

EN  
E-000904/2019  
Answer given by Ms Bieńkowska  
on behalf of the European Commission  
(12.4.2019)

1. Article 57 of Directive 2014/24/EU<sup>1</sup> regulates when tenderers have to or may be excluded from participation in a tender procedure. Article 57(4)(c) stipulates that: “Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations [...] where the contracting authority can demonstrate that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable”. Appropriate means of proof are sufficient and no final judgement is needed. All of the grounds set out in Article 57(4) of the Directive are optional, so that they have to be chosen to be included in the procurement documents by the contracting authority, unless they are made obligatory by the Member State. Conversely, the grounds listed in Article 57(1) are obligatory and pertain to certain criminal acts, including money laundering. Precisely due to the seriousness of these grounds, and the presumption of innocence, the use of these grounds requires a final judgement. It is up to the contracting authority to evaluate whether the conditions of these provisions are fulfilled.

2. The Commission considers that the latest reform cycle of the rules on public procurement, approved by the Member States, yielded an efficient framework, which gives Member States and contracting authorities the tools to ensure the integrity of interested economic operators.

3. It is the primary competence of Member States to apply and ensure compliance with the European legal framework and to take appropriate decisions on the admission of tenders on the basis of the available information.

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<sup>1</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94 of 28 March 2014, p. 65.