



Promoting Social Considerations into Public Procurement Procedures for Social Economy Enterprises

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

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Article 18 (2) of the Directive ► Article 32 (1g) of the Act No. 343/2015 on public procurement			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Only those meeting the following conditions regarding the personal status may take part in the procurement procedure:</p> <p>g) the economic operator has not, within the three years preceding the contract notice, seriously breached environmental, social or labour law obligations under special regulations, for which he has been legally sanctioned by a contracting authority and a contracting entity.¹</p>		<p>The contracting authorities are required to exclude an economic operator from participation in a procurement procedure in cases where the economic operator does not fulfil the conditions set out in the Article 32 (1 g).</p> <p>In case a tenderer or a candidate does not fulfil the conditions for the participation under the Article 32 (1 g), it shall be entitled to demonstrate to the contracting authority that it has taken adequate remedial action. The tenderer or the candidate must demonstrate that he or she has paid or has undertaken to pay compensation for any damage, has sufficiently clarified the facts and circumstances in question by actively cooperating with the competent authorities and has taken specific technical, organisational and personnel measures, which are intended to prevent future misconduct, offences, torts or criminal offences.</p>	<p>Act No. 311/2000 Employment Act Act No. 82/2005 on illegal work and illegal employment Act No. 223/2001 on waste Act No. 124/2006 on safety and health at work Act No. 137/2010 on air Act No. 364/2004 on water</p>
Open questions	<p>The grounds for exclusion under Article 32 (1g) apply in cases of a serious breach of the environmental, social or labour law obligations, but in some cases it might be questionable whether the breach of a law is serious or minor.</p> <p>In cases where the economic operator does not fulfil the conditions set out in the Article 32 (1 g) and demonstrates evidence of a remedy, the contracting authority might find it difficult to decide whether the evidence provided by the economic operator is sufficient, and therefore the economic operator concerned shall not be excluded from the procurement procedure.</p>		
Example of application from the national level (where applicable)			

¹ How art. 18.2 was transposed in the Slovakian legislation, it does not cover all the possibilities that the Directive intended. Only the previous conduct of the tenderer that results into exclusion.

Article 20 of the Directive ► Article 36a of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>(1) The contracting authority and the contracting entity may reserve the right to participate in the procurement procedure only for registered social integration enterprises, sheltered workshops, persons with disabilities who operate or carry out self-employment at a sheltered workplace², or may reserve the performance of the contract under sheltered employment programmes, provided that at least 30% of employees of registered integration social enterprises, employees working in sheltered workshops or employees of sheltered employment programmes are persons with disabilities or otherwise disadvantaged persons.</p> <p>(2) Where a reservation under paragraph 1 applies, it shall be indicated in the contract notice, the notice used as a call for competition, the concession notice, the notice of the call for competition or the invitation to tender.</p>		<p>This provision enables the contracting authority and the contracting entity to reserve the right to participate in the procurement procedure only to the economic operators that are specifically named in the provision. Reference shall be made in the contract notice.</p>	<p>Act No. 112/2018 on social economy and social enterprises.</p> <p>This Act provides a definition for a disadvantaged person and a vulnerable person.</p> <p>Registered social integration enterprise shall employ:</p> <ul style="list-style-type: none"> a) at least 30% of disadvantaged persons out of the total number of employees, b) at least 30% of vulnerable persons out of the total number of employees or c) at least 40% of disadvantaged people and vulnerable people out of the total number of employees. <p>The law lists some possible situations that qualify as “disadvantaged or vulnerable person”, such as ex-offenders, people after parental leave, retired people...</p>
<p>Open questions</p>	<p>Decision of the Supreme court 4Sžf/67/2015</p> <p>The Supreme Court decided that where a contract is reserved for sheltered workshops the contracting authority (or the Office for public procurement as the review body) must consider more thoroughly whether construction works to be carried out within the framework of the procurement contract are also eligible for the employees of the sheltered workshop or sheltered workplace.</p> <p>According to the decision of the Supreme Court they should take into account the specificities of the construction works to be carried out within the contract in the context of the possibilities and capabilities of individuals with disabilities. The purpose of the law is to enable the execution of contracts by sheltered workshops and workplaces and thus effectively contribute to the inclusion of people with disabilities in the market. On the other hand, it must be pointed out that the purpose of that legislation is not that the subject of the contract intended for the sheltered workshops and workplaces was actually performed by subcontractors that are not sheltered workshops or sheltered workplace.</p>		

² Persons with disabilities work in sheltered workshops as employees. In a sheltered workplace person with disabilities can work as an employee or as self-employed.

Example of application from the national level (where applicable)	The Article 20, regarding the reserved contracts, was implemented into the national law in May 2018 when the Act No. 112/2018 on social economy and social enterprises came into law. Therefore, nowadays there are not many registered social enterprises on the market because the new law entered into force only a several months ago. This is also the reason why the contracting authorities do not apply this Article to a large extent. So far contracting authorities have applied this article for contracts below the threshold amount. The contracting authorities usually reserve the right to participate in the procurement procedure for sheltered workshops when awarding contracts for their cleaning and catering services.
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Article 40 of the Directive ► Article 25 of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>(1) Before launching a procurement procedure, the contracting authority and the contracting entity may conduct market consultations for the purpose of preparing the procurement procedure and informing economic operators of the planned procurement procedure. For this purpose, the contracting authority and contracting entity may, in particular, seek advice from independent experts, independent institutions or market participants which may be used in the planning or implementation of the procurement procedure if it does not distort competition or breach the principle of non-discrimination and the principle of transparency.</p> <p>(2) Where the candidate, tenderer or economic operator, in relation to the candidate or tenderer, has provided the contracting authority or the contracting entity with advice, including the consultation referred to in paragraph 1, or otherwise participated in the preparation of a public procurement procedure, the contracting authority and the contracting entity shall take appropriate measures so that the participation of that candidate or tenderer did not distort competition.</p> <p>(3) The measures referred to in paragraph 2 shall include, in particular, announcement of the relevant information to other candidates or tenderers that have been exchanged in relation to the participation of the candidate, tenderer or economic operator in relation to the candidate or tenderer for the preparation of the procurement procedure or information obtained from the participation of the candidate, the tenderer or the economic operator in relations to the candidate or tenderer, including an adequate time limit for receipt of tenders. The contracting authority and contracting entity shall indicate in the contract notice, the notice to be used as a call for competition, a notice of concession, a notice of a call for competition or a call for tenders, in the case of a subcontract, an internet address where the relevant information is available.</p>		<p>This provision permits the contracting authority to request or accept advice from independent experts, institutions or economic operators.</p> <p>A fundamental prerequisite for market consultations is the obligation not to distort competition and not to violate the principle of non-discrimination and the principle of transparency.</p> <p>The conditions set by this provision are in line with the article of the directive.</p>	
Open questions	Most of the contracting authorities do not conduct market consultations because they are concerned that they might violate the principle of non-discrimination and transparency even though they approach the economic operators with all caution.		
Example of application from the national level (where applicable)	A few contracting authorities conduct market consultations for the purpose of preparing the procurement procedure and procurement documents regarding IT contracts and medical equipment.		

Article 42 (1) of the Directive ► Article 42 (1) of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>The procurement documents are written, graphic or other documents containing a detailed definition of the subject matter of the contract. In the procurement documents, the contracting authority and the contracting entity shall indicate all the circumstances that will be relevant to the performance of the contract and the preparation of the tender. The description of the subject matter of the contract may also refer to a specific procedure or method of manufacture or supply of the required goods, works or services as well as a specific procedure for another stage of their life cycle, even if these factors do not form part of their material nature, but shall be related to the subject-matter of the contract and be appropriate to its value and purpose. The subject-matter of the contract must be described unambiguously, completely and impartially by the contracting authority or the contracting entity on the basis of the technical requirements set out in Annex no. 3. Technical requirements:</p> <p>a) should take into account accessibility requirements for people with disabilities and appropriate solutions for all users, except in duly justified cases; where legally binding European Union acts provide for mandatory accessibility requirements for persons with disabilities or solutions suitable for all users, the contracting authority or the contracting entity shall specify in the technical requirements a reference to the relevant legally binding acts of the European Union.</p>		<p>This provision is based on the premise that the economic operator can submit a relevant tender only in case the description of the subject-matter of the contract is unambiguous, complete and impartial.</p> <p>This provision also establishes that the technical specifications must be related to the subject-matter of the contract and proportionate to its value and purpose.</p> <p>The contracting authorities are required to take into account accessibility criteria for persons with disabilities or design for all users.</p>	
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>			

Article 43 of the Directive ► Article 42 (7-9) of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>(7) In case of procurement of goods, works or services with particular environmental, social or other considerations, the contracting authority and the contracting entity may, in the description of the subject-matter of the contract, in the criteria for the evaluation of the tenders or in the contract conditions, require a specific label as a proof that the goods, works, and services are in line with these specific considerations, if</p> <p>a) the requirements for the label are linked to the subject-matter of the contract and are appropriate for the description the subject matter of the contract,</p> <p>b) the requirements for the label are based on objectively verifiable and non-discriminatory criteria,</p> <p>c) the label is the result of an open, transparent process in which all stakeholders, including government authorities, consumers, social partners, manufacturers, distributors and NGOs, can participate,</p> <p>d) the label is available to all the entities that are interested in it, and</p> <p>e) the requirements for the label are determined by the person over whom the economic operator applying for the label has no decisive influence.</p> <p>(8) Where the contracting authority and contracting entity do not require that the goods, works or services fulfil all the requirements for the label, it shall state which of these conditions it requires. The contracting authority and the contracting entity may not require a specific label if the label meets the conditions set out in paragraph 7 (b) to (e), but other conditions not related to the subject matter of the contract must also be met; in this case, they may describe the subject matter of the contract by reference to the detailed specifications of the label or its parts which are relevant to the subject matter of the contract and are suitable for describing the subject matter of the contract.</p> <p>(9) Where the contracting authority and the contracting entity require a particular label, it must also accept another label, the requirements for which are equivalent to the requirements of the required label. If the candidate or the tenderer has objectively not been able to obtain the relevant label within the specified time limits, the contracting authority and the contracting entity must also accept other evidence submitted by the tenderer or candidate such as the manufacturer's technical documentation, provided that they demonstrate that the goods, works or services fulfil the requirements for a specific label or specific conditions required by the contracting authority and the contracting entity.</p>		<p>The contracting authorities are allowed to require labels as means of proof that the works, services or supplies coincide with the characteristics, provided that all conditions laid down by the law are fulfilled.</p> <p>The contracting authority and the contracting entity may also require only certain requirements for obtaining a specific label and on the contrary, may not require a specific label if it is also necessary to fulfil conditions unrelated to the subject-matter of the contract. Also, the contracting authority and contracting entity are obliged to accept equivalent labels, or in certain circumstances, other evidence that the supply, works or services fulfil the conditions for the award of a label.</p>	

Open questions	Decision of the Supreme Court 5Sžf/39/2009 In this case the contracting authority did not justify why the description of the subject-matter of the contract requires a reference to a particular production procedure. Even though the contracting authority argued that it has introduced a number of production procedures, this argument was irrelevant since it is not possible to refer to a particular production procedure without a reference word “or equivalent” even if the subject-matter of the contract cannot be described in a sufficiently precise and comprehensible manner.
Example of application from the national level (where applicable)	Usually contracting authorities require labels for cleaning products. But the use of Labels is not frequent, because the contracting authorities are concerned that they would not be able to evaluate an equivalent label.

Article 46 of the Directive ► Article 28 of the Act No. 343/2015 on public procurement			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>(1) The contracting authority and the contracting entity may divide the contract or the concession into separate lots, indicating in contract notice, the notice used as a call for competition or the concession notice the size and subject matter of such lots and indicating whether the tenders can be submitted for one, for several or for all of the lots.</p> <p>(2) Where the contracting authority does not divide the contract into lots, the reasons shall be stated in the contract notice or the contract report; this obligation does not apply to the award of a concession.</p> <p>(3) Where tenders can be submitted for several or for all of the lots, the contracting authority and the contracting entity may limit the number of lots that may be awarded to one tenderer. The maximum number of lots that may be awarded to one tenderer, shall be indicated in the contract notice, the notice used as a call for competition or a concession notice. The contracting authority and the contracting entity shall indicate in the procurement documents or in the concession documentation objective and non-discriminatory rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.</p> <p>(4) Where more than one lot may be awarded to the same tenderer, contracting authorities and the contracting entity may award contracts combining several or all lots where they have specified in the contract notice, notice to be used as a call for competition or a concession notice that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined. The contracting authority and the contracting entity shall indicate in the procurement documents or in the concession documentation objective and non-discriminatory rules they intend to apply for determining which lots will be awarded to one tenderer.</p>		<p>The contracting authorities are permitted to decide whether or not to divide a contract into lots. This information needs to be specified in the contract notice.</p> <p>In case the contracting authority does not divide a contract into lots, the reasoning must be indicated in the contract notice.</p> <p>The Act also addresses the situation where it is possible for a tenderer to submit tenders for several or all of the lots. This should be indicated in the contract notice, the notice used as a call for competition or the concession notice. In the tender documents, contracting authorities and contracting entities shall state the objective and non-discriminatory rules they apply to determine the parts of the contract to be awarded to one tenderer.</p>	
Open questions	There is still some confusion among contracting authorities regarding the difference between the division of the contract into lots and the situation when the procurement shall not be subdivided with the effect of preventing it from falling within the scope of the Act.		
Example of application from the national level (where applicable)	The contracting authorities divide the contract into separate lots usually in cases where the contract has as its object the execution of works, the supply of products or the provision of services in a bigger territorial area, so the contracting authority divides the public contract into lots taking into account the performance of the contract in a smaller territorial unit.		

Article 56 of the Directive ► Articles of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 53 (8) The Commission shall evaluate the tenders which have not been excluded, on the basis of the criteria laid down in the contract notice, the concession notice, the notices used as a call for competition or in procurement documents that are non-discriminatory and promote competition.</p> <p>Article 40 (1) The contracting authority shall assess the fulfilment of the selection criteria in the procurement procedure in accordance with the documents necessary for the preparation of the tender, the proposal or for the demonstration of compliance with the selection criteria. Where the selection criteria are set out in several documents according to the first sentence, they must not be in conflict.</p> <p>Article 40 (6) The contracting authority and the contracting entity shall exclude from the procurement procedure the tenderer or the candidate if</p> <ul style="list-style-type: none"> a) they did not meet the selection criteria, b) they submitted invalid documents; invalid documents are documents that have expired, (c) they provided information or evidence that is untrue or altered in such a way that it does not correspond to facts and has an impact on the assessment of the selection criteria of the candidate or the tenderer, (d) they attempted to improperly influence the procurement process, (e) they attempted to obtain confidential information which would give him an unjustified advantage, f) the conflict of interests pursuant to § 23 cannot be eliminated by other effective measures, g) on the basis of trustworthy information, has reasonable grounds to suspect that the tenderer or the candidate has concluded an anti-competitive agreement with another economic operator, if that condition is stated in the contract notice or in the notice used as a call for competition, h) when assessing professional ability, has identified the conflicting interests of the candidate or tenderer that may adversely affect the performance of the contract, 	<p>Public procurement Act has its own structure, so the content of the Article 56 of the Directive is divided into different articles or sections of the law.</p>	<p>The contracting authority is required to examine whether the tenders meet the relevant selection criteria that have been set out in the contract notice.</p> <p>The Act outlines the circumstances in which the tenderer may be excluded from the procurement procedure.</p> <p>In open procedure, the contracting authority is allowed to review tenders before verifying the absence of grounds for exclusion and the fulfilment of the selection criteria. It is not allowed in any other procurement procedure.</p> <p>The Act allows contracting authorities to ask for an explanation or for addition of documents if the contracting authority cannot assess the fulfilment of the selection criteria. The provision sets the minimum time limit for explanation or for addition of documents by the tenderer or the candidate.</p>	

i) has not submitted, upon written request, an explanation or addition of the submitted documents within the specified time limit,

j) has not submitted, upon written request, documents replaced by a single European document within a specified time limit,

k) has not replaced an entity by means of which he demonstrates compliance with the selection criteria of a financial and economic standing or of a technical or professional ability, which does not meet a relevant selection criteria within a specified time limit by another entity fulfilling the specified selection criteria,

l) has not replaced a subcontractor who does not meet the requirements specified by the contracting authority or the contracting entity for a new subcontractor meeting specified requirements within the time limit referred to in Article 41 (2),

m) has not replaced the technicians, technical bodies or entities intended to perform the contract or concession contract, or the managerial staff who do not fulfil the selection criteria pursuant to Section 34 (1) (c) or g) within a specified period by new persons or bodies fulfilling this selection criteria.

Article 40

(7) The contracting authority and the contracting entity shall exclude from the procurement procedure also the tenderer or the candidate if the distortion of competition resulting from the preliminary market consultations or prior involvement under § 25 cannot be remedied by other effective measures even after the statement of the tenderer or candidate; prior to any such exclusion the contracting authority and the contracting entity shall provide the candidate or tenderer with the opportunity to demonstrate that its participation in the preliminary market consultations or prior involvement has not caused distortion of competition within five working days of receipt of the request for statement.

Article 66 (7)

The contracting authority may decide that the assessment of compliance with selection criteria pursuant to § 40 shall be made after the evaluation of the tenders under § 53. If the contracting authority does not use an electronic auction, it may decide that the evaluation of the fulfilment of selection criteria and the evaluation of the fulfilment of the subject-matter of the contract is done after the evaluation of tenders based on the contract award criteria.

Article 40 (4)

The contracting authority and he contracting entity shall ask the tenderer

<p>or the candidate for written explanation or addition of documents submitted if validity cannot be assessed from the submitted documents or the fulfilment of the selection criteria. If the contracting authority and the contracting entity does not specify a longer period, the tenderer or candidate shall deliver the explanation or addition of the documents submitted</p> <p>(a) within two working days from the date of receipt of the request if the communication is provided by electronic means,</p> <p>(b) within five working days from the date of receipt of the request, if the communication is provided otherwise than under (a).</p>			
<p>Open questions</p>	<p>Judgement of the Court in C-599/10</p> <p>To enable the contracting authority to require a tenderer whose tender it regards as imprecise or as failing to meet the technical requirements of the tender specifications to provide clarification in that regard would be to run the risk of making the contracting authority appear to have negotiated with the tenderer on a confidential basis, in the event that the tenderer was finally successful, to the detriment of the other tenderers and in breach of the principle of equal treatment.</p> <p>In any event, it does not follow from Article 2 or from any other provision of Directive 2004/18, or from the principle of equal treatment or the obligation of transparency, that, in such a situation, the contracting authority is obliged to contact the tenderers concerned. Those tenderers cannot, moreover, complain that there is no such obligation on the contracting authority since the lack of clarity of their tender is attributable solely to their failure to exercise due diligence in the drafting of their tender, to which they, like other tenderers, are subject.</p> <p>Article 2 of Directive 2004/18 does not therefore preclude the absence, in national legislation, of a provision which would oblige the contracting authority to request tenderers, in a restricted public procurement procedure, to clarify their tenders in the light of the technical requirements of the tender specifications before rejecting them because they are imprecise or do not meet those requirements.</p> <p>None the less, Article 2 of that directive does not preclude, in particular, the correction or amplification of details of a tender where appropriate, on an exceptional basis, particularly when it is clear that they require mere clarification, or to correct obvious material errors, provided that such amendment does not in reality lead to the submission of a new tender. Nor does that article preclude a provision of national legislation such as Article 42(2) of Law No 25/2006, according to which, in essence, the contracting authority may ask tenderers in writing to clarify their tender without, however, requesting or accepting any amendment to the tender.</p> <p>In the exercise of the discretion thus enjoyed by the contracting authority, that authority must treat the various tenderers equally and fairly, in such a way that a request for clarification does not appear unduly to have favoured or disadvantaged the tenderer or tenderers to which the request was addressed, once the procedure for selection of tenders has been completed and in the light of its outcome.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 57 of the Directive ► Articles of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>32 (1) Only those meeting the following conditions regarding the personal status may take part in a procurement procedure:</p> <p>(a) neither himself nor his statutory body or a member of his statutory body was lawfully convicted for the offence of corruption, for the offence of damaging the financial interests of the European Communities, for the offence of making legal income from criminal activities, for the offence of establishing, plotting and supporting a criminal group or for the offence of establishing, plotting and supporting a terrorist group, for the offence related in a public procurement and a public auction</p> <p>(b) he does not have a history of arrears in the payment of contributions to health insurance, social insurance and contributions to seniors' pension savings in the Slovak Republic or in the State of residence, place of business or habitual residence,</p> <p>(c) she does not have a history of tax arrears in the Slovak Republic or in the State of residence, place of business or habitual residence,</p> <p>d) he is not subject to proceedings for a declaration of bankruptcy, is not bankrupt or being wound up, nor a bankruptcy petition was rejected against him due to lack of estate,</p> <p>(e) she is authorised to deliver supplies, execute building works or provide services,</p> <p>f) he is not prohibited from the participation in a public procurement procedure by a final decision in the Slovak Republic or in the State of residence, place of business or habitual residence,</p> <p>(g) within the three years preceding the contract notice, he has not seriously breached environmental, social or labour law obligations under special regulations, for which he has been legally sanctioned by a contracting authority and a contracting entity,</p> <p>(h) within three years preceding the contract notice, she has not committed a serious breach of professional obligations which the contracting authority and the contracting entity can prove.</p> <p>Article 32 (7)</p> <p>A candidate or a tenderer shall be considered meeting the conditions regarding the personal status under the section 1 (b) and (c) where he has paid arrears or has been allowed to pay arrears in</p>	<p>Public procurement Act has its own structure, so the content of the Article 56 of the Directive is divided into different articles or sections of the law.</p>	<p>The selection criteria set out the conditions for tenderer or candidates regarding the personal status and it also includes a serious violations of environmental, social and labour law obligations for which sanctions have been imposed by the law enforcement body.</p> <p>The Act also proposes a new institute, the self-cleaning mechanism whose purpose is to provide a possibility to participate in the procurement procedure for entities for which there are identified grounds for exclusion, provided that sufficient remedial action is taken. These measures may include, for example, personnel and organisational changes, introduction and implementation of control mechanisms, creation of an internal audit structure, payment of compensation for damages caused, etc. However, the self-cleaning mechanism cannot be applied to cases where a final decision imposing a prohibition from participation in a public procurement procedure has been imposed on the tenderer or the candidate. The sufficiency of the measures adopted shall be assessed by the contracting authority or the contracting entity itself, in the context of the seriousness of the error. If the contracting authority or the contracting entity concludes that these measures are inadequate, the candidate or tenderer shall be excluded.</p>	<p>Act No. 300/2005 Penalty Code</p> <p>Act No. 301/2005 Penalty Proceedings Code</p> <p>Act No. 580/2004 on health insurance</p> <p>Act No. 461/2003 on social security</p> <p>Act No. 311/2001 Labour Code</p> <p>Act No. 563/2009 on taxes</p> <p>Act No. 82/2005 on illegal employment</p>

<p>instalments.</p> <p>Article 40 (8)</p> <p>A candidate or a tenderer who does not fulfil the conditions for participation regarding the personal status pursuant to Article 32 (1) (a), (g) and (h), or the grounds for exclusion under paragraph 6 (d) to (g) and paragraph 7 apply, it shall be entitled to demonstrate to the contracting authority and the contracting entity that it has taken adequate remedial action. The tenderer or the candidate must demonstrate that he or she has paid or has undertaken to pay compensation for any damage, has sufficiently clarified the facts and circumstances in question by actively cooperating with the competent authorities and has taken specific technical, organisational and personnel measures, which are intended to prevent future misconduct, offenses, torts or criminal offenses.</p> <p>Article 40 (9)</p> <p>A candidate or a tenderer who has been prohibited from participation in a procurement procedure by a final decision in another Member State is not entitled to prove to the contracting authority and the contracting entity that he has taken remedial action under the second sentence of section 8 if that decision is enforceable in the Slovak Republic.</p> <p>Article 40 (10)</p> <p>The contracting authority and the contracting entity shall assess the remedy under the second sentence of the section 8 submitted to the tenderer or a candidate, taking into account the seriousness of the error and its particular circumstances. Where the remedy proposed by the candidate or tenderer is considered insufficient by the contracting authority or the contracting entity, the tenderer or candidate shall be excluded from the award of the contract.</p> <p>Article 83 (3)</p> <p>The Office for Public Procurement will impose</p> <p>a) a fine of between EUR 1 000 and EUR 10 000 and a prohibition from participation in a public procurement procedure for a period of three years to a tenderer, a candidate or an economic operator if for the purposes of showing compliance with selection criteria, for the purposes of the selection of tenderers, for the purposes of registration of economic operators, for the purpose of making a deposit, has provided information or evidence which is untrue or altered in such a way that it does not correspond to facts and has an impact on the assessment of compliance with selection criteria, the selection of</p>			
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<p>candidates, the registration in the list of operators or the guaranteeing of tenders,</p> <p>b) to a tenderer, a candidate or an economic operator a prohibition from participation in a public procurement procedure for a period of:</p> <ol style="list-style-type: none"> 1. one year to the economic operator if he has been sanctioned by a final for the reason that he did not properly or in a timely manner, in any material or substantial extent, fulfil the obligation to pay remuneration or repayment to the person who was the subcontractor in relation to the contract awarded under this Act, 2. three years if the contracting authority or the contracting entity has withdrawn from the contract, the concession contract or the framework agreement due to a substantial breach of the supplier's obligations, <p>c) a prohibition from participation in a public procurement procedure for a period of one year to a tenderer, a candidate or an economic operator if in the procedure of awarding a contract through the Electronic contracting system or in performing a contract concluded through the Electronic contracting system, he violates the provisions of this Act or the trading conditions of the Electronic contracting system and causes the contracting authority damages or gains benefit.</p>			
Open questions			
Example of application from the national level (where applicable)			

Article 67 of the Directive ► Article 44 of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 44</p> <p>(1) The contracting authority and the contracting entity shall evaluate the tenders on the basis of objective criteria for the evaluation of tenders relating to the subject matter of the contract in order to determine the most economically advantageous tender. The criteria set by the contracting authorities and the contracting entities must be non-discriminatory and must promote competition.</p> <p>(2) The criterion for the evaluation of tenders shall be deemed to be related to the subject-matter of the contract if, in any respect and at any stage in the life cycle of a product, works or service, relates to the required goods, works or services, including factors relating to the particular process of manufacture, goods, the execution of works or the provision of services or the trading of them, or of a specific process of another life cycle of a product, building or service; this is true even if these factors are not part of their material nature.</p> <p>(3) The tenders are evaluated on the basis of:</p> <p>a) the best price / quality ratio,</p> <p>b) cost using the cost-effectiveness approach, in particular life-cycle costs, or</p> <p>c) the lowest price.</p> <p>(4) The best price / quality ratio shall be evaluated on the basis of the price or cost and other criteria that include qualitative, environmental or social considerations related to the subject matter of the contract, which include, in particular, the quality, technical merit, aesthetic and functional features, accessibility, social, environmental and innovation characteristics, trading and its conditions, organisation, qualification and experience of employees assigned to the performance of a contract or concession contract if the quality of such employees can have a significant effect on the level of the performance, warranty service, post-warranty service, technical assistance, the delivery date, the delivery method, the delivery period or the end date, in the case of a contract in the field of defence and security also security of a supply, interoperability and operational characteristics.</p>	<p>Public procurement Act has its own structure, so the content of the Article 56 of the Directive is divided into different articles or sections of the law.</p>	<p>The determination of the award criteria is primarily based on the requirement that the criteria are linked to the subject-matter of the contract and at the same time designed in accordance with the principles of transparency, non-discrimination and equal treatment, thereby ensuring that tenders are assessed in terms of effective and fair competition. The main objective of the award criteria thus defined is the selection of the most economically advantageous tender. With regard to the best price / quality ratio, the provision allows criteria based on environmental and social consideration as possible criteria for evaluating tenders.</p>	

<p>Article 53</p> <p>(1) The Commission shall evaluate the tenders in order to meet the requirements of the contracting authority or the contracting entity for the subject matter of the contract and, if in doubt, verify the accuracy of the information and evidence provided by the tenderer; in the case of a defence and security contract, the Commission will evaluate the offers also in terms of security and protection requirements for classified information and security of supply. If the Commission identifies discrepancies or uncertainties in the information or evidence provided by the tenderer, it shall request in writing the explanation of the tender and, if necessary, the submission of evidence.</p> <p>Article 44</p> <p>(9) The criteria for the evaluation of tenders shall be indicated:</p> <p>(a) by the contracting authority in the contract notice,</p> <p>(10) The contracting authority and the contracting entity shall specify to each of the criteria, except for the criteria in paragraph 3 c), the relative weight which can be expressed by determining the interval with the appropriate maximum spread. The relative weight shall be specified</p> <p>(a) by the contracting authority in a contract notice, in the procurement documents, in the call for competition or in an informative document,</p> <p>(11) Where the relative weighting of the individual criteria is not possible for objective reasons, the contracting authority and the contracting entity shall indicate them in descending order of importance.</p>			
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>	<p>Contracting authorities are used to set the contract award criteria for the evaluation of tenders solely on price or cost. When applicable the contracting authorities use as a second criterion delivery conditions such as delivery date, delivery process and delivery period or period of completion. Currently, environmental criteria such as material recyclability and waste minimalization are also being used.</p>		

Article 69 of the Directive ► Article 53 of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>(2) Where a particular tender appears to be abnormally low in relation to the goods, works or services, the Commission shall ask the tenderer in writing to explain that part of the tender that is essential for its price. Explanation may concern in particular:</p> <ul style="list-style-type: none"> a) the economics of construction methods, the economics of manufacturing processes or the economics of the services provided, b) the technical solution or particularly favourable conditions available to the tenderer for the supply of goods, the performance of construction works, the provision of services, c) the special nature of the goods, the specific nature of the works or the special nature of the service proposed by the tenderer, d) compliance with environmental, social or labour law obligations under special regulations, e) compliance with obligations towards subcontractors, f) the possibilities of the tenderer to obtain State aid. <p>(3) Where at least three tenders are submitted from candidates who meet the selection criteria, the requirements of the contracting authority or the contracting entity on the subject-matter of the contract, an abnormally low tender is a tender with a price that is:</p> <ul style="list-style-type: none"> a) 15% lower than the average prices of the other tenders, except the tender with the lowest price or b) 10% lower than the bid price with the second lowest pricing. <p>(4) The Commission shall take into account the explanation of the tender by the tenderer in accordance with the requirement under paragraph 1 or the justification of the abnormally low tender by the tenderer in accordance with the evidence presented.</p> <p>(5) The contracting authority and the contracting authority shall exclude the tender if:</p> <ul style="list-style-type: none"> a) the tenderer has not made a deposit under the specified conditions, b) the offer does not meet the requirements for the subject-matter of the contract or concession specified in the documents necessary for the preparation of the tender, c) the tenderer did not submit a written explanation of the tender in accordance with the requirement under paragraph 1 within <ul style="list-style-type: none"> 1. two working days from the date of the request for clarification, unless the Commission has determined a longer period and the communication is made by electronic means, 		<p>The provision requires the Commission to ask the tenderer for clarification if the tender appears to be abnormally low in relation to the subject-matter of the contract. The consideration of whether a particular tender is showing signs of abnormally low tender is the sole responsibility of the contracting authority or the contracting entity.</p> <p>The provision sets out the reasons for the exclusion of the tender and the obligation of the contracting authority and the contracting entity to notify the tenderer in writing of the exclusion of the tender.</p>	

<p>2. five working days from the date of receipt of the request for clarification, unless the Commission has determined a longer period and the communication is carried out otherwise than under the first point,</p> <p>d) the tenderer's submitted explanation of the offer does not comply with the requirement under paragraph 1,</p> <p>e) the tenderer does not provide a written justification of an abnormally low tender within five working days of the date of receipt of the request if the Commission has not specified a longer period,</p> <p>f) the tenderer's submitted explanation of the abnormally low tender and the evidence do not sufficiently justify the low level of the prices or costs, especially in view of the facts under paragraph 2,</p> <p>g) the tenderer has provided false information or distorted information with substantial influence on the evaluation of the tenders,</p> <p>h) the tenderer has attempted to improperly influence the procurement process.</p> <p>(6) If the tenderer justifies the abnormally low tender by obtaining State aid, he must be able to demonstrate within a reasonable time limit set by the Commission that the State aid had been granted in accordance with the rules of the internal market of the European Union, otherwise the contracting authority or the contracting entity shall exclude the tender.</p>			
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>	<p>Compliance with social or labour law obligations is a concern in particular with contracts where the performance is provided by an employee with a salary close to the minimum wage. This may include the staff of cleaning services, guard services, construction workers, etc. The contracting authorities do not pay enough attention when assessing the tender price in relation to the compliance with social or labour law obligations.</p> <p>Even though it is the responsibility of the contracting authority to require an explanation where tenders appear to be abnormally low, it is usually the unsuccessful tenderer who raises the question of non-compliance with social or labour law obligations when he submits a motion for review procedure in relation to the evaluation of tenders.</p> <p>For this reason the Office for Public Procurement has issued a recommendation that the contracting authorities and contracting entities should address the issue of labour costs in the process of preparing the public procurement and prepare a preliminary labour cost calculation. Such financial quantification of labour costs will help to detect irregularities. The Office for Public Procurement also recommends that contracting authorities and contracting entities, when identifying an abnormally low tender, also request a clarification with a detailed calculation demonstrating that the tender price includes all costs arising from the labour law.</p>		

Article 70 of the Directive ► Article 42 (12) of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>The contracting authority and the contracting entity may lay down special conditions relating to the performance of a contract, provided that they indicate them in the contract notice, the notice used as a call for competition or in the procurement documents. Special conditions relating to the performance of the contract may include economic, social, environmental, innovation or employment-related aspects; in case of a contract in the field of defence and security, special conditions relating to the performance of the contract may also include subcontractors, security and protection of classified information or security of supply.</p>		<p>Contracting authorities are allowed to set additional conditions for performance of contracts linked to their subject matter.</p>	
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>	<p>The most common special condition of the contract is the obligation of the successful tenderer to employ long-term unemployed persons. Such a condition was also required for some projects funded by the European Union.</p>		

Article 71 of the Directive ► Articles of the Act No. 343/2015 on public procurement

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 41</p> <p>(1) The contracting authority and the contracting entity may require in the procurement documents or in the concession documentation that:</p> <p>a) the tenderer in the tender has indicated the proportion of the contract it intends to subcontract, the proposed subcontractors and the subject of the subcontracts,</p> <p>b) the proposed subcontractor fulfils the conditions of selection criteria regarding personal status and that there are no grounds for exclusion under Article 40 (6) (a) to (h) and (7); the authorisation to deliver goods, to perform construction works or to provide a service shall be proved in relation to that part of the contract or concession that would be performed by the subcontractor.</p> <p>(2) If the proposed subcontractor does not meet the selection criteria under paragraph 1 (b), the contracting authority or the contracting entity shall ask the tenderer in writing for replacement. The tenderer shall deliver the proposal of the new subcontractor within five working days from the date of receipt of the request under the first sentence if the contracting authority or the contracting entity has not specified a longer period.</p> <p>(3) The contracting authority and the contracting entity shall in the procurement documents or in the concession documentation require that in the contract, framework agreement or concession contract, at the latest at the time of conclusion, the successful tenderer provides details of all known subcontractors, details of the person entitled to act as a subcontractor in the scope of name and surname, residence, date of birth.</p> <p>(4) The contracting authority and the contracting entity are required to specify in the draft of the contract, framework agreement or concession contract</p> <p>a) the supplier's obligation to notify any change of information regarding the subcontractor,</p> <p>b) the rules regarding the change of the subcontractor and the obligation to notify the change of the subcontractor and the information under paragraph 3 on the new subcontractor.</p> <p>(5) If the contracting authority or the contracting entity required in the tender documents or in the concession documentation that the proposed subcontractor shall fulfil the conditions for selection criteria under paragraph 1 b), the required selection criteria must also be met by the new subcontractor.</p> <p>(6) In the case of a public works contract, a public service contract or a</p>		<p>The provision establishes a legal framework for subcontracting. In the first instance, the legislation offers contracting authorities the possibility to require tenderers to indicate the proportion of the contract they intend to subcontract, to nominate the subcontractors, and they may require that the proposed subcontractor fulfils the selection criteria regarding the personal status. In the event the subcontractor does not fulfil the requirements, the contracting authority or the contracting entity shall request in writing the replacement of the concerned subcontractor.</p> <p>At the same time, the legislation aims to address the issue of non-payment to the subcontractor by providing the possibility of the direct payments provision. The contracting authority or the contracting entity may, therefore, in the contract or framework agreement reserve the right to make a payment for performance carried out in connection with the performance of the subject-matter of the contract directly to the subcontractor if so requested. The specific mechanism of the direct payments provision leaves the Act at the discretion of the contracting authorities or contracting entities.</p>	

<p>concession contract, the contracting authority and the contracting entity shall not require the information referred to in paragraphs 3 and 4 concerning the supplier of the goods.</p> <p>(7) Where the nature of the contract so permits, the contracting authority or the contracting entity may determine in the contract or framework agreement that the appropriate payment for the supply, works or services is paid directly to the subcontractor who provided the supply, carried out the works or provided the services to the contractor if the subcontractor so requests. At the same time, the contracting authority or the contracting entity shall determine, in the contract or framework agreement, details of the method of payment for the subcontractor and the appropriate mechanism to enable the contractor to object against an undue payment.</p> <p>(8) The provisions of paragraphs 1 to 7 shall not affect the contractor's liability for the performance of the contract or the concession contract.</p> <p>39 (1) For the purposes of this Act, the European single procurement document is a document which an economic operator may use to provisionally replace documents demonstrating compliance with the selection criteria specified by the contracting authority or the contracting entity.</p>			
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>			

Article 74 of the Directive ► Articles of the Act No. 343/2015 on public procurement			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 5 (2)</p> <p>Above the threshold contract is a contract where the estimated contract value is equal to or higher than the financial limit laid down by the Decree of the Office for Public Procurement.</p>	<p>Decree of the Office for Public Procurement No. 118/2018 on threshold amounts.</p> <p>The Decree sets the threshold amounts for public contracts for social and other specific services when they are equal to or greater than € 750 000.</p>	<p>There is no special procurement regime dedicated to public contracts for social and other specific services when they are equal to or greater than € 750 000.</p> <p>The procurement procedure dedicated to public contracts for social and other specific services when they are equal to or greater than € 750 000 is the same as for any other public service contract above the threshold.</p> <p>Therefore, there are two relevant articles. The first article ensures compliance with general principles of procurement (transparency and equal treatment of economic operators).</p> <p>The second article enables that the contracting authority can award a contract on the basis of the best price-quality ratio, which includes qualitative, environmental and/or social considerations related to the subject-matter of the public contract.</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 75 of the Directive ► Articles of the Act No. 343/2015 on public procurement			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>There is no special procurement regime dedicated to public contracts for social and other specific services when they are equal to or greater than € 750 000.</p> <p>The procurement procedure dedicated to public contracts for social and other specific services when they are equal to or greater than € 750 000 is the same as for any other public service contract above the threshold.</p> <p>Therefore, there are a few relevant articles. These provisions ensure the proper publication of the contract notice.</p>			
Open questions			
Example of application from the national level (where applicable)			

Article 76 of the Directive ► Not transposed			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
		<p>There is no special procurement regime dedicated to public contracts for social and other specific services when they are equal to or greater than € 750 000.</p> <p>The procurement procedure dedicated to public contracts for social and other specific services when they are equal to or greater than € 750 000 is the same as for any other public service contract above the threshold.</p>	
Example of application from the national level (where applicable)			

Article 77 of the Directive ► Not transposed			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
Open questions			
Example of application from the national level (where applicable)			