



Promoting Social Considerations into Public Procurement Procedures for Social Economy Enterprises

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



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Article 18(2) of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, Statutory Instrument 284/2016, reg 18(4)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>18 (4) (a) In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided that have been established by European Union law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7. (b) A contracting authority shall ensure that public contracts entered into by it require that the obligations referred to in subparagraph (a) are complied with.</p>		<p>This provision requires economic operators to comply with applicable obligations in the fields of environmental, social and labour law. Contracting authorities may exclude tenders for failing to comply with such obligations. Abnormally low tenders should be rejected if the submitted tender does not comply with the applicable obligations. (Regulation 69(5) of the 2016 Regulations)</p>	<p>Examples of applicable obligations include obligations under;</p> <ul style="list-style-type: none"> S.I. 412 of 2016 - European Union (Posting of Workers) Regulations 2016 Protection of Employees (Part-time Work) Act 2001 S.I. No.339 of 2011 which implements Directive 2009/33/EC (clean and energy efficient road transport vehicles); S.I. No. 151 of 2011 which implements Directive 2006/32/EC (Energy Efficient public procurement) <p>Schedule 7 of SI 284/2016 offers the following list of international, social and environmental conventions referred to in Regulation 18(4)(a)</p> <ul style="list-style-type: none"> (a) ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise; (b) ILO Convention 98 on the Right to Organise and Collective Bargaining; (c) ILO Convention 29 on Forced Labour; (d) ILO Convention 105 on the Abolition of Forced Labour; (e) ILO Convention 138 on Minimum Age; (f) ILO Convention 111 on Discrimination (Employment and Occupation); (g) ILO Convention 100 on Equal Remuneration; (h) ILO Convention 182 on Worst Forms of Child Labour; (i) Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer; (j) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); (k) Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention); (l) Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its regional Protocols.

<p>Open questions</p>	<p>This provision has not been dealt with in national courts.</p> <p>A possible element of concern relates to the extent of contracting authorities' responsibilities to ensure compliance with applicable obligations. Contracting authorities should use the completed European Single Procurement Document and the Tenderer's Declaration of Personal Circumstances to assess tenderers compliance with applicable obligations. Contracting authorities are required to examine abnormally low tenders by asking the economic operator to demonstrate or confirm that they are or will comply with the appropriate obligations in the fields of environmental, social and labour law. Government guidance states that beyond this, compliance checking lies with other relevant statutory bodies such as the Workplace Relations Commissions and Tax Revenue.</p>
<p>Example of application from the national level (where applicable)</p>	<p>The Office of Government Procurement's standardised templates for goods and services request for tenders and accompanying contract templates contain the following provision "In the performance of any Goods Contract awarded, the successful Tenderer(s), and their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the goods provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations."¹ Contracting authorities procuring low to medium risk goods and services which fall above the EU threshold should use the suite of standardised request for tenders and contract templates.</p>

¹ Section 2.1.1 Environmental, Social and Labour Law. Goods RFT 240818. 2018.

Article 20 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, art 20

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>20. (1) A contracting authority may— (a) reserve the right to participate in a procurement procedure to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, or (b) provide for contracts awarded under such a procurement procedure to be performed in the context of sheltered employment programmes, where at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. (2) In a case referred to in paragraph (1), the call for competition shall make reference to Article 20 of the Public Authorities Contracts Directive.</p>		<p>These provisions permit contracting authorities to reserve certain public contracts for certain sheltered workshops and economic operators. Contracting authorities may reserve the right to participate in a public contract competition to sheltered workshops and economic operators whose primary operating purpose is the integration of disabled or disadvantaged persons. Alternatively, contracting authorities may provide for such contracts to be performed in the context of sheltered employment programmes, where at least 30% of the employees of the workshop or economic operator are disabled or disadvantaged workers. Contracting authorities are required to state in the request for tender documentation that they are relying on Article 20.</p>	<p>Contracting authorities should be aware of the definitions of ‘disability’ set out in; The Disability Act 2005; The Employment Equality Acts 1998 and 2004 Section 32 of the Education Act 1998 offers a definition of ‘educational disadvantage’</p>
<p>Open questions</p>	<p>This provision has not been dealt with in national courts. A possible element of legal uncertainty relates to the definition of ‘disadvantaged’. While contracting authorities can rely of the definitions of ‘disability’ set out in the Disability Act 2005 and in the Employment Equality Acts 1998 and 2004, there is no available legal definition of ‘disadvantage.’ Contracting authorities may rely on government guidance and policy documents to understand the scope of the definition. Please note that Section 32 of the Education Act 1998 offers a definition of ‘educational disadvantage’</p>		
<p>Example of application from the national level (where applicable)</p>	<p>During the preparatory stage for the New National Children’s Hospital, the procurement board concluded two contracts for supplies and services relying on Regulation 20 in 2018. Both contracts were awarded to one social enterprise based in the locality of the hospital site.</p>		

Article 40 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 40

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>40. (1) Before commencing a procurement procedure, a contracting authority may conduct market consultations with a view to preparing the procurement and informing economic operators of the authority's procurement plans and requirements. (2) For the purposes of paragraph (1), a contracting authority may seek or accept advice from independent experts or authorities or from market participants. (3) The advice referred to in paragraph (2) may be used in the planning and conduct of the procurement procedure, where the use of such advice does not— (a) have the effect of distorting competition, or (b) result in a violation of the principles of non-discrimination and transparency.</p>		<p>These provisions allow for contracting authorities to carry out market consultations in a non-discriminatory and transparent manner. Contracting authorities can use such consultations to assess the suitability of incorporating social considerations and clauses in the public contract.</p>	<p>N/A</p>
<p>Open questions</p>	<p>This provision has not yet been dealt with in national courts. A possible element of concern relates to guaranteeing fair competition between competitors, ensuring that economic operators who assisted in the market consultations do not have an unfair advantage over other competitors. In ensuring, equal treatment of interested economic operators, contracting authorities should make any relevant competitive information available to all operators at the request for tender advertising stage or should exclude the previously engaged economic operator from the competition, if it is not possible to level the playing field for all operators.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>The Irish Prison Service is currently engaging in pre-market consultations to assess whether it is viable to conduct a procurement competition relying on Regulation 20.</p>		

Article 42(1) of the Directive (4th & 5th subparagraph) ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 40

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>42. (1) The technical specifications shall be specified in the procurement documents and shall lay down the required characteristics of works, services or supplies.</p> <p>...</p> <p>(4) For all procurement which is intended for use by natural persons, whether the general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.</p> <p>(5) 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>This provision requires contracting authorities in most circumstances to incorporate technical criteria which takes into consideration accessibility criteria for persons with disabilities or design for all users. Technical specifications must refer to any mandatory accessibility requirements which have been adopted by a legal act of the European Union.</p>	<p>Section 27 of the Disability Act 2005 Specifically, this section requires contracting authorities to ensure that public services are accessible for people with disabilities. However, contracting authorities are not required to comply with this section if it is too costly to include accessibility criteria or if would cause an unreasonable delay.</p> <p>Section 27 states; '1) Where a service is provided to a public body, the head of the body shall ensure that the service is accessible to persons with disabilities. 2) Subsection (1) shall not apply if the provision of access by persons with disabilities to any services provided to the body— a. would not be practicable, b. would not be justified having regard to the cost of doing so, or c. would cause unreasonable delay in making the goods or services available to other persons. 3) In this section references to the provision of services include references to the supply of goods. 4) This section shall come into operation on 31 December 2005. '</p> <p>Furthermore, contracting authorities should be aware of the definitions of 'disability' set out in; The Disability Act 2005; The Employment Equality Acts 1998 and 2004</p>
<p>Open questions</p>	<p>This provision has not yet been dealt with in national courts.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>The Irish National Disability Authority (NDA) is the independent statutory body that provides information and advice to the Government on policy and practice relevant to the lives of persons with disabilities. The NDA offers advice to public bodies on the following topics;</p> <p>“Guidelines for Access Auditing of the Built Environment” “Web accessibility auditing” “User Testing” “Guidelines for Public Access Terminals Accessibility” “Guidelines for Smart Card Accessibility” “Guidelines for Accessible Maritime Passenger Transport” “Guidelines for Purchasers of Disability Equality Training” “eLearning Centre” from the National Disability Authority</p>		

Article 43 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 43

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>43. (1) Where a contracting authority intends to purchase works, supplies or services with specific environmental, social or other characteristics the authority 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, where the following conditions are fulfilled:</p> <p>(a) the label requirements concern only criteria which are linked to the subject matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject matter of the contract;</p> <p>(b) the label requirements are based on objectively verifiable and non-discriminatory criteria;</p> <p>(c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;</p> <p>(d) the labels are accessible to all interested parties; (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.</p> <p>(2) Where a contracting authority does not require the works, supplies or services to meet all of the label requirements, the authority shall indicate which label requirements are referred to.</p> <p>(3) A contracting authority 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 has 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 of the manufacturer, where 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—</p> <p>(a) fulfils the conditions referred to in paragraph (1)(b) to (e), and (b)</p>		<p>These regulations allow for contracting authorities to require economic operators to demonstrate that they meet operational requirements set out by specific labels. Contracting authorities may refer to social labels which require suppliers to meet minimum ethical or sustainable trading or operational standards. Contracting authorities may only require economic operators to comply with labels which are linked to the subject matter of the contract, are based on non-discriminatory and objectively verifiable criteria that are accessible to all interested parties and are set by an independent third party. In upholding the principles of equal treatment, non-discrimination and proportionality, economic operations whom cannot obtain a specific label before contract commencement, the contracting authority shall accept other appropriate and equivalent means of proof. This may include a technical dossier of the manufacturer, where the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label.</p>	<p>S.I. No. 426/2014 - European Union (Energy Efficiency) Regulations 2014 S.I. No. 426 of 2014 - EUROPEAN UNION (ENERGY EFFICIENCY) REGULATIONS 2014 S.I. No. 316/2014 - European Union (Timber and Timber Products) (Placing on the Market) Regulations 2014.</p>

<p>sets out requirements not linked to the subject matter of the contract, a contracting authority shall not require the label but may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts of it, that are linked to the subject matter of the contract and are appropriate to define characteristics of that subject matter.</p>			
<p>Open questions</p>	<p>This provision has not yet been dealt with in national courts.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 46 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 46

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>46. (1) A contracting authority may decide to award a contract in the form of separate lots and may determine the size and subject matter of those lots.</p> <p>(2) A contracting authority shall, in the procurement documents or in the report referred to in Regulation 84(1), provide an indication of the main reasons for the decision not to subdivide into lots.</p> <p>(3) A contracting authority shall indicate, in the relevant contract notice or in the relevant invitation to confirm interest, whether tenders may be submitted for one, for several or for all of the lots.</p> <p>(4) A contracting authority may, where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, where the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest.</p> <p>(5) A contracting authority shall indicate in the procurement documents the objective and non-discriminatory criteria or rules the authority intends 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>(6) Where more than one lot may be awarded to the same tenderer, a contracting authority may award a contract combining several or all lots where the authority has specified in the contract notice or in the invitation to confirm interest that it reserves the possibility of doing so and indicates the lots or groups of lots that may be combined.</p>		<p>These provisions encourage the participation of all forms of small business participation in public procurement. Contracting authorities may divide larger contracts into smaller lots to foster competition in the market. If a contracting authority does not divide an above threshold contract into smaller lots, the authority shall offer a justification of their decision not to subdivide the public contract. The discretionary regulations were transposed in Reg 46(3) and Reg 46(4), allowing contracting authorities to limit the number of lots they may award to one tenderer. If the contracting authority chooses to limit the number of lots one tenderer may be awarded, they must clearly state this in the contract notice or in the invitation to confirm interest. Additionally, contracting authorities shall clearly outline in the procurement documents how the lots will be awarded in circumstances where one tenderer is awarded more lots than the maximum number. In circumstances where more than one lot is awarded to one tenderer, the contracting authority may choose to award a contract combining several or all lots, provided that this has been specified in the contract notice or in the invitation to confirm interest.</p>	N/A
Open questions	Possible elements of legal uncertainty surround the reporting of a contracting authorities decision not to divide an above threshold contract into smaller lots.		
Example of application from the national level (where applicable)	Lots are used on a regular basis in Ireland. Above threshold contracts are divided into heterogenous or homogenized lots, depending on the size, value and subject matter of the contract. Furthermore, contracting authorities including the national centralized body the 'Office of Government Procurement', use lots when awarding contracts from framework agreements or dynamic purchasing systems. Framework agreements are the most common procurement tool used for repeat purchases.		

Article 56 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 56

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>56. (1) Contracts shall be awarded on the basis of criteria laid down in accordance with Regulations 67 to 69, where the contracting authority has verified, in accordance with Regulations 59 to 61, that the tender—</p> <p>(a) complies with the requirements, conditions and criteria specified in the contract notice or invitation to confirm interest and in the procurement documents, taking into account, where applicable, Regulation 45,</p> <p>(b) has been submitted by a tenderer that is not excluded in accordance with Regulation 57 and meets the selection criteria specified by the contracting authority in accordance with Regulation 58,</p> <p>and (c) where applicable, meets the non-discriminatory rules and criteria referred to in Regulation 65.</p> <p>(2) A contracting authority may decide not to award a contract to the tenderer submitting the most economically advantageous tender where the authority has established that the tender does not comply with applicable obligations referred to in Regulation 18(4).</p> <p>(3) In open procedures—</p> <p>(a) a contracting authority may decide to examine tenders before verifying the absence of grounds for exclusion and the fulfilment of the selection criteria in accordance with Regulations 57 to 64,</p> <p>and (b) where a contracting authority avails of the option under subparagraph (a), the authority shall ensure that the verification of absence of grounds for exclusion and of fulfilment of the selection criteria is carried out in an impartial and transparent manner so that no contract is awarded to a tenderer that— (i) should have been excluded under Regulation 57, or (ii) does not meet the selection criteria specified by the contracting authority.</p>		<p>These provisions require contracts to be awarded in accordance with the criteria set on in Regulations 59 – 61.</p> <p>Contracting authorities are required to verify that tenderers meet the conditions and specifications set out in the contract notice or invitation to confirm interest and in the procurement document and to ensure that a tenderer is not excluded from the competition in accordance with Regulation 57 and meets the specification criteria laid out in Regulation 58. Regulation 57 sets out exclusion criteria and Regulation 58 sets out permissible selection criteria. In certain circumstances, where the contracting authority reduces the number of otherwise qualified candidates to participate, this must be done in a manner that meets the non-discriminatory rules and criteria set out in Regulation 65.</p> <p>Furthermore, this provision supports Regulation 18(4), by allowing for contracting authorities not to award a contract to the tenderer submitting the most economically advantageous tender in circumstances where the tender does not comply with the applicable obligations set out in Regulation 18(4).</p> <p>When conducting open procedures, contracting authorities may defer from the normal process of verifying fulfilment with the selection criteria before examining the tenders. This must be carried out in an impartial and transparent manner and no contract should be awarded to any tenderer that should have been excluded from Regulation 57 or that fails to meet the specified selection criteria.</p>	<p>Examples of applicable obligations include, obligations under;</p> <p>S.I. 412 of 2016 - European Union (Posting of Workers) Regulations 2016</p> <p>Protection of Employees (Part-time Work) Act 2001</p> <p>S.I. No.339 of 2011 which implements Directive 2009/33/EC (clean and energy efficient road transport vehicles);</p> <p>S.I. No. 151 of 2011 which implements Directive 2006/32/EC (Energy Efficient public procurement)</p> <p>S.I. No. 426/2014 - European Union (Energy Efficiency) Regulations 2014</p> <p>Schedule 7 of SI 284/2016 offers the following list of international, social and environmental conventions referred to in Regulation 18(4)(a)</p> <p>(a) ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;</p> <p>(b) ILO Convention 98 on the Right to Organise and Collective Bargaining;</p> <p>(c) ILO Convention 29 on Forced Labour;</p> <p>(d) ILO Convention 105 on the Abolition of Forced Labour;</p> <p>(e) ILO Convention 138 on Minimum Age;</p> <p>(f) ILO Convention 111 on Discrimination (Employment and Occupation);</p> <p>(g) ILO Convention 100 on Equal Remuneration;</p> <p>(h) ILO Convention 182 on Worst Forms of Child Labour;</p> <p>(i) Vienna Convention for the protection of the Ozone Layer and its Montreal</p>

<p>(4) Where information or documentation submitted by an economic operator is, or appears to a contracting authority, to be incomplete or erroneous, or where specific documents are missing, the authority may request the economic operator concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, where any such request is made in full compliance with the principles of equal treatment and transparency.</p>		<p>In upholding the principle of proportionality, the contracting authority may offer economic operators the opportunity to submit missing documentation or information, to clarify or complete certain elements of a submitted tender within an appropriate time limit, whilst at all times respecting the principles of equal treatment and transparency.</p>	<p>Protocol on substances that deplete the Ozone Layer; (j) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); (k) Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention); (l) Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its regional Protocols.</p>
<p>Open questions</p>	<p>There is a possible element of legal uncertainty relating to the submission or correction of incomplete or erroneous tender documents. A recent High Court judgment rejecting a challenge to the conduct of a procurement procedure for a €200 million Public-Private Partnership (PPP) contract awarded for a Dublin Institute of Technology (DIT) campus offers some clarity on this issue. In <i>BAM PPP v National Treasury Management Agency</i>, the Court ruled that documents may be accepted after the submission deadline has passed.² The Court ruled that the procuring body had valid reasons to exercise its discretion to accept late documents without infringing the general principles of equal treatment, transparency, non-discrimination and proportionality.</p>		
<p>Example of application from the national level (where applicable)</p>			

² *BAM PPP PGGM Infrastructure Cooperative UA -v- National Treasury Management Agency & anor*, [2015] IEHC 370 (2015)

Article 57 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 57

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>57. (1) Subject to paragraphs (6), (7), (13) and (18), a contracting authority shall exclude an economic operator from participation in a procurement procedure where it has established, by verifying in accordance with Regulations 59, 60 and 61, or is otherwise aware that the economic operator concerned has been convicted of one or more of the following offences:</p> <p>(a) participation in a criminal organisation, within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 200836 on the fight against organised crime;</p> <p>(b) corruption, which, in this Regulation, means corruption within the meaning of the following: (i) Regulation 2; (ii) Article 2(1) of Council Framework Decision 2003/568/JHA37 of 22 July 2003 on combating corruption in the private sector; (iii) the law of the State, where the contracting authority or the economic operator concerned is established in the State;(iv) the law of the Member State, other than the State, in which the contracting authority or the economic operator concerned is established;</p> <p>(c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests drawn up under the Council Act of 26 July 1995;</p> <p>(d) terrorist offences or offences linked to terrorist activities, within the meaning of Articles 1 and 3 respectively of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism or inciting or aiding or abetting or attempting to commit an offence referred to in Article 4 of that Council Framework Decision;</p> <p>(e) money laundering or terrorist financing, within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;</p> <p>(f) child labour and other forms of trafficking in human beings, within the meaning of Article 2 of Directive 2011/36/EU41 of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.</p> <p>(2) The obligation of a contracting authority to exclude an economic operator under paragraph (1) also applies (but subject to paragraphs</p>		<p>This provision sets out the mandatory and discretionary criteria which contracting authorities shall or may rely on when conducting competitions.</p> <p>Contracting authorities are required to exclude economic operators from competitions, if the authority is aware that the economic operator has been convicted of any the offences listed below or if the authority has verified the information in accordance with Regulations 59, 60 and 61. Offences include; participation in a criminal organization, engaging in corrupt or fraudulent activities, engaging in terrorist offences or offences linked to terrorist activities, engaging in money laundering or terrorist financing, or participation in child labour or other forms of trafficking of human beings. The provision relies on definitions established for each of these activities in Council Framework Decisions, the Convention on the protection of the European Communities' financial interests and definitions set out in Directives.</p> <p>If the contracting authority is aware that a person convicted of any of these offences in a member of the administrative, management or supervisory body of the economic operator or maintains a decision making, representative or controlling position in the economic operator, the contracting authority shall</p>	<p>Article 2 of Council Framework Decision 2008/841/JHA of 24 October 200836 on the fight against organised crime</p> <p>Article 2(1) of Council Framework Decision 2003/568/JHA37 of 22 July 2003 on combating corruption in the private sector</p> <p>Article 1 of the Convention on the protection of the European Communities' financial interests drawn up under the Council Act of 26 July 1995</p> <p>Articles 1 and 3 respectively of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism or inciting or aiding or abetting or attempting to commit an offence referred to in Article 4 of that Council Framework Decision</p> <p>Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing</p> <p>Article 2 of Directive 2011/36/EU41 of the European Parliament and of the Council of 5 April 2011 on</p>

<p>(6), (7), (13) and (18)) where the person convicted is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control in the economic operator.</p> <p>(3) Subject to paragraphs (5) to (7), (13) and (19), an economic operator shall be excluded from participation in a procurement procedure where—</p> <p>(a) 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> <p>and (b) the breach referred to in subparagraph (a) has been established by a judicial or administrative decision having final and binding effect in accordance with the law of the country in which the operator is established or the Member State of the contracting authority.</p> <p>(4) Subject to paragraph (5), a contracting authority may exclude an economic operator from participation in a procurement procedure where the contracting authority can demonstrate, by any appropriate means, that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions</p> <p>(5) Paragraphs (3) and (4) shall not apply when the economic operator has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.</p> <p>(6) A contracting authority shall not be obliged to exclude an economic operator under this Regulation where, on an exceptional basis, there are overriding reasons relating to the public interest such as public health or protection of the environment.</p> <p>(7) A contracting authority shall not be obliged to exclude an economic operator under this Regulation where such an exclusion would be disproportionate, including where— (a) only minor amounts of taxes or social security contributions referred to in paragraph (3)(a) are unpaid, or (b) 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 referred to in paragraph (3)(a) at such time that it did not have the possibility of taking measures as provided for in paragraph (5) before the expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.</p> <p>(8) Subject to paragraphs (13) and (20), a contracting authority may exclude from participation in a procurement procedure any economic</p>		<p>exclude that economic operator from the competition.</p> <p>Furthermore, the contracting authority shall exclude any economic operator that is in breach of its obligations relating to the payment of taxes or social security contributions, provided that the breach was established by a judicial or administrative decision.</p> <p>In circumstances where the contracting authority can evidence, by any appropriate means, that an economic operator is in breach of its obligations relating to the payment or taxes or social security contributions, the contracting authority may exclude the operator from the competition. Although, a contracting authority shall not exclude such economic operators if the economic operator has fulfilled its payments or has entered into an arrangement to pay outstanding tax or social contributions. In exceptional circumstances, contracting authorities are not required to exclude such economic operators if there any overriding public policy considerations.</p> <p>Contracting authorities are not required to exclude such economic operators if the violations against social, labour or environmental law were minor and disproportionate to the size of the contract.</p> <p>In relation to discretionary exclusions, contracting authorities may exclude economic operators from participation in a procurement procedure; where the contracting authority can demonstrate that an</p>	<p>preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA</p> <p>Examples of applicable obligations include obligations under;</p> <p>S.I. 412 of 2016 - European Union (Posting of Workers) Regulations 2016</p> <p>Protection of Employees (Part-time Work) Act 2001</p> <p>S.I. No.339 of 2011 which implements Directive 2009/33/EC (clean and energy efficient road transport vehicles);</p> <p>S.I. No. 151 of 2011 which implements Directive 2006/32/EC (Energy Efficient public procurement)</p> <p>Schedule 7 of SI 284/2016 offers the following list of international, social and environmental conventions referred to in Regulation 18(4)(a)</p> <p>(a) ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;</p> <p>(b) ILO Convention 98 on the Right to Organise and Collective Bargaining;</p>
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<p>operator in one or more of the following situations:</p> <p>(a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Regulation 18(4);</p> <p>(b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the law of the State;</p> <p>(c) where the contracting authority can demonstrate, by appropriate means, that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;</p> <p>(d) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;</p> <p>(e) where a conflict of interest within the meaning of Regulation 24 cannot be effectively remedied by other, less intrusive, measures;</p> <p>(f) where a distortion of competition from the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in Regulation 41, cannot be remedied by other, less intrusive, measures;</p> <p>(g) 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>(h) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit supporting documents required under Regulation 59;</p> <p>(i) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, or obtain confidential information that may confer upon it undue advantages in the procurement procedure or where the economic operator has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.</p> <p>(9) Notwithstanding paragraph (8)(b), a contracting authority may decide not to exclude an economic operator that is in any of the situations referred to in that paragraph where the contracting authority has established that the economic operator will be able to perform the</p>		<p>economic operator violates any applicable obligations referred to in Regulation 18(4); where the operator is bankrupt or is in the process of winding-up proceedings, or is the subject of insolvency; where the economic operator is guilty of grave professional misconduct; where the economic operator has engaged in activities aimed at distorting competition; where a conflict of interest exists as laid out in Regulation 24; where an economic operator has participated in market consultations and participation in the competition would distort competition, this should only be used a last resort; where the economic operator has performed poorly in past public contracts which led to early termination of the contract or application of sanctions or other comparable sanctions; where the economic operator has made serious misrepresentations in relation to the selection criteria and where the economic operator has unduly influenced the awarding process or has gained access to confidential information. Contracting authorities may exclude economic operators at any stage of the competition for engaging in any of these activities before or during the competition. Contracting authorities retain the discretion not to exclude any economic operator for engaging in these activities in circumstances where; the economic operator provides evidence showing that it has paid or has undertaken to pay compensation in respect of any</p>	<p>(c) ILO Convention 29 on Forced Labour;</p> <p>(d) ILO Convention 105 on the Abolition of Forced Labour;</p> <p>(e) ILO Convention 138 on Minimum Age;</p> <p>(f) ILO Convention 111 on Discrimination (Employment and Occupation);</p> <p>(g) ILO Convention 100 on Equal Remuneration;</p> <p>(h) ILO Convention 182 on Worst Forms of Child Labour;</p> <p>(i) Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;</p> <p>(j) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);</p> <p>(k) Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);</p> <p>(l) Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade</p>
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<p>contract taking into account the national rules and measures of the Member State of establishment of the economic operator or the law of the State, as appropriate, on the continuation of business in those situations.</p> <p>(10) A contracting authority shall, at any time during the procurement procedure, exclude an economic operator where the authority becomes aware 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) to (3).</p> <p>(11) A contracting authority may, at any time during the procurement procedure, exclude an economic operator where the authority becomes aware that that economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph (8).</p> <p>(12) An economic operator that is in one of the situations referred to in paragraphs (1), (2) or (8) may provide evidence to the effect that measures taken by the economic operator concerned are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion.</p> <p>(13) Where the evidence provided under paragraph (12) is considered sufficient the economic operator concerned shall not be excluded from the procurement procedure.</p> <p>(14) For the purposes of paragraphs (12) and (13) the economic operator shall show that it has— (a) paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct concerned, (b) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities, and (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.</p> <p>(15) The contracting authority shall, when evaluating the measures shown to be taken by the economic operator under paragraph (14), take into account the gravity and particular circumstances of the criminal offence or misconduct concerned.</p> <p>(16) Where the contracting authority considers that the measures shown to be taken by the economic operator under paragraph (14) are insufficient, the contracting authority shall give the economic operator a statement of the reasons for that decision.</p> <p>(17) An economic operator that is excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for in paragraphs (12) to (16) during the period of exclusion resulting from that judgment</p>		<p>damage caused by the criminal offence or misconduct concerned or has offered a valid explanation for its actions or has introduced technical, organisational and personnel measures to prevent further offences. If the contracting authority considers the steps taken to be insufficient, they must offer the economic operator a statement summarising the rationale of their reasons for that decision.</p> <p>Economic operators found guilty of any of the mandatory exclusion offences and have not engaged in any self-cleansing measures shall be excluded from procurement competitions for a period of five years from the date of conviction. This period is reduced to three years for discretionary exclusion offences.</p>	<p>(UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its regional Protocols.</p>
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<p>in the Member State where the judgement is effective.</p> <p>(18) Paragraphs (1) and (2) shall be construed so that the requirement under either of those paragraphs that the economic operator be excluded, in the manner there mentioned, shall cease to apply on the expiration of the period of 5 years from the date of conviction of the economic operator or person, as the case may be, for the offence concerned referred to in the relevant paragraph.</p> <p>(19) Paragraph (3) shall be construed so that the requirement under that paragraph that the economic operator be excluded, in the manner there mentioned, shall cease to apply on the expiration of the period of 5 years from the date the relevant breach is established by the judicial or administrative decision concerned referred to in subparagraph (b) of that paragraph.</p> <p>(20) Paragraph (8) shall be construed so that the power under that paragraph to exclude an economic operator, in the manner there mentioned, shall not be exercisable where the contracting authority establishes that 3 or more years have elapsed since the date that the economic operator concerned was in the relevant situation referred to in that paragraph.</p> <p>(21) The reference in paragraph (18) to the requirement under paragraph (1) or (2) includes a reference to the requirement under either such paragraph as it operates by virtue of paragraph (10).</p> <p>(22) The reference in paragraph (19) to the requirement under paragraph (3) includes a reference to the requirement under that paragraph as it operates by virtue of paragraph (10).</p> <p>(23) The reference in paragraph (20) to the power under paragraph (8) includes a reference to the power under that paragraph as that paragraph operates by virtue of paragraph (11).</p>			
Open questions	This provision has not yet been dealt with in national courts.		
Example of application from the national level (where applicable)	Contracting authorities should use the completed European Single Procurement Document and the Tenderer's Declaration of Personal Circumstances to assess tenderers compliance with applicable obligations.		

Article 67 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 67

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>67. (1) Without prejudice to any law in the State on the price of certain supplies or the remuneration of certain services, a contracting authority shall base an award of public contracts on the most economically advantageous tender.</p> <p>(2) The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, including life-cycle costing in accordance with Regulation 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental or social aspects, linked to the subject matter of the public contract in question.</p> <p>(3) The criteria referred to in paragraph (2) may comprise, amongst other things— (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions, (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract, or (c) after-sales service and technical assistance, delivery conditions, including delivery date, delivery process and delivery period or period of completion.</p> <p>(4) The cost element under this Regulation may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.</p> <p>(5) 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— (a) the specific process of production, provision or trading of those works, supplies or services, or (b) a specific process for another stage of their life cycle, where those factors do not form part of their material substance.</p> <p>(6) Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority concerned.</p>		<p>This provision requires contracting authorities to award contracts on the basis of most economically advantageous tender. Although, this provision does not prohibit the use of price-only award criteria. Contracting authorities can award contracts on the basis on cost, a life-cycle costing or a best price-quality ratio. Best price-quality ratio may include qualitative, environmental or social aspects, once the criteria are linked to the subject matter of the contract. Such criteria may include social, environmental and innovative operational characteristics. Weightings must be assigned to each criterion and should be transparently set out in the procurement documents. Qualitative criteria must not restrict competition or confer unrestricted freedom of choice onto the contracting authority.</p>	<p>Competition and Consumer Protection Act 2014 (2014 Act)</p>

<p>(7) Award criteria shall— (a) ensure the possibility of effective competition, and (b) 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>(8) In case of doubt, a contracting authority shall verify effectively the accuracy of the information and proof provided by the tenderers.</p> <p>(9) 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, other than where this is identified on the basis of price alone.</p> <p>(10) The weighting referred to in paragraph (9) may be expressed by providing for a range with an appropriate maximum spread.</p> <p>(11) Where the weighting referred to at paragraph (9) is not possible for objective reasons, the contracting authority shall indicate the criteria in descending order of importance.</p>			
<p>Open questions</p>	<p>In the recent, <i>Word Perfect Translation Services Limited v The Minister for Public Expenditure and Reform</i> (No.3) [2018] IECA 156 ruling, the Court of Appeal re-emphasised the importance of precisely following the selection and award criteria set out in the call for competition. Contracting authorities must consistently and diligently apply the stated award criteria. Similar findings have been set out in <i>Sanofi Aventis Ireland Limited Trading as Sanofi Pasteur -v- Health Service Executive</i> [2018] IEHC 566 and in <i>Gaswise Ltd. v. Dublin City Council</i> [2014] IEHC 1, [2014] 3 IR 1. Contracting authorities may use qualitative, environmental or social criteria, once the criteria are linked to the subject matter of the contract, clearly set-out in the call for notice and applied consistently in the tender evaluation and contract performance stages.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 69 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 69

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>69. (1) A contracting authority shall require economic operators to explain the price or costs proposed in a tender which appears to be abnormally low in relation to the works, supplies or services.</p> <p>(2) The explanations given in accordance with paragraph (1) may relate to, amongst other things, the following:</p> <p>(a) the economics of the manufacturing process, of the services provided or of the construction method; (b) 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;</p> <p>(c) the originality of the work, supplies or services proposed by the tenderer;</p> <p>(d) compliance with applicable obligations referred to in Regulation 18(4);</p> <p>(e) compliance with obligations referred to in Regulation 71;</p> <p>(f) the possibility of the tenderer obtaining State aid.</p> <p>(3) The contracting authority shall assess the information provided under this Regulation by consulting the tenderer.</p> <p>(4) A contracting authority may only reject a tender where the evidence supplied under this Regulation does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in paragraph (2).</p> <p>(5) A contracting authority shall reject a tender where it has established that the tender is abnormally low because it does not comply with applicable obligations referred to in Regulation 18(4).</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— (a) after consultation with the tenderer concerned, and (b) where the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the TFEU.</p> <p>(7) Where a contracting authority rejects a tender in the circumstances referred to in paragraph (6), it shall inform the Commission in writing.</p>		<p>This provision requires contracting authorities to examine tenders which they consider abnormally low. Economic operators are required to explain their pricing, referring to; the economics of manufacturing process or the construction method or the technical solutions chosen. Contracting authorities may reject any tenderer which does not provide sufficient evidence to explain the low basis of their submitted costings. In circumstances, where the contracting authority has established that the costings proposed results from non-compliance with all applicable obligations in the fields of environmental, social and labour laws, the contracting authority must reject the tender. Contracting authorities may reject tenders where the submitted low cost is due to the tenderer obtaining State Aid and is unable to prove that the aid is compatible with EU State Aid rules.</p>	
<p>Open questions</p>	<p>This provision has not been dealt with in national courts. However, a possible element of legal uncertainty relates to lack of harmonised legal definition of ‘<i>abnormally low</i>.’ While the regulations offer advice on how to manage abnormally low tenders, contracting authorities are required to investigate submitted tenders which they consider to be ‘<i>abnormally low</i>.’</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 70 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 70

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>70. (1) A contracting authority may lay down special conditions relating to the performance of a contract, where those conditions are— (a) linked to the subject matter of the contract within the meaning of Regulation 67(5), and (b) indicated in the call for competition or in the procurement documents.</p> <p>(2) The conditions referred to in paragraph (1) may include economic, innovation related, environmental, social or employment related considerations.</p>		<p>These provisions allow for contracting authorities to take non-economic awarding criteria into account, once such criteria is linked to the subject matter of the contract and is clearly indicated in the call for competition or in the procurement documents.</p>	<p>Examples of applicable obligations include obligations under;</p> <ul style="list-style-type: none"> S.I. 412 of 2016 - European Union (Posting of Workers) Regulations 2016 Protection of Employees (Part-time Work) Act 2001 S.I. No.339 of 2011 which implements Directive 2009/33/EC (clean and energy efficient road transport vehicles); S.I. No. 151 of 2011 which implements Directive 2006/32/EC (Energy Efficient public procurement) <p>Schedule 7 of SI 284/2016 offers the following list of international, social and environmental conventions referred to in Regulation 18(4)(a)</p> <ul style="list-style-type: none"> (a) ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise; (b) ILO Convention 98 on the Right to Organise and Collective Bargaining; (c) ILO Convention 29 on Forced Labour; (d) ILO Convention 105 on the Abolition of Forced Labour; (e) ILO Convention 138 on Minimum Age; (f) ILO Convention 111 on Discrimination (Employment and Occupation); (g) ILO Convention 100 on Equal Remuneration; (h) ILO Convention 182 on Worst Forms of Child Labour; (i) Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer; (j) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); (k) Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention); (l) Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its regional Protocols.
<p>Open questions</p>	<p>This provision has not been dealt with in national courts.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>The Office of Government Procurement (OGP) published a guidance ‘information note’ for contracting authorities on ‘how’ to incorporate social considerations in public procurement. The national document does not instruct public bodies to conduct socially-conscious procurement competitions, but aims to offer advice to procurers on to permissible include social criteria.</p>		

Article 71 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 71

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>71. (1) In procurement documents, a contracting authority may ask a tenderer to indicate, in its tender, any share of the contract that it may intend to subcontract to third parties and any proposed subcontractors.</p> <p>(2) Paragraph (1) is without prejudice to the main contractor's liability.</p> <p>(3) In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the contracting authority, after the award of the contract and no later than when the performance of the contract commences, the contracting authority shall require the main contractor to indicate to the contracting authority the name, contact details and legal representatives of its subcontractors, involved in such works or services, in so far as known at the relevant time.</p> <p>(4) A contracting authority shall require the main contractor to notify the contracting authority of—</p> <p>(a) any changes to the information notified during the course of the contract, and (b) the name, contact details and legal representatives of any new subcontractors which the main contractor subsequently involves in such works or services.</p> <p>(5) Where necessary for the purposes of paragraph (8), the required information shall be accompanied by the subcontractors' self-declarations as provided for in Regulation 59 and subcontractors which are presented after the award of the contract shall provide the certificates and other supporting documents instead of the self-declaration.</p> <p>(6) Paragraphs (3) and (4) do not apply to suppliers.</p> <p>(7) Where a contracting authority determines that such compliance in the following cases or by the following persons is required (and makes it a requirement accordingly), the obligations provided for in paragraphs (3) and (4) shall also fall to be complied with in such cases or by such persons as it determines, including, but not limited to— (a) cases of supply contracts, services contracts, other than those concerning services to be provided at the facilities under the direct oversight of the contracting authority, or to suppliers involved in works or services contracts, and (b) subcontractors of the main contractor's subcontractors or subcontractors further down the subcontracting chain.</p> <p>(8) To avoid contraventions of the obligations referred to in Regulation 18(4), a contracting authority may take appropriate measures by, amongst other things, verifying in accordance with Regulations 59, 60 and 61, whether there are grounds for exclusion of subcontractors under Regulation 57.</p>		<p>These provisions provide for contracting authorities the option to ask tenderers to indicate in its tender whether it intends to subcontract any of the contract if it is awarded the contract. Contracting authorities may require subcontractors to submit a separate European Single Procurement Document to assess the subcontractors suitability to carry out the contract. Tenderers may rely on the capacity of subcontractors to demonstrate compliance with the selection requirements, in circumstances where the subcontractor will perform the works or services for which its capacity is required. Winning tenderers are required to provide details and information of all subcontractors relied on during the life of the contract.</p>	<p>The Construction Contracts Act 2013 applies to construction contracts entered into force after 25 July 2016. This Act entitles subcontractors to be paid the full value of work completed every 30 days. Prompt Payments Return requires all central Government Departments, the Health Service Executive, the local authorities and all other public sector bodies (excluding commercial Semi-State bodies) to pay their suppliers within 15 calendar days of receipt of a valid invoice.</p>

<p>(9) In the case of verification under paragraph (8), the contracting authority— (a) shall require that an economic operator replaces a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion, or (b) may require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.</p>			
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>			

Article 74 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 74

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>74. Public contracts for social and other specific services listed in Annex XIV to the Public Authorities Contracts Directive shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Regulation 5(e).</p>		<p>The provision requires contracts for social and other specific services listed in Annex XIV to be awarded in accordance with the rules laid out in this section, once the contract have an estimated value of €750,000 or greater.</p>	
<p>Open questions</p>	<p>This provision has not been dealt with in national courts.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>Services that fall within this category are explicitly listed (with CPV codes) in Annex XIV of Directive 2014/24/EU. The 14 categories of services are: Health, social and related services Administrative social, educational, healthcare and cultural Compulsory social security services Benefit services Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services Religious services Hotel and restaurant services Legal services not excluded by Article 10(d) of Directive 2014/24/EU Other administrative services and Government services Provision of services to the community Prison related services, public security and rescue services not excluded by Article 10(b) of Directive 2014/24/EU. Investigation and security services International services Postal service Miscellaneous services</p> <p>It is believed that such contracts will only generate cross-border trade when the value of the contracts reaches or exceeds €750,000. Contracts falling below this threshold generally do not encourage competitive cross-border trade. Contracting authorities are required to comply with the principles of transparency, equal treatment and non-discrimination when carrying out procurement competitions for these services. Contracting authorities may publish a Prior Information Notice (PIN) on the OJEU in advance of the procedure to encourage competition in the market place. PINs and call for competition notices must include sufficient information about the contract and the competition to allow for interested economic operators to assess if they can competently compete and conduct the advertised contract. The notices should set out; the time limits for responding to the competition, the applicable selection criteria and award procedure. Award criteria may include considerations relating to quality and accessibility needs of all users.</p>		

Article 75 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 75

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>75. (1) Subject to paragraph (2), a contracting authority intending to award a public contract for the services referred to in Regulation 74 shall make known its intention:</p> <p>(a) by means of a contract notice, which shall contain the information referred to in Part 8 of Schedule 3 in accordance with the standard forms referred to in Regulation 51;</p> <p>(b) by means of a prior information notice, which shall— (i) be published continuously, (ii) contain the information set out in Part 1 to 9 of Schedule 3, (iii) refer specifically to the types of services that will be the subject matter of the contract to be awarded, and (iv) indicate that the contract will be awarded without further publication and invite interested economic operators to express their interest in writing.</p> <p>(2) Paragraph (1) shall not apply where a negotiated procedure without prior publication could have been used, in accordance with Regulation 32, for the award of a public service contract.</p> <p>(3) A contracting authority that has awarded a public contract for the services referred to in Regulation 74 shall make known the results by means of a contract award notice, which shall contain the information referred to in Part 10 of Schedule 3 in accordance with the standard forms referred to in Regulation 51.</p> <p>(4) A contracting authority may group contract award notices referred to in paragraph (3) on a quarterly basis, in which case it shall send the grouped notices not later than 30 days after the end of the quarter concerned.</p> <p>(5) A contracting authority shall send the notices referred to in this Regulation for publication in accordance with Regulation 51.</p>		<p>For contracts with a value €750,000 that are set in Annex XIV, contracting authorities shall publish a Contract Notice or a Prior Information Notice in the OJEU. Furthermore, contracting authorities are required to publish an Award Notice singularly or in quarterly batches in the OJEU.</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 76 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 76

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>76. (1) A contracting authority shall determine the procedures that are to be applied in connection with the award of contracts in accordance with this Chapter and may take into account the specificities of the services in question as it relates to services referred to in this Chapter.</p> <p>(2) The procedures referred to in paragraph (1) shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.</p> <p>(3) Where, in accordance with Regulation 75, a contract notice or prior information notice has been published in relation to a given procurement, the contracting authority shall conduct that procurement, and award any resulting contract, in conformity with the information contained in the relevant notice, as required by Part 8 or 9 of Schedule 3, including the— (a) conditions for participation, (b) time limits for contacting the contracting authority, and (c) award procedure to be applied, in accordance with the standard model notice established by the Commission.</p> <p>(4) When awarding contracts under this Chapter contracting authorities shall apply Regulation 57 in relation to the exclusion and selection of candidates and tenderers, in the procedures determined under paragraph (1).</p> <p>(5) In relation to the award of contracts under this Chapter, a contracting authority may take into account any relevant considerations, including—</p> <p>(a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services,</p> <p>(b) the specific needs of different categories of users, including disadvantaged and vulnerable groups,</p> <p>(c) the involvement and empowerment of users, and (d) innovation.</p> <p>(6) All the time limits imposed on economic operators for the purpose of this Regulation, whether for responding to a contract notice or taking any other steps in the relevant procedure, shall be reasonable and proportionate.</p> <p>(7) Without prejudice to the generality of paragraph (1), and subject to the other requirements of these Regulations, a contracting authority may apply procedures for the purposes of this Regulation which correspond to procedures, techniques or other features otherwise provided for in these Regulations.</p>		<p>These provisions offer contracting authorities the flexibility to choose any process or procedure to run the competition, once the process complies with the principles of transparency, equal treatment and nondiscrimination. There is no requirement to use the standard procedures, such as the open or restricted procedures. However, contracting authorities are required to comply with conditions set out in the contract notice such as ; conditions for participation, time limits for contacting the contracting authority and the award procedure to be applied.</p> <p>Furthermore, the contracting authority is required to apply the rules in relation to mandatory and discretionary exclusion grounds and to adhere to proportionate time limits for the submission of tenders. Contracting authorities may take account of the following considerations ; quality, continuity, accessibility, affordability and comprehensiveness of the services; and the specific needs of different categories of users such as disadvantaged or vulnerable users.</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 77 of the Directive ► European Union (Award of Public Authority Contracts) Regulations 2016, SI 284/2016, reg 77

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>77. (1) A contracting authority 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 Regulation 74, which are covered by the following CPV codes: (a) 75121000-0; (b) 75122000-7; (c) 75123000-4; (d) 79622000-0; (e) 79624000-4; (f) 79625000-1; (g) 80110000-8; (h) 80300000-7; (i) 80420000-4; (j) 80430000-7; (k) 80511000-9; (l) 80520000-5; (m) 80590000-6; (n) 85000000-9 to 85323000-9; (o) 92500000-6; (p) 92600000-7; (q) 98133000-4; (r) 98133110-8.</p> <p>(2) An organisation referred to in paragraph (1) shall fulfill the following conditions: (a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph (1); (b) its profits are reinvested with a view to achieving the organisation's objective and, where profits are distributed or redistributed, this should be based on participatory considerations; (c) the structures of management or ownership of the organisation performing the contract— (i) are based on employee ownership or participatory principles, or (ii) require the active participation of employees, users or stakeholders; (d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Regulation within the immediately preceding 3 years.</p> <p>(3) The duration of a contract under this Regulation shall not be longer than 3 years.</p> <p>(4) The call for competition in respect of a contract under this Regulation shall make reference to this Regulation.</p>		<p>These provisions allow contracting authorities to reserve the right to participate in competitions for certain health, social and cultural services for specific economic operators. Permissible operators must fulfil the following conditions ;its objective is the pursuit of a public service mission linked to the delivery of the services ; its profits are reinvested to achieve the organisation's objectives ; the ownership or management structure are based on employee ownership or participatory principles or require the active participation of employees or stakeholders ; the organisation has not been awarded a services contracted by the contracting authority pursuant to the Regulations within the last three years. Contracts awarded relying on this provision must not last longer than three years.</p>	
<p>Open questions</p>	<p>This provision has not been dealt with in national courts.</p>		
<p>Example of application from the national level (where applicable)</p>			