



Promoting Social Considerations into Public Procurement Procedures for Social Economy Enterprises

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

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Article 18(2) of the Directive ► Article 42(1)(1), (1)(2) and (1)(7); 53(2)(4) and (4), 60(2) and (3) of the Public Procurement Law (further – PPL)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 42 Rules for the exclusion of candidates and tenderers:</p> <p>(1) The contracting authority shall exclude a candidate or a tenderer from participation in a procurement procedure in any of the following cases:</p> <p>1) a candidate, a tenderer or a person who is a member of the board or council of a candidate or a tenderer, a person who is a legal person or a prosecutor, or a person who has been authorised to represent a candidate or a tenderer in activities related to the branch, with such a statement of the public prosecutor regarding the sentence or a court judgment that has entered into force and has become incontestable and unappealable, have been found guilty or coercive measure has been applied for any of the following offences:</p> <p>a) the establishment, management or involvement in a criminal organisation or in its organised group or other criminal formation or participation in criminal offences committed by such an organisation,</p> <p>(b) bribery, seizure, bribe embezzlement, bribe intermediary, unauthorised participation in property transactions, unauthorised acceptance of benefits, commercial bribery, claiming, accepting or giving illegal benefits, trading with influence,</p> <p>(c) fraud, embezzlement or money laundering,</p> <p>(d) terrorism, financing of terrorism, calls for terrorism, threats of terrorism or the recruitment or training of a person to carry out terrorist acts,</p> <p>(e) trafficking in human beings,</p> <p>(f) avoidance of taxes or charges assimilated thereto;</p> <p>2) it has been determined that the candidate or a tenderer has tax debts on the last day of submission of request to</p>	<p>The PPL also provides other provisions referred to in the table below concerning compliance with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.</p>	<p>The law does not literally set out Article 18(2) of the Directive in Latvian PPL. Nevertheless, all the conventions / agreements listed in Annex X of the Directive are in force in the Republic of Latvia.</p> <p>Article 42(1) obliges contracting authorities to exclude an economic operator from the procurement on mandatory grounds of exclusion also taking into account social clauses.</p> <p><i>(for more in-depth evaluation of the Article 42 of the PPL see the section of this Matrix table regarding Article 57 of the Directive).</i></p> <p>Article 53(2)(4): If a tender appears to be abnormally low, the contracting authority must request clarification regarding the price or costs of the tender, specifically asking to clarify also the compliance with applicable obligations in the fields of environmental, social and labour and labour protection law (international law, European Union law, national law, provisions included in collective agreements).</p> <p>Article 53(4): contracting authority must reject the tender as abnormally low if a) the clarification is not sufficient or substantiated or b) costs regarding the compliance with</p>	<p>Labour Law²</p> <p>Labour Protection Law³,</p> <p>Law on Social Services and Social Assistance⁴</p> <p>etc. depending on the sector.</p>

² Labour Law. Adoption: 20.06.2001. Entry into force: 01.06.2002. Publication: "Latvijas Vēstnesis", 254 (5826), 29.12.2016.

³ Labour Protection Law. Adoption: 20.06.2001. Entry into force: 01.01.2002. Publication: "Latvijas Vēstnesis", 105 (2492), 06.07.2001. "Ziņotājs", 15, 09.08.2001.

⁴ Law on Social Services and Social Assistance. Adoption: 31.10.2002. Entry into force: 01.01.2003. Publication: "Latvijas Vēstnesis", 168 (2743), 19.11.2002. "Ziņotājs", 23, 12.12.2002.

<p>participate or tender or on the day when a decision regarding the possible award of the public contract has been taken, in Latvia or the country in which it is registered or in which it has a normal place of residence, including mandatory State social insurance debts, which total in one of the states exceeds EUR 150. In respect of tenderers registered and permanently resident in Latvia, the contracting authority shall take into account the information, which has been placed in the information system specified by the Cabinet of Ministers on the date of the last updating of the State Revenue Service tax debtor public database and the Real Estate Tax Administration system;</p> <p>7) a candidate or a tenderer with a decision of a competent authority or a judgment of a court, which has entered into force and has become indisputable and unappealable, has been found guilty of a violation, which takes the form of:</p> <p>(a) the employment of one or more persons, if they do not have the necessary work permit or if they are not entitled to reside in a Member State of the European Union,</p> <p>(b) the employment of a person without a written contract of employment, within the time period specified in the tax regulatory enactments, without submitting an informative declaration regarding the employees to be submitted about the persons that start to work;</p> <p>Article 53. Abnormally low tender</p> <p>(2) The clarification¹ may relate in particular to:</p> <p>4) compliance with the obligations specified in the regulatory enactments and collective agreements in the fields of environmental, social and labour law and labour protection;</p> <p>(4) The contracting authority shall reject the tender as abnormally low if the clarification provided does not justify the low price or cost level offered by the tenderer or if the price or costs do not include costs related to compliance with the obligations specified in the regulatory enactments and collective</p>		<p>obligations in the fields of environmental, social and labour law and labour protection legislation are not included in the tender.</p> <p>Article 60(2) and (3): A contracting authority must take into account the requirements of obligations established by normative acts (including in relation to social conditions, environmental protection etc.) and also is entitled to provide for any special provisions for the fulfilment of a public contract mainly in relation to economic and social conditions, innovations or environmental protection requirements, however taking into account the conflicting EU law provisions and the rights and legal interests of the contracting parties.</p>	
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¹ Article 53(1). If the tender for particular public works, public supply or public service contract appears to be abnormally low, the contracting authority shall request clarification regarding the price or costs offered.

agreements in the fields of environmental, social and labour law and labour protection.

Article 60. Public contract

(2) A contracting authority shall, in preparing a public contract, take into account the requirements of laws and regulations regarding construction works, supplies and services included in the procurement subject-matter and shall specify in the public contract:

- 1) the name of the contracting authority;
- 2) the name of the supplier;
- 3) the subject-matter of procurement, the amount thereof, the quality requirements and other necessary information;
- 4) the contract price and the procedures for payment thereof, as well as, if the contracting authority intends, the payment arrangements for subcontractors in the case referred to in Article 63 of this Law;
- 5) the time period, place and conditions of fulfilment of the public contract;
- 6) the liability of the contracting parties for losses caused and non-fulfilment of the public contract;
- 7) the procedures for the replacement of subcontractors and personnel indicated in the tender and the procedures for attracting new subcontractors and personnel in accordance with the provisions of Article 62 of this Law;
- 8) the procedures for amending the public contract and the procedures by which a derogation from the public contract is permissible;
- 9) other provisions.

(3) A contracting authority is entitled to provide for special provisions for the fulfilment of a public contract mainly in relation to economic and social conditions, innovations or environmental protection requirements, subject to the condition that these provisions do not conflict with the directly applicable European Union laws in these fields and are indicated in the technical specifications or notice regarding contract, or in the procurement procedures documents and are related to the subject-matter of the relevant public contract.

The contracting authority may use guidelines developed by

<p>sectoral experts or organisations for procurement and contracting, as well as standard contracts for the preparation of the public contract. When concluding a public contract, a reasonable observance of the rights and legal interests of the contracting parties shall be ensured.</p>			
<p>Open questions</p>	<p>Social clause is a term that is not widely used in public procurement procedures in Latvia. As a result, the understanding of the concept of “social clause” in the majority of cases is limited to the amount of social tax / insurance paid. Local governments and State authorities are not aware of how to use social clauses and prefer to use other criteria to define public procurement, but not social clauses.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 20 of the Directive ► Article 16 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 16. Privileged contracts</p> <p>(1) If the subject-matter of the intended public contract permits, the contracting authority shall be entitled, within the framework of measures intended for certain groups of persons, to reserve the possibility to participate in procurement procedures only for candidates or tenderers for whom more than 30 per cent of the average number of employees employed per year are persons with disabilities.</p> <p>(2) If the public contract is concluded for the health, social and cultural services referred to in Annex 2 of this Law, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8, the contracting authority is entitled to reserve the possibility to participate in the procurement procedure in accordance with the procedures of Article 10 of this Law only for those candidates or tenderers who have been granted the status of a social undertaking and who provide the services in these fields, and who, within the last three years from the date on which a decision on the award of a procurement contract would be taken, the contracting authority has not granted the public contract award for the services referred to in this Article in accordance with the procedures of this Article. The duration of such a public contract shall not exceed three years.</p> <p>(3) In applying Paragraph 1 of this Article, the contracting authority shall refer to this article in the notice regarding the contract. In applying Paragraph 2 of this Article, the contracting authority shall refer to this article in the notice regarding the contract or in the notice regarding social and other specific services.</p>	<p>Article 5 of the Disability Law</p> <p>(1) A disability is a long-term or non-transitional very severe, severe or moderate level limited functioning which affects a person's mental or physical abilities, ability to work, self-care and integration into society.</p> <p>(2) The criteria for determining a disability and loss of ability to work, time periods and procedure shall be regulated by the Cabinet of Ministers.</p> <p>(3) A person, who has been determined with a disability, shall be issued a document certifying the disability. The document specimen and the procedure for issuing and accounting shall be regulated by the Cabinet of Ministers.</p>	<p>In Latvian law, the term “<i>privileged contract</i>” is used (in Directive – “<i>reserved contract</i>”).</p> <p>Article 16(1): provides an option for the contracting authority to reserve the possibility to participate in procurement procedures only for those candidates or tenderers who are employing employees from whom at least 30 per cent are persons with disabilities (other socially more disadvantaged person groups and sheltered workshops are not included). Social enterprise status for a candidate and tenderer is not needed.</p> <p>Regarding Article 16(2) – social enterprise - of the PPL see the section of this Matrix table regarding Article 77 of the Directive.</p> <p>Article 16(3): if the right to participate is reserved according to this article then it must be indicated in the notice regarding the contract.</p>	<p>Disability Law⁵</p> <p>Cabinet of Ministers Regulation No. 805 “Regulations Regarding the Criteria, Time Periods and Procedures Determining Predictable Disability, Disability, and the Loss of Ability to Work”.⁶</p>
<p>Open questions</p>	<p>Privileged contracts are often not concluded, because the contracting authorities are not aware of how to use social clauses. Created positive social impacts and privileged contracts awarded to socially more disadvantaged person groups would be higher, if contracting authorities would be more aware of how to use these social clauses.</p>		

⁵ Disability Law. Adoption: 20.05.2010. In force from 01.01.2011. Publication: "Latvijas Vēstnesis", 91 (4283), 09.06.2010.

⁶ Cabinet of Ministers Regulation No. 805 "Regulations Regarding the Criteria, Time Periods and Procedures Determining Predictable Disability, Disability, and the Loss of Ability to Work". Adoption: 23.12.2014. In force from 01.01.2015. Publication: "Latvijas Vēstnesis", 257 (5317), 30.12.2014.

Example of application from the national level
(where applicable)

In 2007-2017, according to the information provided by the competent authority of the Republic of Latvia, there have been 9 cases where notices regarding the contract were published according to which privileged contracts were intended to be concluded (in 3 of those cases - notices regarding procurement results were not published). Therefore, privileged contracts are not widely used in Latvia as, for example, in 2016 there were in total 15 449 agreements and framework agreements concluded according to the previous public procurement law (valid until 1 March 2017), but no privileged contracts.

Article 40 of the Directive ► Article 18(2) and 18(3) of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 18. Notification on planned procurements and procurement procedures, consultation with suppliers and pre-involvement of candidates and tenderers</p> <p>(2) Prior to the launching of a procurement procedure, the contracting authority may hold consultations with the suppliers in order to prepare procurement and inform the suppliers regarding the procurement plan and requirements. The contracting authority shall notify the discussion on its website, indicating the issues to be discussed, the time and place of consultations, the manner in which suppliers may apply for participation in the discussion, the requirements regarding documentation of the consultation and the publication of such documentation.</p> <p>(3) A contracting authority may receive consultations from independent experts or institutions or suppliers. Those consultations may be used in procurement planning and preparation if they do not restrict competition and do not violate the principles of equal treatment and transparency.</p> <p>(4) If a candidate or tenderer, or a legal person associated with a candidate or tenderer, advises the contracting authority or is otherwise involved in the preparation of the procurement, the contracting authority shall ensure that the participation of the relevant candidate or tenderer in procurement does not restrict competition by notifying other candidates and tenderers of the essential information which was provided when the candidate or tenderer was involved in the preparation of the procurement, or which results from such involvement, and by setting an appropriate time period for the submission of requests to participate or tender accordingly.</p>	<p>Article 9(2) of the PPL states that also in “small” procurement (threshold of a public supply contract or public service contract is EUR 10 000 or more but less than EUR 42 000 and of a public works contract is EUR 20 000 or more but less than EUR 170 000), the commissioning authority may apply Paragraphs 2 and 3 of Article 18 of this Law in preparing the procurement.</p>	<p>Article 18(2): Consultations with suppliers may be held by the contracting authority for purposes of preparing procurements and informing the suppliers regarding the procurement plan and requirements. Pre-procurement consultation is and must be an endorsed practice as it helps to maximise the resources invested by the contracting authority, avoid risks etc.</p> <p>Article 18(3): the contracting authority may receive advice (including for the planning and preparation of procurement) from independent experts or authorities, or suppliers, in so far as they do not restrict competition and do not violate principles of equal treatment and transparency.</p> <p>Article 18(4): in case contracting authority was advised by the person that intends to participate or participates or is otherwise involved in procurement then contracting authority must inform other candidates or tenderers providing information necessary to comply with principles of fair competition and equal treatment.</p>	<p>N/A</p>
<p>Open questions</p>	<p>There is room for interpretation in determining what is the essential information indicated in Article 18(4) of the law - the information necessary to comply with principles of fair competition and equal treatment that a contracting authority is obliged to provide to other candidates and tenderers. Also, practical application of Article 18(3) of the Law may differ.</p>		

Example of application from the national level (where applicable)

Article 42(1) fourth and fifth subparagraph of the Directive ► Article 20(9) of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 20. Technical specifications</p> <p>(9) Procurement, the results of which are intended for use by natural persons, including the personnel of the contracting authority, shall be prepared in such a manner as to ensure the availability of procurement results for persons with disabilities or the principles of universal design are taken into account, except in cases where the contracting authority duly justifies the non-inclusion of such requirements in technical specifications. Where mandatory access requirements have been approved by European Union law, the technical specifications shall contain a reference to such standards, in so far as they require access to persons with disabilities or taking into account universal design principles.</p>	<p>N/A</p>	<p>Article provides obligation regarding technical specifications in cases when works or services, or supply of goods is intended to be used by natural persons.</p> <p>The technical specifications must be prepared so that the subject-matter of procurement, for example, building, are available to persons with disabilities or taking into account the principles of universal design. Also, there may be exceptions in cases where there are objective grounds and the contracting authority can substantiate it.</p> <p>Additionally, if mandatory access requirements have been approved by EU law, then the technical specifications shall contain a reference to such EU standards.</p>	<p>N/A</p>
<p>Open questions</p>	<p>There is space for interpretation for contracting authority to “duly justify” the non-inclusion in technical specification requirements regarding the availability of procurement results for persons with disabilities or taking into account the principles of universal design.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 43 of the Directive ► Article 21 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 21. Labels</p> <p>(1) If the contracting authority plans to acquire construction works, goods or services which meet certain environmental protection, social or other special requirements, it may require special labelling in technical specifications, tender evaluation criteria or the requirements for the fulfilment of the contract as evidence of the requirements laid down for the conformity of works, services or supplies, if all of the following conditions are met:</p> <ol style="list-style-type: none"> 1) the labelling requirements shall apply only to criteria related to the subject-matter of the public contract and shall be appropriate for determining the characteristics characterising the construction works, supply or services included in the procurement subject-matter; 2) the labelling requirements have been prepared on the basis of objectively verifiable and non-discriminatory criteria; 3) the label has been approved in an open and transparent procedure, in which all of the interested persons, including public institutions, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate; 4) the labels are available to all interested parties; 5) the labelling requirements are set by the person to whom the supplier applying for the receipt of the label has no decisive influence. <p>(2) If the labelling complies with the conditions of Clauses 2, 3, 4 and 5 of Paragraph 1 of this Article, but the label also contains information regarding requirements which are not related to the subject-matter of the public contract, the contracting authority shall not require compliance with all the requirements of the labelling, but shall refer to the detailed specification of the relevant label or parts thereof which are related to the subject-matter of the public contract and are suitable for determining the characteristics characterising the subject-matter of the public contract.</p> <p>(3) The contracting authority shall indicate which labelling requirements are to be complied with if the conformity of works, supplies or services with all the requirements of the marking is not required. The contracting authority</p>	<p>N/A</p>	<p>Article 21(1): the contracting authority has the right to require a label, certificate or document certifying that works, products, services, processes or procedures meet environmental protection, social or other special rules – if certain cumulative criteria indicated in the article are met (basically the same as in the Directive). Label to be provided may be required by the contracting authority in: a) technical specifications; b) tender evaluation criteria; c) requirements for the fulfilment of the contract.</p> <p>Article 21(2): the contracting authority may ask to provide compliance with only such criteria that are related to the fulfilment of the public contract to be concluded.</p> <p>Article 21(3): the contracting authority must indicate only necessary criteria that the label certifies and accept an equivalent label that certifies the necessary criteria.</p> <p>Article 21(4): if there are objective reasons for not submitting the labels requested, then the contracting authority must accept other evidence that confirms compliance with the necessary requirements.</p>	<p>If the green public procurement is applied then annexes of Cabinet of Ministers Regulation No. 353 “Requirements for green public procurement and procedures for their application”⁷ prescribes certain criteria – (including labels) that are drafted based on the subject-matter of the procurement.</p> <p>Green public procurement is mandatorily applicable (also by applying certain criterion specified in the Cabinet of Ministers Regulation No. 353) for procurements of:</p> <ol style="list-style-type: none"> 1. Office paper. 2. Printing equipment. 3. Hardware and Information and Communication Technologies infrastructure. 4. Food and catering services. 5. Cleaning products and services. 6. Indoor lighting.

⁷ Cabinet of Ministers Regulation No. 353 “Requirements for green public procurement and procedures for their application” Adoption: 20.06.2017. In force from 01.07.2017. Publication: "Latvijas Vēstnesis", 129 (5956), 30.06.2017.

<p>shall accept equivalent markings confirming the conformity of the works, supplies or services with the marking indicated by the contracting authority.</p> <p>(4) If, for reasons independent of it, it was impossible for the supplier to obtain the mark or equivalent label indicated by the contracting authority by the date of submission of the tender, the contracting authority shall accept other relevant evidence, including the manufacturer's technical documentation, which justifies the conformity of the works, supplies or services with the requirements of the marking specified by the contracting authority.</p>			<p>7. Street lights and traffic signals.</p> <p>In other cases, for example in works contracts etc., contracting authority may choose whether to apply the green public procurement criteria (including requirements for labels) taking into account conditions set in Article 21 of PPL and Cabinet of Ministers Regulation No. 353.</p>
<p>Open questions</p>	<p>There is no recent case law regarding interpretation of Article 21 of PPL.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>One of the frequently identified errors in procurement documentation - label includes requirements that are not related to the subject-matter of the public contract.⁸ Also one of the frequently identified errors in procurement documentation was the tendency to use criterion of materials only certified in Latvia or mandatory provision regarding CE label.⁹</p> <p>In green public procurement in Latvia (according to Latvian Procurement Authority) the following ecolabels are available: EU organic label; FSC (Forest Stewardship Council); Latvian Ecoproduct; Good Environmental Choice "Bra Miljöver"; Nordic Swan; EU Ecolabel; Blue angel; TCO; White rabbit; Fairtrade.¹⁰</p>		

⁸ 16 June 2018. Latvian Procurement Authority. "Public procurement law (in force from 01.03.2017.) and more frequently made errors". Available at: http://latlit.eu/wp-content/uploads/2018/06/19.06.2018_VARAM_PIL-grozijumi_neatbilstibas.pptx

⁹ 26 February 2014. Central Finance and Contracting. "Public procurement, procurement evaluation, and performance" Agency. Available at: [https://cfla.gov.lv/userfiles/files/lepirkumi_R%C4%ABga\(1\).pdf](https://cfla.gov.lv/userfiles/files/lepirkumi_R%C4%ABga(1).pdf)

¹⁰ 2019. Latvian Procurement Authority. Ecolabel. Available at: <https://www.iub.gov.lv/lv/node/187>

Article 46 of the Directive ► Paragraph 195, 196 and 197 of Cabinet of Ministers regulation No. 107 “Procedure for public procurement procedures and design contests”

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>195. The contracting authority may decide to award the public contract in separate lots and may determine the size and subject-matter of such lots.</p> <p>196. The contracting authority shall include in the procurement documents an explanation of the reasons that form the basis for the award of a procurement contract without subdividing procurement into lots.</p> <p>197. The contracting authority shall indicate in the contract notice and procurement documents whether tenders may be submitted for one or more or all lots. If a tender may be submitted for several or all lots, then if in the notice regarding the contract and in the procurement procedure documents the contracting authority has indicated the maximum number of lots per tenderer, then the contracting authority is entitled to limit the number of lots in which the award of a public contract is granted to one tenderer. The contracting authority shall indicate in the procurement documents objective and non-discriminatory criteria or rules which will be applied to determine which lots will be awarded to the tenderer if it would be granted a higher number of lots than the maximum determined according to the criteria for the award of the public contract.</p>	<p>Article 11(4) of the PPL: It is not permitted to divide into parts works projects, foreseeable supplies or services in order to avoid the application of the procurement or procurement procedure concerned. The use of a method aimed at the non- application of procurement or procurement procedures laid down in this Law is not permitted for the determination of the estimated contract price.</p>	<p>Paragraphs of Cabinet of Ministers Regulation provide the contracting authority with an option to divide public contract into lots.</p> <p>Public procurement procedures (the six that are stated in Directive 2014/24/EU as well as in PPL) must be mandatorily organized if the estimated contract price of supplies or services reaches or exceeds 42 000 EUR or in case of works – 170 000 EUR. Then the contracting authority can decide to subdivide procurement contract into lots.</p> <ul style="list-style-type: none"> • If subdivides - then contracting authority must indicate it in the contract notice and procurement documents. • If it does not subdivide - then an explanation must be provided in procurement documents. 	<p>N/A</p>
<p>Open questions</p>	<p>There is no recent case law regarding contract separation into lots.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 56 of the Directive ► Article 41(1) and (2) of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 41. General rules for the verification and selection of candidates and tenderers.</p> <p>(1) The contracting authority shall select candidates and tenderers in accordance with the qualification requirements laid down in Articles 44, 45, 46, 47 and 48 of this Law, verify the conformity of tenders with the requirements specified in the procurement procedure documents and select the tender or tenders in accordance with the specified criteria for evaluation of tenders.</p> <p>(2) The contracting authority may determine the minimum level of compliance with the requirements referred to in Articles 45 and 46 of this Law. The number of requirements, as well as the minimum level of capacity requested for fulfilment of a specific public contract, shall be determined in proportion to the subject-matter of the public contract. Such minimum level of compliance shall be included in the contract notice, as well as in the procurement documents.</p>	<p>Article 51. Criteria for evaluating the tender</p> <p>(2) The most economically advantageous tender shall be determined:</p> <ol style="list-style-type: none"> 1) using price or cost, applying an efficiency approach (for example, when assessing life-cycle costs); 2) taking into account price or cost and quality criteria related to the subject-matter of the public contract, for example: <ol style="list-style-type: none"> (a) quality, including technical advantages, aesthetic and functional characteristics, accessibility, compliance with universal design, social and environmental requirements, innovative characteristics and conditions of sale, (b) the public contract fulfilment management structure and the qualification and experience of the personnel involved if the quality of the fulfilment of the public contract can be significantly affected by the qualifications and experience of the personnel involved, (c) after-sales services and technical assistance, delivery conditions, such as delivery date, delivery process and delivery period or completion period. (3) Quality criteria are related to the subject-matter of the procurement contract, if they relate to any stage of the life-cycle of the works, supply or service, as well as to factors related to the process of carrying out works, the production of goods or the provision of services or any other process during the life-cycle, even if such factors are not directly related to the subject-matter of a procurement contract (for example, compliance with environmental protection requirements or social clauses during the provision of a service, the production of a product or the fulfilment of works). (4) A contracting authority is entitled to use only a price for comparing and evaluating tenders, if the procurement is performed in accordance with the procedures specified in Articles 9 or 10 of this Law or if the technical specification 	<p>There is no clear transposition in law of Article 56 Paragraph 1, last subparagraph - provision that states that the economically advantageous tender can be rejected based on obligations specified in Article 18 of the Directive.</p> <p>Article 41 states general qualification rules for the candidates and tenderers in accordance with Articles 44 (conformity for the fulfilment of professional activities), 45 (economic and financial standing), 46 (technical ability and professional skills), 47 (quality assurance standards) and 48 (environmental management standards) of the PPL.</p> <p>Article 41 (2) also provides the right for a contracting authority to determine the minimum level of compliance with the requirements referred to in Articles 45 and 46 of the PPL.</p> <p>Also, there are many provisions that provide a chance for the contracting authority to exclude the tenderer based on regulatory enactments and collective agreements in the fields of environmental, social and labour law and labour protection:</p> <p>Article 41: the contracting authority can set the minimum economic and financial standing and technical and professional ability requirements - conditions and characteristics (in particular physical, functional and legal) which must be complied with or must be made available by any tender in order to enable the contracting</p>	<p>N/A</p>

	<p>prepared is detailed and other criteria do not have a significant role to play in the selection of a tender.</p> <p>(5) A contracting authority shall determine non-competitive and objectively comparable or evaluable criteria for the evaluation of a tender.</p> <p>(6) The contracting authority shall indicate in the procurement procedure documents all the criteria for evaluating the tender in the order of significance, the values of the criteria and, if applicable, the ranges of values, as well as the tender selection algorithm in accordance with these criteria and describe how each of the specified evaluation criteria will be applied.</p> <p>(7) The contracting authority shall indicate in the procurement procedure documents the crucial selection criterion for the tender, in accordance with which a tender will be chosen, if, prior to taking a decision regarding the award of the procurement contract, it was determined that the assessment of at least two tenders is equal. The contracting authority has the right to determine the crucial criterion regarding the selection of the tender, which describes the conformity of the supplier with social protection requirements, including the fact that the selected tender was submitted by a supplier who is a member of a national employers' organisation and has entered into a collective agreement with a trade union that is a member of a national trade union (if the tender has been submitted by a partnership or association of persons), the collective agreement must be concluded with each member of the partnership and each member of the association of persons.</p> <p>(with amendments to the Law of 26.04.2018 entering into force on 01.06.2018).</p> <p>Article 53. Abnormally low tender</p> <p>(2) The clarification¹¹ may relate in particular to:</p> <p>4) compliance with the obligations specified in the regulatory enactments and collective agreements in the fields of environmental, social and labour law and labour protection;</p>	<p>authority to award the contract in accordance with the award criteria chosen. These also can include requirements in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions. Therefore, if such criteria are not complied with then the tenderer must be excluded.</p> <p>Article 51: the most economically advantageous tender is determined by one of two options. The first one takes into account only price or cost. The second one, price or cost and quality criteria related to the subject-matter of the public contract. Quality criteria may include also requirements in the fields of environment, social and labour law, for example, according to given example in Article 51(2)(2)(a) of the PPL – compliance with universal design, social and environmental requirements. Quality criteria are applicable if they are directly or indirectly concerned with any phase of the life-cycle of the building works supply or services.</p> <p>Article 53(2)(4): If a tender appears to be abnormally low, the contracting authority must request clarification regarding the price or costs of the tender, specifically asking to clarify also the compliance with applicable obligations in the fields of environmental, social and labour and</p>	
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¹¹ Article 53(1). If a tender for particular public works, public supply or public service contract appears to be abnormally low, the contracting authority shall request clarification regarding the price or costs offered.

	(4) The contracting authority shall reject the tender as abnormally low if the clarification provided do not justify the low price or cost level offered by the tenderer or if the price or costs do not include costs related to compliance with the obligations specified in the regulatory enactments and collective agreements in the fields of environmental, social and labour law and labour protection.	labour protection law (understanding with that international law, European Union law, national law, provisions included in collective agreements).	
Open questions	Article 18(2) and the last subparagraph of Article 56(1) of the Directive has been transposed by the provisions that set mandatory exclusion grounds and criteria of evaluation of a tender (including abnormally low tender). These provisions set the scope for Latvian contracting authorities for evaluation of certain social aspects in the field of employment and taxes. Also see Interpretation of Procurement Monitoring Bureau (competent authority) "On the most significant and most frequent irregularities in the documentation and conduct of procurement procedures" ¹² ; "On the most frequent irregularities in the documentation and conduct of procurement procedures regarding EU-funded projects" ¹³ ; and Information and communication technology sector association recommendations "On economically advantageous tender evaluation criteria in IT sector". ¹⁴		
Example of application from the national level (where applicable)			

¹² 11 July 2017. Interpretation of Procurement Monitoring Bureau (competent authority) "On the most significant and most frequent irregularities in the documentation and conduct of procurement procedures". Available at: https://www.iub.gov.lv/sites/default/files/upload/Biezak_konstat_kludas-072017.pdf

¹³ 7 September 2018. Interpretation of Procurement Monitoring Bureau (competent authority) and "On the most frequent irregularities in the documentation and conduct of procurement procedures regarding EU-funded projects". Available at: https://www.iub.gov.lv/sites/default/files/07.09.18_Biezak_konstat_kludas%202018_gala_m-lapai.pdf

¹⁴ 2018. Information and communication technology sector association recommendations "On economically advantageous tender evaluation criteria in IT sector". Available at: https://www.iub.gov.lv/sites/default/files/upload/IKT_rekomendacijas_SVP_vert_krit_iep_IT_20181029.pdf

Article 57 of the Directive ► Article 42 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 42 Rules for the exclusion of candidates and tenderers:</p> <p>(1) The contracting authority shall exclude a candidate or a tenderer from participation in a procurement procedure in any of the following cases:</p> <p>1) a candidate, a tenderer or a person who is a member of the board or council of a candidate or a tenderer, a person who is a legal person or a prosecutor, or a person who has been authorised to represent a candidate or a tenderer in activities related to the branch, with such a statement of the public prosecutor regarding the sentence or a court judgment that has entered into force and has become incontestable and unappealable, have been found guilty or coercive measure has been applied for any of the following offences:</p> <p>a) the establishment, management or involvement in a criminal organisation or in its organised group or other criminal formation or participation in criminal offences committed by such an organisation;</p> <p>(b) bribery, seizure, bribe embezzlement, bribe intermediary, unauthorised participation in property transactions, unauthorised acceptance of benefits, commercial bribery, claiming, accepting or giving illegal benefits, trading with influence,</p> <p>(c) fraud, embezzlement or money laundering,</p> <p>(d) terrorism, financing of terrorism, calls for terrorism, threats of terrorism or the recruitment or training of a person to carry out terrorist acts;</p> <p>(e) trafficking in human beings,</p> <p><u>(f) avoidance of taxes or charges assimilated thereto;</u></p> <p><u>2) it has been determined that the candidate or a tenderer has tax debts on the last day of submission of request to participate or tender or on the day when a decision regarding the possible award of the public contract has been taken, in Latvia or the country in which it is registered or in which it has a normal place</u></p>	<p>Article 43. Assessment of the evidence submitted to ensure reliability</p> <p>(1) If a candidate or a member of a partnership, if a candidate is a partnership, complies with the exclusion grounds referred to in Clauses 1, 3, 4, 5, 6 or 7 of Paragraph 1 of Article 42 of this Law or in Clauses 1 or 2 of Paragraph 2 of Article 42 of this Law, the candidate shall, together with the request to participate, submit an explanation and evidence regarding the reimbursement of the damage caused, and the conclusion of an agreement regarding the reimbursement of the damage caused, cooperation with the investigating bodies and the technical, organisational or personnel management measures taken to demonstrate their reliability and prevent the recurrence of the same and similar cases in the future.</p> <p>(2) If a tenderer or a member of a partnership, if the tenderer is a partnership, complies with the exclusion grounds referred to in Clauses 1, 3, 4, 5, 6 or 7 of Paragraph 1 of Article 42 of this Law or in Clauses 1 or 2 of Paragraph 2 of Article 42 of this Law, the tenderer shall indicate in the tender thereof and, if it is recognised as having the right to award the contract, provide clarification and evidence regarding the reimbursement of the damage caused, or the conclusion of an agreement regarding reimbursement of the damage caused, cooperation with the investigating authorities and the technical, organisational or personnel management measures taken to demonstrate their reliability and prevent the recurrence of the same and</p>	<p>Article 42 obliges or allows contracting authorities to exclude an economic operator from the procurement depending if they base the procedure on mandatory and discretionary grounds of exclusions.</p> <p>Regarding transposition of Article 57(2) of the Directive: Article 42(1)(2) states if candidate or tenderer has tax debts which in total exceeds EUR 150, then a contracting authority shall exclude it. Therefore, the limit of tax debts of EUR 150 has been set.</p> <p>Regarding transposition of Article 57(4)(a) of the Directive there are no clear transposition of such norm in Latvian law. Article 42(1)(7) of the PPL provides that candidate or tenderer shall be excluded if by decision that has become indisputable it has been found guilty of specific substantial employment law violations.</p> <p>Article 43 provides the obligation for a candidate and tenderer to submit evidence about its reliability if</p>	<p>Cabinet of Ministers Regulation No. 108 "Public electronic procurement rules"¹⁵ prescribes information system (available at www.eis.gov.lv) according to Article 42(9) and (9¹).</p>

¹⁵ Cabinet of Ministers regulation No. 108 "Public electronic procurement rules" Adoption: 28.02.2017. In force from 01.03.2017. Publication: "Latvijas Vēstnesis", 45 (5872), 01.03.2017.

of residence, including mandatory State social insurance debts, which total in one of the states exceeds EUR 150. In respect of tenderers registered and permanently resident in Latvia, the contracting authority shall take into account the information, which has been placed in the information system specified by the Cabinet of Ministers on the date of the last updating of the State Revenue Service tax debtor public database and the Real Estate Tax Administration system;

3) the insolvency proceedings of a candidate or a tenderer have been declared, the economic activities of the candidate or tenderer has been suspended, the candidate or the tenderer shall be liquidated;

4) the officer or employee of contracting authorities preparing the procurement procedure documents, the member of the procurement commission or expert is associated with the candidate or a tenderer within the meaning of Article 25, Paragraph 1 or 2 of this Law or is interested in the selection of any candidate or tenderer, and it is not possible for the contracting authority to rectify this situation with less restrictive measures of the candidates or tenderers;

5) the candidate or tenderer has competitive restrictive advantages in the procurement procedure, if it or its related legal person was involved in the preparation of the procurement procedure in accordance with Paragraph 4 of Article 18 of this Law and such advantages cannot be eliminated by less restrictive measures, and the candidate or tenderer cannot prove that the participation of the legal person related thereto in the preparation of public procurement shall be without prejudice to competition;

6) a candidate or a tenderer has been found guilty of a violation of competition law in the form of a horizontal cartel agreement by a decision of a court judgment or such a competent authority, which has entered into force and has become indisputable and unappealable, except in the case where the relevant institution determining a violation of competition law within the framework of the leniency programme waived the fine or reduced the fine of a candidate or a tenderer;

7) a candidate or a tenderer with a decision of a competent authority or a judgment of a court, which has entered into force and has become indisputable and unappealable, has been

similar cases in the future.

(3) If a candidate or tenderer fails to submit explanations and evidence, the contracting party shall exclude the candidate or tenderer from participation in the procurement procedure as conforming to the exclusion case referred to in Clauses 1, 3, 4, 5, 6 or 7 of Paragraph 1 of Article 42 of this Law or in Clauses 1 or 2 of Paragraph 2 of Article 42 of this Law.

(4) The contracting authority shall evaluate the actions taken by a candidate, tenderer or partnership, if the candidate or tenderer is a partnership, the measures taken and the evidence thereof, taking into account the seriousness and specific circumstances of the offence or violation. The contracting authority may request opinions from the competent authorities of the relevant criminal offence or violation regarding whether the measures taken by the candidate or tenderer are sufficient to restore confidence and to prevent the same and similar cases in the future. The opinion shall not be requested if the contracting authority is made available or the candidate or tenderer has submitted an opinion of the competent authority in the field of the relevant criminal offence or infringement regarding the adequacy of the measures taken by the relevant candidate or tenderer for restoration of reliability and for the prevention of the same and similar cases in the future.

(5) If the contracting authority considers the measures taken to be sufficient for restoration of reliability and for the prevention of similar cases in the future, it shall take a decision not to exclude the relevant candidate or tenderer from participation in the procurement procedure. If the measures taken are insufficient, the contracting authority shall take a decision to exclude the candidate or tenderer from subsequent participation in the procurement procedure.

the specific grounds for exclusion applies (including, for example, avoidance of taxes by a candidate, a tenderer, a person who is a member of the board or council etc., violation of certain rules in the field of employment law etc.). Based on the evaluation of evidence presented and evaluation of them, the contracting authority takes a decision to exclude or not to exclude the relevant candidate or tenderer from participation in the procurement procedure.

found guilty of a violation, which takes the form of:

(a) the employment of one or more persons, if they do not have the necessary work permit or if they are not entitled to reside in a Member State of the European Union,

(b) the employment of a person without a written contract of employment, within the time period specified in the tax regulatory enactments, without submitting an informative declaration regarding the employees to be submitted about the persons that start to work;

8) a candidate or a tenderer has provided false information in order to certify compliance with the provisions of this Article or the qualification requirements for candidates and tenderers specified in accordance with this Law, or has not provided the requested information;

9) on the member of the partnership, if the candidate or tenderer is a partnership, the conditions of Clauses 1, 2, 3, 4, 5, 6 or 7 of this Paragraph shall apply;

10) the subcontractor indicated by the tenderer, which works or services to be performed shall be at least 10 per cent of the total value of the public works, service or supply contract, shall be subject to the conditions of Clauses 2, 3, 4, 5, 6 or 7 of this Paragraph;

11) the person indicated by the candidate or tenderer, on whose options the candidate or tenderer is based to certify that his or her qualification complies with the requirements specified in the contract notice or procurement documents, shall be subject to the conditions laid down in Clauses 1, 2, 3, 4, 5, 6 or 7 of this Paragraph;

12) a candidate or a tenderer is an offshore registered legal person or an association of persons;

13) the owner or holder of more than 25 per cent capital shares (shares) of a candidate or a tenderer registered in Latvia is an offshore legal person or an association of persons;

14) one of the subcontractors indicated by the candidate or tenderer, the value of which works or services to be performed shall be at least 10 per cent of the total value of the public works, service or supply contract, or any of the persons on whose options the candidate or tenderer is based shall be an offshore registered legal person or an association of persons.

(2) The contracting authority, if it has been specified in a notice regarding a contract or procurement procedure documents, is entitled to exclude a candidate or a tenderer from future participation in the procurement procedure in the following cases:

1) a candidate or a tenderer (as a contracting authority or a shareholder or a member of the contracting authority, if the contracting authority has been a supplier association or partnership), a shareholder or a member thereof (if the candidate or tenderer is a supplier association or partnership) has not fulfilled a public contract, framework agreement or concession agreement concluded with such contracting authority and therefore the contracting authority or the public partner has exercised the right to unilaterally withdraw from a public contract, framework agreement or concession contract;

2) the candidate or tenderer has committed a serious professional violation, which calls into question the fairness thereof, or has failed to comply with a public contract, framework agreement or concession contract concluded with the contracting authority or public partner, and this fact has been recognised by such a decision of the competent authority or a court judgment which has entered into force and has become undisputable;

3) a member of a partnership, if the candidate or tenderer is a partnership, shall be subject to the conditions of Clause 2 of this Paragraph;

4) the subcontractor indicated by the tenderer, the value of which works to be performed or services to be provided shall be at least 10 per cent of the total value of the public works, service or supply contract, shall be subject to the conditions of Clauses 1 or 2 of this Paragraph;

5) the person indicated by the candidate or tenderer, on whose options the candidate or tenderer is based to certify that his or her qualification complies with the requirements specified in the contract notice or procurement documents, shall be subject to the conditions of Clauses 1 or 2 of this Paragraph.

(3) The contracting authority shall not exclude a candidate or a tenderer from participation in a procurement procedure if:

1) from the date on which a court judgment has become incontestable and unappealable, the public prosecutor's statement regarding the sentence or a decision taken by

another competent authority in relation to the violations referred to in Paragraph 1(1) and Paragraph 7(a), three years have passed until the date of submission of a request to participate or a tender;

2) from the date on which the judgment of the court or the decision taken by another competent authority in relation to the infringements referred to in Paragraph 1(6) and 7(b) and Paragraph 2(2) of this Article has become incontestable and unappealable, 12 months have elapsed until the date of submission of a request to participate or a tender.

(4) The contracting authority shall not exclude a candidate or a tenderer from participating in a procurement procedure if, from the day when the contracting authority unilaterally resigned from the date of the public supply, service or works contract referred to in Paragraph 2(1) of this Article, the framework agreement regarding supply, services or works or a service or works concession contract has passed 12 months. The contracting authority, if indicated in the notice regarding the contract or procurement procedure documents, is entitled not to exclude the candidate or tenderer from future participation in the procurement procedure in accordance with Paragraph 2(1) of this Article, instead providing for additional fulfilment of the undertaking or the terms of fulfilment of the public contract which make the candidate or tenderer economically disadvantageous to the public contract or non-compliance with essential provisions of the framework agreement. When taking a decision regarding the exclusion of a candidate or tenderer from future participation in the procurement procedure in accordance with Paragraph 2(1) of this Article, the contracting authority shall take into account the importance of the violation committed in the fulfilment of its public contract, framework agreement or concession contract, from which the contracting authority has unilaterally resigned, as well as the risk of failure to enter into the contract or framework agreement.

(5) if the contracting authority determines that the information contained in the information system that is determined by the Cabinet of Ministers in accordance with the State Revenue Service's public tax debtor database or the Real Estate Tax Administration System on the last date of the updating of the data to the candidate or tenderer or to the person referred to in Clauses 9, 10 and 11 of Paragraph 1, on the last day of submitting tenders or on the day of the decision regarding the possible award of a public contract, there are tax debts, including debts of mandatory State social security contributions, which, in total,

exceeds EUR 150, the contracting authority shall set a time limit - of 10 days after the date of issue or transmission – for submission of attestation about that on the last day of submitting a request to participate or tender or on the day of the decision on the possible award of a public contract, there were no tax debts, including mandatory state social security contributions, amounting to a total of more than EUR 150. If a statement has not been submitted within the specified time period, the contracting authority shall exclude the candidate or tenderer from participation in the procurement. If the contracting authority determines that the information in the information system specified by the Cabinet of Ministers, in accordance with the information inserted in the State Revenue Service's public tax debtor database or the Real Estate Tax Administration System on the date of the last updating of the data, the tenderer or the person referred to in Clauses 9, 10 and 11 of Paragraph 1 of this Article on the last day of the time period for submitting a request to participate or tenders or, on the day of the decision on a possible award of a public contract, there are no tax debts, including the mandatory State social security contribution debt, which in total exceeds EUR 150, the contracting authority shall not request a statement.

(6) A candidate or tenderer, in order to certify that the person referred to in Clauses 9, 10 and 11 of Paragraph 1 of this Article did not have tax debts, including the mandatory State social security contribution debt, which in total exceeds EUR 150 in Latvia, shall submit within the time period referred to in Paragraph 5 of this Article:

- 1) a certified printout of the relevant person or his representative from the electronic declaration system of the State Revenue Service or a statement from the State Revenue Service regarding the fact that the relevant person did not have the corresponding tax debts, including the State social insurance contribution debt;
- 2) a statement issued by the local government regarding the fact that the relevant person did not have debts of real estate tax;
- 3) a copy of a decision issued by the competent authority of the State Revenue Service or local government regarding the extension or deferral of the term of payment of taxes or other objective evidence regarding the absence of tax debts.

(7) The contracting authority shall request the candidate or a tenderer to replace a subcontractor whose value for the works or services to be provided is at least 10 per cent of the total value of a public works, public service or public supply contract, if it conforms to Clauses 2, 3,

4, 5, 6, 7 or 14 of Paragraph 1 of this Article or cases of exclusion mentioned in Clauses 1 and 2 of Paragraph 2 and the person on whose options the candidate or tenderer is based to certify that its qualification complies with the requirements laid down in the contract notice or procurement documents, if it complies with the requirements set out in Clauses 1, 2, 3, 4, 5, 6, 7 or 14 of the Paragraph 1 of this Article or cases of exclusion mentioned in Clauses 1 and 2 of Paragraph 2. If, within 10 working days of the date of issue or dispatch of the request, a candidate or tenderer fails to submit documents regarding a new subcontractor or person meeting the requirements specified in the contract or procurement documents, on which the candidate or tenderer is based to certify that the qualification complies with the requirements specified in the contract or procurement documents, the contracting authority shall exclude the candidate and tenderer from participation in the procurement procedure.

(8) The Cabinet of Ministers shall determine the list of violations of professional activity for which exclusion from the procurement procedure is intended.

(14) The contracting authority shall perform an examination regarding the cases of the exclusion of candidates and tenderers specified in Paragraph 1 and 2 of this Article:

1) in an open competition - in respect of each tenderer, who, in conformity with the other requirements specified in the contract and procurement procedure documents and the selected criteria for the evaluation of the tender, should be granted the contract award rights;

2) in a closed competition, a competitive dialogue, an innovation partnership procedure and a competitive procedure with negotiations - in respect of each candidate who conforms to the other requirements specified in the contract and selection rules and should be invited to submit a tender. If the contracting authority applies the reduction of the number of candidates, it shall perform the check before the reduction of the number of candidates. The contracting authority shall carry out a verification of the existence of the case for the exclusion of candidates and tenderers referred to in Clauses 2 and 10 of Paragraph 1 of this Article in respect of each tenderer who, in accordance with the other requirements specified in the contract and procurement documents and the selected criteria for evaluating the tender, should be awarded the award of a public

<p>contract;</p> <p>3) in the procurement referred to in Article 10 of this Law (if the contracting authority intends to apply the exclusion conditions referred to in Paragraphs 1 and 2 of this Article in the procurement documents) and in the negotiated procedure - in respect of each tenderer who should be granted the award of a public contract;</p> <p>4) in the tendering procedure with negotiations in the case referred to in Article 8(6)(5) of this Law, if it invites only all those tenderers who have not been excluded in the relevant procurement procedure previously announced in accordance with the provisions of this Article and comply with the qualification requirements raised, if it is applied after the termination of an open competition, in respect of each tenderer who has submitted the tender shall be open and shall be invited to the negotiated procedure. This check shall be carried out before negotiations are opened.</p> <p>(15) If the contracting authority applies the negotiated procedure in accordance with Article 8(7)(7) of this Law, it shall not apply Clause 3 of Paragraph 1 of this Article.</p>			
<p>Open questions</p>	<p>See Interpretation of Procurement Monitoring Bureau (competent authority) "On the change of the tender evaluation criterion after procurement announcement"¹⁶ and "Rules for the exclusion of candidates/tenderers in relation to registration in the offshore area".¹⁷</p>		
<p>Example of application from the national level (where applicable)</p>	<p>Regarding exclusion based on tax debts, according to the judgment of the Supreme Court in the case under consideration, the tenderer was excluded from public procurement procedure based on tax debts (State social insurance payments). However, the tenderer after the term submitted a statement eliminating the non-compliance and taxes were paid. The court stated that by ensuring compliance of a tenderer in this way after expiry of the deadline for submission of tenders is not compatible with the principle of equal treatment applicable in public procurement procedures, as it would allow unjustifiably different deadlines for the fulfilment of the requirements for tenderers of one procurement.¹⁸</p>		

¹⁶ 21 March 2018. Interpretation of Procurement Monitoring Bureau (competent authority) "On the change of the tender evaluation criterion after procurement announcement". Available at: https://www.iub.gov.lv/sites/default/files/upload/Skaidrojums_kriterija_maina_20180321.pdf

¹⁷ 18 October 2018. Interpretation of Procurement Monitoring Bureau (competent authority) "Rules for the exclusion of candidates/tenderers in relation to registration in the offshore area". Available at: https://www.iub.gov.lv/sites/default/files/upload/20181018_skaidrojums_PIL_arzona_pr.pdf

¹⁸ Summary of Supreme Court case law 2004-2017, page 37. Available at: http://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2017/2-Apkopojums_publiciskie%20iepirkumi_2017_31_10.docx

Article 67 of the Directive ► Article 51 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 51 Criteria for evaluating the tender</p> <p>(1) The contracting authority shall grant the right to enter into a public contract for the most economically advantageous tender.</p> <p>(2) The most economically advantageous tender shall be determined:</p> <p>1) using price or cost, applying an efficiency approach (for example, when assessing life-cycle costs);</p> <p>2) taking into account price or cost and quality criteria related to the subject-matter of the public contract, for example:</p> <p>(a) quality, including technical advantages, aesthetic and functional characteristics, accessibility, compliance with universal design, social and environmental requirements, innovative characteristics and conditions of sale,</p> <p>(b) the structure of the management of the fulfilment of the public contract and the qualifications and experience of the personnel involved where the quality of the fulfilment of the public contract can be significantly affected by the qualifications and experience of the personnel involved,</p> <p>(c) after-sales services and technical assistance, delivery conditions, such as delivery date, delivery process and delivery period or completion period.</p> <p>(3) Quality criteria are related to the subject-matter of a public contract, if they relate to any stage of the life-cycle of the works, supply or service, as well as to factors related to the process of carrying out works, the production of goods or the provision of services or any other process during the life-cycle, even if such factors are not directly related to the subject-matter of a public contract (for example, compliance with environmental protection requirements or social clauses during the provision of a service, the production of a product or the fulfilment of works).</p> <p>(7) The contracting authority shall indicate in the procurement procedure documents the crucial selection criterion for the tender, in accordance with which a tender will be chosen, if, prior to taking a decision regarding the award of the public contract, it will be determined that the assessment of at least two tenders is equal. The contracting authority has the right to determine a criterion regarding the crucial selection of the tender, which describes the conformity of the supplier with social protection requirements, including the fact that the selected tender was submitted by a supplier who is a member of a national</p>	<p>Article 26 Procedures for the decision making of the procurement Commission</p> <p>(2) Each member of the procurement commission shall assess the tender individually after all the evaluation criteria specified in the procurement documents, except in the case where only the cost is used for comparison and evaluation of tenders. The most economically advantageous tender shall be recognised as an offer which, after compiling individual assessments, has obtained the highest assessment.</p>	<p>Article 51: the most economically advantageous tender is determined by one of two options. The first one takes into account only price or cost. The second one, price or cost and quality criteria if quality criteria are directly or indirectly related to the subject-matter of the public contract at any phase of the life-cycle of the building works, supply or services.</p> <p>The list of potential quality criteria is open. Quality criteria must relate to the subject of the contract and may include also requirements in the fields of environment, social and labour law, for example, according to the given example in Article 51(2)(2)(a) of the PPL – compliance with universal design, social and environmental requirements.</p> <p>Article 51(7): if two tenders based on results of the tender evaluation are equal, then tender is selected according to crucial selection criterion for the tender which describes the conformity of the supplier with social protection requirements.</p>	<p>Laws linked to social clauses, i.e. law On State Social Insurance¹⁹, Disability law.</p>

¹⁹ Law On State Social Insurance. Adoption: 01.10.1997. Entry into force: 01.01.1998. Publication: "Latvijas Vēstnesis", 274/276 (989/991), 21.10.1997., "Ziņotājs", 22, 27.11.1997.

<p>employers' organisation and has entered into a collective agreement with a trade union that is a member of a national trade union (if the tender has been submitted by a partnership or association of persons), the collective agreement must be concluded with each member of the partnership and each member of the association of persons).</p>			
<p>Open questions</p>	<p>Local governments and state authorities in Latvia are not aware of how to use social clauses. They prefer to use other criteria to define public procurement, but not social clauses. Created positive social impact would be higher, if contracting authorities would be more aware of how to use these social clauses.</p> <p>Also see Interpretation of Procurement Monitoring Bureau (competent authority) "On the verification of the eligibility of tenderers' tenders in relation to the contract price offered by the tenderer in the procurement procedure".²⁰</p>		
<p>Example of application from the national level (where applicable)</p>	<p>According to research by the Partnership of Latvian Construction Entrepreneurs "Guidelines for Choosing the Economically Most Advantageous Tender in Construction and Design-and-Build Procurements"²¹ the contracting authorities may determine the following social clauses:</p> <ul style="list-style-type: none"> • average social insurance contributions to the State budget during the 12-month period of the tenderer's employees. Usually the contracting authority assesses the total amount of social insurance contributions paid by the tenderer against the average number of hours worked during the last calendar year or during the last 12 months. Consequently, the average amount of social insurance contributions paid by the tenderer for one working hour is obtained. According to research, in about 5-8 % of public procurements such criteria are used in evaluation when awarding public works contracts. • persons with special needs, employment of pre-retirement age (up to 10 years before retirement age), employment of persons in probation. The contracting authority may assess the total number of such persons employed. In order to ensure formal compliance with this clause (e.g. the tenderer formally employs a large number of persons with special needs but all or most of the work is part-time), it is suggested to determine that the assessment of the criterion is limited, for example, to those persons with special needs which the tenderer employs and which in the preceding three months have received remuneration of not less than the minimum monthly wage determined. According to research, in about 0.5-2 % of public procurements such criteria are used in awarding public works contracts. • persons employed within the framework of the study practice. The contracting authority may assess the number of persons employed within the framework of the study practice within the framework of a certain period etc. According to research, in about 0.5-2 % of public procurements such criteria are used in evaluation when awarding public works contracts. 		

²⁰ 29 October 2018. Interpretation of Procurement Monitoring Bureau (competent authority) "On the verification of the eligibility of tenderers' tenders in relation to the contract price offered by the tenderer in the procurement procedure". Available at: https://www.iub.gov.lv/sites/default/files/upload/skaidrojums_prezentanta%20piedavata_ligumcena_20181029.pdf

²¹ 27 April 2017. Partnership of Latvian Construction Entrepreneurs Guidelines "Guidelines for Choosing the Economically Most Advantageous Tender in Construction and Design-and-Build Procurements".

Available at : https://www.iub.gov.lv/sites/default/files/upload/20170531_Vadl%C4%ABnijas_public%C4%93%C5%A1anai_WEB_lap%C4%81.pdf

Article 69 of the Directive ► Article 53 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 53. Abnormally low tender</p> <p>(1) If a tender for a specific public works, public supply or public service contract appears to be abnormally low, the contracting authority shall request an explanation regarding the proposed price or costs.</p> <p>(2) The clarification may relate in particular to:</p> <ol style="list-style-type: none"> 1) the costs of the production process, works method or services to be provided; 2) the selected technical solutions and the particularly favourable conditions for the fulfilment of works, the supply of goods or the provision of services, which are available to the tenderer; 3) the characteristics and originality of the proposed works, goods or services; 4) compliance with the obligations specified in the regulatory enactments and collective agreements in the fields of environmental, social and labour law and labour protection; 5) commitments to subcontractors; 6) the commercial activity support received by the tenderer. <p>(3) The contracting authority, in consultation with the tenderer, shall evaluate the explanations provided by it. The contracting authority has the right to request the tenderer to submit prints from the electronic declaration system of the State Revenue Service regarding the average hourly tariff rates of the tenderer and the subcontracted employees indicated in the tender to the occupational groups, if such data is compiled by the State Revenue Service.</p> <p>(4) The contracting authority shall reject a tender as abnormally low, if the explanations provided do not justify the low price or cost level tendered by the tenderer or if the price or costs do not include costs related to compliance with the duties specified in the regulatory enactments of the fields of environmental, social and labour rights and labour protection and collective agreements.</p> <p>(5) If the contracting authority finds that the tender is abnormally low because the</p>	<p>N/A</p>	<p>Provision allows to reject abnormally low tenders if tenderers cannot provide sufficient explanation.</p> <p>Article 53(2)(4): If a tender appears to be abnormally low, the contracting authority must request clarification regarding the price or costs of the tender, specifically asking to clarify also the compliance with applicable obligations in the fields of environmental, social and labour and labour protection law (understanding with that international law, European Union law, national law, provisions included in collective agreements).</p> <p>Article 53(4): contracting authority must reject the tender as abnormally low if a) the clarification is not sufficient or substantiated or b) costs regarding the compliance with obligations in the fields of environmental, social and labour law and labour protection legislation are not included in the tender.</p>	<p>Law On Prevention of Squandering of the Financial Resources and Property of a Public Person²²</p> <p>Cabinet of Ministers Regulation No. 656 "Rules regarding the amount of minimum monthly wage within the framework of normal working time and calculation of the minimum hourly tariff rate"²³</p> <p>Regarding Article 53(2)(4): Labour Law, Labour Protection Law, Disability Law, Law on Social Services and Social Assistance</p> <p>etc.</p>

²² Law On Prevention of Squandering of the Financial Resources and Property of a Public Person. Adoption: 19.07.1995. Entry into force: 16.08.1995. Publication: "Latvijas Vēstnesis", 114 (397), 02.08.1995, "Ziņotājs", 17, 07.09.1995.

²³ Cabinet of Ministers Regulation No. 656 "Rules regarding the amount of minimum monthly wage within the framework of normal working time and calculation of the minimum hourly tariff rate". Adoption: 24.11.2015. Entry into force: 01.01.2016. Publication: "Latvijas Vēstnesis", 232 (5550), 26.11.2015.

<p>tenderer has received commercial activity support, the tender may be rejected after consultation with the tenderer only on the grounds that the tenderer cannot prove within a reasonable time limit specified by the contracting authority that the commercial support received is compatible with the internal market in accordance with Article 107 of the Treaty on the Functioning of the European Union. If the contracting authority rejects the tender for this reason, it shall inform the European Commission and the Procurement Monitoring Bureau of the rejection of the tender and the reason for the rejection.</p>			
<p>Open questions</p>	<p>According to case law of the Supreme Court of the Republic of Latvia regarding previous public procurement law provisions (valid until 1st of March 2017) (interpretation of which could be extended to the effective PPL) the effective use of public funds does not include only a formal choice of tender of the lowest price, but also a grounded and serious tender. If in the view of the contracting authority the tender does not appear to be abnormally low, the provisions shall not apply.²⁴</p>		
<p>Example of application from the national level (where applicable)</p>			

²⁴ Summary of Supreme Court case law 2004-2017. page 40. Available at: http://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2017/2-Apkopojums_publiciskie%20iepirkumi_2017_31_10.docx

Article 70 of the Directive ► Article 60(3) of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 60. Public contract (3) The contracting authority is entitled to provide for special rules for the fulfilment of a public contract mainly in relation to economic and social conditions, innovation or environmental protection requirements, taking into account the condition that such provisions do not conflict with the directly applicable law of the European Union in the areas referred to and are specified in the technical specifications or in the contract notice or procurement documents and are related to the subject-matter of the public contract concerned. The contracting authority may use guidelines developed by sectoral experts or organisations for procurement and contracting, as well as standard contracts in the preparation of the public contract. The conclusion of a public contract shall ensure that the rights and legal interests of the Contracting Parties are respected proportionally.</p>	N/A	Contracting authorities have a right to set additional conditions for fulfilment of contracts linked to their subject matter mainly (therefore, list is not exhaustive) in relation to economic and social conditions (for example, employing members of a marginalised group), innovation or environmental protection requirements. However, by setting such standards principle of proportionality must be taken into account.	Support for Unemployed Persons and Persons Seeking Employment Law ²⁵ - The purpose of this Law is to provide support for unemployed persons, persons seeking employment and persons subject to the risk of unemployment in order to facilitate their ability to compete in the labour market.
Open questions	There is no common understanding of “social aspects” provided in the Regulation that might be recognised as related to the fulfilment of the contract, therefore use of such provisions in the public contract might be less used by contracting authorities.		
Example of application from the national level (where applicable)	(see the section of this Matrix table regarding Article 67 of the Directive)		

²⁵ Support for Unemployed Persons and Persons Seeking Employment Law. Adoption: 09.05.2002. Entry into force: 01.07.2002. Publication: "Latvijas Vēstnesis", 80 (2655), 29.05.2002., "Ziņotājs", 12, 27.06.2002.

Article 71 of the Directive ► Articles 62 and 63 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 42 Rules for the exclusion of candidates and tenderers</p> <p>(1) The contracting authority shall exclude a candidate or a tenderer from participation in a procurement procedure in any of the following cases:</p> <p>10) the subcontractor indicated by the tenderer, which works or services to be performed shall be at least 10 per cent of the total value of the public works, service or supply contract, shall be subject to the conditions of Clauses 2, 3, 4, 5, 6 or 7 of this Paragraph;</p> <p>(2) The contracting authority, if it has been specified in a notice regarding a contract or procurement procedure documents, is entitled to exclude a candidate or a tenderer from future participation in the procurement procedure in the following cases:</p> <p>5) the person indicated by the candidate or tenderer, on whose options the candidate or tenderer is based to certify that his or her qualification complies with the requirements specified in the contract notice or procurement documents, shall be subject to the conditions of Clauses 1 or 2 of this Paragraph.</p> <p>(7) The contracting authority shall request that a candidate or a tenderer replace a subcontractor whose value for the works or services to be provided is at least 10 per cent of the total value of a public works, public service or public supply contract, if it conforms to Clauses 2, 3, 4, 5, 6, 7 or 14 of Paragraph 1 of this Article or cases of exclusion mentioned in Clauses 1 and 2 of Paragraph 2 and the person on whose options the candidate or tenderer is based to certify that its qualification complies with the requirements laid down in the contract notice or procurement documents, if it complies with the requirements set out in Clauses 1, 2, 3, 4, 5, 6, 7 or 14 of the Paragraph 1 of this Article or cases of exclusion mentioned in Clauses 1 and 2 of Paragraph 2. If, within 10 working days of the date of issue or dispatch of the request, a candidate or tenderer fails to submit documents regarding a new subcontractor or person meeting the requirements specified in the contract or procurement documents, on which the candidate or tenderer is based to certify that the qualification complies with the requirements specified in the contract or procurement documents, the contracting authority shall exclude the candidate and tenderer from participation in the procurement procedure.</p> <p>Article 62. Replacement of personnel and subcontractors involved in the fulfilment</p>	<p>Article 1(1) subcontractor - a person hired by a tenderer or a person hired by a subcontractor itself that carries out construction work or provides services for the fulfilment of a procurement contract.</p>	<p>Cited provisions of the Article 42 provide grounds for exclusion or request for replacement of a candidate or a tenderer if subcontractor - which performs works or services of at least 10 per cent of its value - has tax debts (in total - over 150 EUR), has violated the employment law provisions etc. according to Article 42 of the PPL (full text of the Article 42 can be found above).</p> <p>Articles 62 and 63 provide certain rules if the subcontractors are or will be involved in fulfilment of procurement contract, including information about subcontractors, necessity to harmonise with the contracting authority replacement of subcontractor, obligation to provide all the subcontractors that will be involved in fulfilment of the contract, criteria for the subcontractors to</p>	<p>The Civil Law²⁶ - regarding responsibility of subcontractor (the conclusion of a subcontracting agreement does not in itself relieve the subcontractor as a contractor of damages).</p> <p>Law On Taxes and Duties²⁷ -</p> <p>Chapter XIII of the Law "Liability Coverage of the Main Performer of Construction Work towards Employees of the Subcontractor Hired for Fulfilment of Public Works Contract or Works Contract" - provides the provisions for the responsibility of the main performer (supplier) of public works contract - monthly State Social Insurance Mandatory Payments for the subcontractor's employees who are subject to social insurance in Latvia and who are employed in the construction site in the fulfilment of the</p>

²⁶ The Civil Law. Adoption: 28.01.1937. Entry into force: 01.09.1992. Publication: "Valdības Vēstnesis", 41, 20.02.1937.

²⁷ Law On Taxes and Duties. Adoption: 02.02.1995. Entry into force: 01.04.1995. Publication: "Latvijas Vēstnesis", 26 (309), 18.02.1995. "Ziņotājs", 7, 13.04.1995.

<p>of the procurement contract and the attraction of new personnel and subcontractors</p> <p>(1) The tenderer selected in the procurement procedure (party to the procurement contract or framework agreement) is not entitled, without coordination with the contracting authority, to perform the replacement of the personnel and subcontractors indicated in the tender and to involve additional subcontractors in the fulfilment of the procurement contract. The contracting authority may request the views of the personnel and subcontractor regarding the reasons for the change. The contracting authority may provide in the procurement contract or the provisions of the framework agreement that the tenderer selected in the procurement procedure (party to the procurement contractor framework agreement) has an obligation to coordinate the involvement of additional personnel of the contracting authority in the fulfilment of the procurement contract.</p> <p>(2) The replacement of the personnel indicated in the tender shall be permitted only in accordance with the procedures and cases specified in the terms and conditions of the procurement contract or the framework agreement. The contracting authority shall not agree to the replacement of the personnel indicated in the tender in the cases specified in the procurement contract or the provisions of the framework agreement and in cases where the proposed personnel do not meet the requirements laid down in the procurement procedure documents or do not have at least the same qualification and experience as the personnel, which was evaluated in determining the economically most advantageous tender.</p> <p>(3) The contracting authority shall not agree to the replacement of the subcontractor indicated in the tender if one of the following conditions exists:</p> <ol style="list-style-type: none"> 1) the proposed subcontractor does not comply with the requirements laid down in the procurement procedure documents for subcontractors; 2) a subcontractor shall be replaced, on the opportunities of which the tenderer selected in the procurement procedure has based its tender in order to certify the conformity of his or her qualification with the requirements specified in the contract and procurement documents, and the proposed subcontractor does not have at least the same qualifications as the candidate selected in the procurement procedure has referred to, attesting its conformity with the requirements specified in the procurement procedure or it meets exclusion ground requirements specified in Paragraph 1 or 2 of Article 42 of this Law (in conformity with the cases referred to in the contract or procurement procedure documents indicated by the contracting authority); 3) the proposed subcontractor, which works or services to be provided value is at least 10 per cent of the value of the total procurement contract, shall conform to the grounds of exclusion of tenderers referred to in Paragraph 1 or 2 of Article 42 of this Law (according to the notice specified by the contracting authority regarding the contract or procurement procedures 		<p>be involved etc.</p> <p>Article 63(5) sets mechanism of direct payments to subcontractors in case public works contract has been awarded, providing that contracting authority has a right and public procurement procedure documents state that if the subcontractor has not received the payment from economic operator to whom the public contract has been awarded then the contracting authority shall transfer due payments directly to the subcontractor for services or works provided to the economic operator to whom the public contract has been awarded.</p>	<p>construction contract. Labour Law etc.</p>
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documents);

4) a change in the subcontractor would result in an amendment to the tenderer's tender which, if originally included, would affect the choice of the tender in accordance with the tender evaluation criteria laid down in the procurement documents.

(4) The contracting authority does not agree to the attraction of a new subcontractor in the event that such changes, if they were made in the initial tender, would have affected the choice of the tender in accordance with the criteria for evaluation of the tender specified in the procurement procedure documents.

(5) When examining the conformity of a new subcontractor, the contracting authority shall apply the provisions of Article 42 of this Law. The time periods referred to in Paragraph 3 of Article 42 of this Law shall be counted from the day when the request for the replacement of the subcontractor is submitted to the contracting authority.

(6) The contracting authority shall adopt a decision to allow or refuse the replacement of the personnel or subcontractors of a successful tenderer (party to the procurement contract or framework agreement) in the procurement procedure or the involvement of new subcontractors in the fulfilment of the procurement contract as soon as possible, but not later than within five working days after receipt of all the information and documents necessary for the adoption of the decision in accordance with the provisions of this Article.

Article 63. Subcontractors

(1) The contracting authority shall be entitled, in order to ascertain that the supplier is able to perform a procurement contract, to request that the tenderer indicate in his or her tender the parts of the procurement contract which will be transferred to the subcontractors, as well as all foreseeable subcontractors.

(2) The contracting authority shall request that a tenderer shall indicate in his or her tender all subcontractors whose value of the works or services to be performed is 10 per cent of the value of the total procurement contract or higher and for each such subcontractor the share of the procurement contract to be transferred to the fulfilment.

(3) The total value of the works or services to be performed by the subcontractor shall be determined taking into account the value of the works or services to be performed by the subcontractor and all related undertakings within the scope of the relevant procurement. For the purposes of this Article, a capital company in which, in accordance with the laws and regulations governing the status of the group, the subcontractor has a decisive influence or has decisive influence in the subcontractor, or a capital company in which the decisive influence is for another capital company, which has the decisive influence at the same time in the

<p>subcontractor concerned, shall be deemed to be a related undertaking.</p> <p>(4) In the case of a public service contract, if the services are provided at the contracting authority's site and in the case of a public works contract, the contracting authority shall request that after the award of the procurement contract and not later than upon the fulfilment of the procurement contract, the tenderer shall submit a list of subcontractors involved in the construction works or services (if such is planned to be involved), in which the name, contact details of the subcontractor and the person represented thereof shall be indicated, in so far as that information is known. The list shall also indicate subcontractors of the supplier's subcontractors. The contracting authority shall request that during the fulfilment of the procurement contract the supplier shall notify the contracting authority of any changes to that information, as well as shall supplement the list with information regarding the subcontractor who is later involved in the fulfilment of the construction work or the provision of services.</p> <p>(5) The contracting authority may provide in the procurement procedures documents that, in the case of a public works contract, at the request of the subcontractor, payments for the services, supplies or works provided by the subcontractor to the supplier which he or she has accepted and whose due date is delayed if the contracting authority has not paid the contract price due to the supplier, the contracting authority shall transfer directly to the subcontractor on the basis of an invoice submitted by the subcontractor and shall reduce the corresponding amount for the next payment supplier. The contracting authority shall inform the supplier of such requests prior to the payment of the subcontractor's invoice and shall allow it to express an opinion regarding the merits of the request. The order by which payments are to be made and the exchange of information with the supplier and its subcontractors shall be provided by the contracting authority in the procurement contract.</p> <p>(6) The procedures provided for in Paragraphs 1 and 5 of this Article shall not affect matters relating to the responsibility of the supplier for the fulfilment of the procurement contract.</p>			
Open questions	The conclusion of a subcontracting agreement does not relieve the subcontractor of remuneration of damages.		
Example of application from the national level (where applicable)			

Article 74 of the Directive ► Article 10 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 10. Procurement of services referred to in Annex 2 of this Law</p> <p>(1) If the estimated contract price of a public service contract is EUR 42 000 or more and the contract is entered into for the services referred to in Annex 2 of this Law, the contracting authority may not apply the procurement procedures specified in this Law, except the requirements laid down in Articles 13, 14, 19, 20, 21 and 22, Chapter III, Paragraph 2 of Article 28, Articles 32 and 33, Paragraphs 1 and 3 of Article 36, Articles 37, 38 and 39, Paragraphs 1, 3, 4 and 5 of Article 40, and Articles 60 and 61 of this Law.</p> <p>(2) The contracting authority is entitled not to apply this Law to a public service contract, the subject of which conforms to one of the CPV codes referred to in the chapter "Health, Social and Related Services" of Annex 2 of this Law, if the estimated contract price thereof is less than EUR 750 000. Where the estimated contract price of such a public service contract is EUR 750 000 or more, the procurement procedure provided for in Paragraph 1 of this Article shall apply.</p> <p>(3) The contracting authority is entitled not to apply this Law to a public service contract, which is entered into regarding provision of teaching practice or study practice or training that based in the work environment, if the estimated contract price thereof is less than EUR 750 000.</p>	(see the section of this Matrix table regarding Article 75 of the Directive).	(see the section of this Matrix table regarding Article 76 of the Directive).	<p>Cabinet of Ministers Regulation No. 105 "Rules on thresholds for public contracts"²⁸. Cabinet of Ministers regulation implements the thresholds set by the European Commission.</p> <p>Cabinet of Ministers Regulation No. 103 "Public Procurement Notices and Procedures for Preparation of them"²⁹.</p>
Open questions	(see the section of this Matrix table regarding Article 75 and 76 of the Directive).		
Example of application from the national level (where applicable)			

²⁸ Cabinet of Ministers Regulation No.105 "Rules on Thresholds for Public Procurement" Adoption: 28.02.2017. In force from 01.03.2017. Publication: "Latvijas Vēstnesis", 45 (5872), 01.03.2017.

²⁹ Cabinet of Ministers Regulation No. 103 "Public Procurement Notices and Procedures for Preparation of them" Adoption: 28.02.2017. In force from 01.03.2017. Publication: "Latvijas Vēstnesis", 45 (5872), 01.03.2017.

Article 75 of the Directive ► Article 32 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 32 Notice on social and other specific services</p> <p>(1) The contracting authority who wishes to organise procurement in accordance with the procedures specified in Article 10 of this Law shall publish a notice regarding social and other specific services. The contracting authority shall determine the time limit for the submission of requests to participate not less than five working days from the date on which the notice regarding social and other specific services was published on the website of the Procurement Monitoring Bureau. The contracting authority shall determine the time limit for the submission of tenders not less than five working days from the day on which the notice regarding social and other specific services was published on the website of the Procurement Monitoring Bureau or when the invitation to submit a tender has been sent to the selected candidates, if the selection of candidates is intended.</p> <p>(2) The contracting authority shall, within 10 working days after entering into a public service contract or taking a decision regarding the termination or suspension of procurement, submit a notice regarding social and other specific services for publication.</p> <p>(3) The contracting authority is entitled not to publish the notice referred to in Paragraph 1 of this Article, if the procurement meets one of the cases referred to in Article 8(7) of this Law.</p> <p>(26.04.2018. in the version of the Law entering into force on 01.06.2018.)</p>	<p>Article 27 of PPL provides that the contracting authority may inform about planned purchases by publishing the prior information notice.</p> <p><u>Cabinet of Ministers Regulation No. 103 “Public Procurement Notices and Procedures for Preparation of them”</u></p> <p>Paragraph 2.8. provides notice on social and other special services – prior information notice.</p> <p>Paragraph 2.9. provides that there is also notice on social and other specific services — a contract notice.</p> <p>Paragraph 2.10. provides that notice on social and other special services — a contract award notice.</p>	<p>Article 32(1) provides obligation and terms for contracting authority to publish notice regarding social and other specific services which is implemented with Cabinet of Ministers Regulation No. 103 that provides form on contract notice and information notice.</p> <p>Article 32(2) provides obligation and term for contracting authority to publish contract award notice regarding conclusion of social and other specific services contract (implemented with Cabinet of Ministers Regulation No. 103 Paragraph 2.10).</p> <p>Article 32(3) provides the right for the contracting authority to not publish the notice if negotiated procedure is organised.</p> <p>According to Cabinet of Ministers Regulation No. 103 “Public Procurement Notices and Procedures for Preparation of them” in notice on social and other special services contracting authority provides information whether procedure according to Article 10 of PPL will be organised as open, closed or negotiated procedure.</p>	<p>Cabinet of Ministers Regulation No. 103 “Public Procurement Notices and Procedures for Preparation of them”.</p>
<p>Open questions</p>	<p>PPL clearly does not indicate that there can be two kinds of notices on social and other specific services published (a contract notice and a contract award notice) in the procedure according to Article 10 of PPL.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 76 of the Directive ► Article 10 of PPL

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 10. Procurement of services referred to in Annex 2 of this Law</p> <p>(1) If the estimated contract price of a public service contract is EUR 42 000 or more and the contract is entered into for the services referred to in Annex 2 of this Law, the contracting authority may not apply the procurement procedures specified in this Law, except the requirements laid down in Articles 13, 14, 19, 20, 21 and 22, Chapter III, Paragraph 2 of Article 28, Article 32 and 33, Paragraphs 1 and 3 of Article 36, Articles 37, 38 and 39, Paragraphs 1, 3, 4 and 5 of Article 40, and Articles 60 and 61 of this Law.</p> <p>(2) The contracting authority is entitled not to apply this Law to a public service contract, the subject of which conforms to one of the CPV codes referred to in the chapter “Health, Social and Related Services” of Annex 2 of this Law, if the estimated contract price thereof is less than EUR 750 000. Where the estimated contract price of such a public service contract is EUR 750 000 or more, the procurement procedure provided for in Paragraph 1 of this Article shall apply.</p> <p>(3) The contracting authority is entitled not to apply this Law to a public service contract, which is entered into regarding provision of teaching practice or study practice or training that based in the work environment, if the estimated contract price thereof is less than EUR 750 000.</p>		<p>Annex 2 of the PPL provides the list of the same (analogue) CPV codes that are included in Annex XIV of the Directive.</p> <p>PPL provides that simplified procedure taking into account only requirements stated in the Article 10(1) – <i>Articles 13 (general conditions for the supplier), 14 (protection of information), 19 (green public procurement), 20 (technical specifications), 21 (labels) and 22 (test reports, specifications and other evidence), Chapter III (procurement commission), Paragraph 2 of Article 28, Article 32 and 33 (contract notices), Paragraphs 1 and 3 of Article 36 (access to, service and provision of supplementary information), Articles 37, 38 and 39, Paragraph 1, 3, 4 and 5 of Article 40 (exchange of information and procurement documents) and Articles 60 and 61 (procurement contract and amendments of it)</i> – of the law can be applied in case the estimated contract price (threshold) of a public service contract is EUR 42 000 or more, therefore providing stricter requirements (lower threshold) than the Directive.</p> <p>Paragraphs 2 and 3 of Article 10 provides that in certain fields the threshold is higher than usually applicable under the PPL (EUR 42 000) - EUR 750 000 (as in the Directive).</p>	<p>Cabinet of Ministers Regulation No. 105 “Rules on thresholds for public contracts”.</p> <p>Cabinet of Ministers Regulation No. 103 “Public Procurement Notices and Procedures for Preparation of them”.</p>
<p>Open questions</p>	<p>PPL clearly does not indicate that procedure according to Article 10 of PPL is organised as an open, closed or negotiated procedure – this follows only from the notice form provided in Cabinet of Ministers Regulation No. 103 “Public Procurement Notices and Procedures for Preparation of them” and guidelines issued by competent authority.</p> <p>Also see Interpretation of Procurement Monitoring Bureau (competent authority), “Interpretation of Annex 2 of PPL”.³⁰</p>		

³⁰ 11 September 2018. “Interpretation of Annex 2 of Public Procurement Law”. Available at: https://www.iub.gov.lv/sites/default/files/upload/skaidrojums_PIL_2pielik_20180910.pdf

Example of application from the national level (where applicable)	
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Article 77 of the Directive ► Article 16 of PPL and Social Enterprise Law

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><u>PPL</u></p> <p>Article 16. Privileged contracts</p> <p>(1) If the subject-matter of the intended public contract permits, the contracting authority shall be entitled, within the framework of measures intended for certain groups of persons, to reserve the possibility to participate in procurement procedures only for candidates or tenderers for whom more than 30 per cent of the average number of employees employed per year are persons with disabilities.</p> <p>(2) If the public contract is concluded for the health, social and cultural services referred to in Annex 2 of this Law, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8, the contracting authority is entitled to reserve the possibility to participate in the procurement procedure and procurement procedure in accordance with the procedures of Article 10 of this Law only for those candidates or tenderers who have been granted the status of a social undertaking and who provide the services in these fields, and who, within the last three years from the date on which a decision on the award of a procurement contract would be taken, the contracting authority has not granted the public contract award for the services referred to in this Article in accordance with the procedures of this Article. The duration of such a public contract shall not exceed three years.</p> <p>(3) In applying Paragraph 1 of this Article, the contracting authority shall refer to this article in the notice regarding the contract. In applying Paragraph 2 of this Article, the contracting authority shall refer to this article in the notice regarding the contract or in the notice regarding social and other specific services.</p> <p><u>Social Enterprise Law</u></p> <p>Article 2. Concept of a Social Enterprise</p> <p>(1) A social enterprise is a limited liability company which in accordance with the procedures laid down in this Law has been granted the status of a social enterprise and which conducts an economic activity that creates a positive social impact (e.g. provision of social services, formation of an inclusive civil society, promotion of education, support for science, protection and preservation of the environment, animal protection, or ensuring of cultural diversity).</p> <p>(2) The status of a social enterprise may be acquired by a limited liability company where one or several public persons jointly do not have the majority of votes, if the objective defined in</p>	<p>N/A</p>	<p>Article 16 provides the contracting authority the right to reserve the right to award public contract to the social enterprise if public contract is intended to be concluded in certain social fields according to Annex No. 2 (analogue to Annex XIV of the Directive).</p> <p>Article 16(2): provides the right for the contracting authority to reserve the possibility to participate in certain social fields (health, social and cultural services according to Annex No. 2 of the PPL - analogue to Annex XIV of the Directive) - to social enterprises, which according to the Social Enterprise Law is a company that creates a positive social impact (e.g. provision of social services, formation of an inclusive civil society, promotion of education, support for science, protection and preservation of the environment, animal protection, or ensuring of cultural diversity). Social enterprise's status is granted by the Ministry of Welfare (in force from 01.06.2018).</p> <p>Article 16(3): if the right to participate is reserved</p>	<p>The Social Enterprise Law³¹ (in force from 01.04.2018).</p>

³¹ The Social Enterprise Law. Adoption: 12.10.2017. Entry into force: 01.04.2018. Publication: "Latvijas Vēstnesis", 212 (6039), 25.10.2017.

<p>the articles of association of the social enterprise is employment of the target groups.</p> <p>Article 5. Granting of the Status of a Social Enterprise</p> <p>(1) The status of a social enterprise shall be granted to a limited liability company if:</p> <ol style="list-style-type: none"> 1) the objectives defined in its articles of association conform to the purpose of this Law and it conducts the economic activity referred to in Article 2, Paragraph 1 of this Law; 2) the meeting of its shareholders has taken a decision to acquire the status of a social enterprise. The decision of the meeting of shareholders to acquire the status of a social enterprise shall be taken if not less than two thirds of the votes represented at the meeting were given for such decision and the articles of association do not provide for a larger number of votes necessary for taking such decision; 3) the profit thereof is not retained, but is invested to achieve the objectives defined in the articles of association; 4) it employs paid employees; 5) conformity with one of the requirements specified in Paragraph two of this Article is ensured. <p>(2) In order to acquire the status of a social enterprise the enterprise shall ensure conformity with one of the following requirements:</p> <ol style="list-style-type: none"> 1) a representative of the target group is involved in the executive body or supervisory body of the enterprise; 2) a representative of the target group or a representative of an association or foundation representing the target group, or an expert of the specific field is involved in the advisory body of the enterprise, if such has been established. <p>(3) A social enterprise shall, throughout the entire period of its activity, ensure conformity with the criteria referred to in Paragraph 1 of this Article.</p> <p>(4) The Ministry of Welfare shall take a decision to grant the status of a social enterprise, to refuse to grant the status of a social enterprise, to withdraw or revoke the status of a social enterprise.</p> <p>(5) The status of a social enterprise shall be acquired from the day on which the decision of the Ministry of Welfare to grant the status of a social enterprise has entered into effect.</p> <p>(6) The documents necessary for the acquisition of the status of a social enterprise and also the procedures for their submission and granting the status of a social enterprise shall be stipulated by the Cabinet of Ministers.</p> <p>Article 9. Conditions and Limitations of the Activity of a Social Enterprise</p> <p>(1) The reporting year of a social enterprise shall coincide with the calendar year.</p> <p>(2) A social enterprise shall not distribute profit (earned in any reporting year) as dividends.</p> <p>(3) A social enterprise is not entitled to disburse dividends or to make disbursements in the</p>		<p>according to this article then it must be indicated in the notice regarding the contract or in the notice regarding social and other specific services.</p> <p>Social Enterprise Law provides the definition (Article 2), criteria (Article 5), conditions and limitations (Article 9) and other rules for the limited liability company to be registered and operate as a social enterprise. Article 77 has been fully implemented in national regulation.</p> <p>Regarding Article 16(1) of the PPL see the section of this Matrix table regarding Article 20 of the Directive.</p>	
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<p>event of reduction of the equity capital and also to make other disbursements within the meaning of Article 182 of the Commercial Law.</p> <p>(4) The property and financial means of a social enterprise may be used only for the objectives defined in the articles of association.</p> <p>(5) A social enterprise shall form a reserve capital where the entire profit of the reporting year is transferred.</p> <p>(6) A social enterprise is not entitled:</p> <ol style="list-style-type: none"> 1) to carry out transactions in securities or immovable property, except for the lease or rent of premises; 2) to operate in such areas as the manufacture and trade of explosives, weapons and ammunition, production of alcoholic beverages (except for small alcoholic beverage producers), production and trade of tobacco products, gambling and betting activities, financial and insurance activities, or in areas posing a threat to public health and safety; 3) to issue loans, except for loans to the target groups if the latter is provided for in the articles of association of a social enterprise. 			
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<p>Open questions</p>	<p>Social entrepreneurship is quite a new concept in Latvia. Many regular business companies that could be considered as social enterprises because they create a positive social impact, for example, by providing workplaces for vulnerable persons, are not registered as social enterprises because they are not aware of the social enterprise concept or of the benefits social enterprises can get.</p>
<p>Example of application from the national level (where applicable)</p>	<p>In 2007-2017, according to information provided by the competent authority of the Republic of Latvia, there have been 9 cases where notices regarding the contract were published, according to which privileged contracts were intended to be concluded (in 3 of those cases notices regarding procurement results were not published). Therefore, privileged contracts are not widely used in Latvia as, for example, in 2016 there were in total 15 449 agreements and framework agreements concluded according to the previous public procurement law (valid until 1st of March 2017), but neither type of agreement included privileged contracts.</p> <p>Social Enterprise Law is in force only from 01.04.2018.</p> <p>Article 16 of the PPL - in referred version entered into force on 01.06.2018.</p> <p>However, regarding usage of the chance to apply these provisions it must be taken into an account that:</p> <ul style="list-style-type: none"> • Social Enterprise Law is in force only from 01.04.2018. • Article 16 of the PPL - in referred version entered into force on 01.06.2018. • Article 16 of the PPL - until 01.06.2018 (<i>and previous PPL (in force until 01.03.2017)</i>) was in following redaction: <ol style="list-style-type: none"> (1) If the subject-matter of an intended contract allows it, the contracting authority is entitled to reserve the opportunity of participating in procurement procedures only for those candidates or tenderers, which mainly (more than 30 (<i>in previous law – 50</i>) per cent of the average number of employees per year) employ disabled persons (<i>in previous law - disabled persons which cannot be employed in normal conditions</i>). (2) When applying Paragraph 1 of this Article, reference to this Article shall be made in the notice regarding the contract.

According to the statistics (for period until 20.12.2018), in Latvia there are 27³² organisations that have obtained the social enterprise status.

³² Register of social enterprises, available at: <http://lm.gov.lv/lv/es-finansejums/lm-istenotie-projekti/aktualie-projekti/esf-projekts-atbalsts-socialajai-uznemejdarbibai/socialo-uznemumu-registrs>
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