

Concessions Act

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*Note: An update of the English text of this Act is being prepared following the amendments in SG No. 7/19.01.2018

Text in Bulgarian: Закон за концесиите

Chapter One BASIC CONCEPTS

Section I Subject and Purpose

Article 1. (1) This Act shall govern public-private partnership whereupon an economic operator executes works or provides services awarded by a public authority by way of a works concession or a services concession.

(2) This Act shall furthermore regulate the terms and procedure for the award of a concession for use of facilities constituting public State property or public municipal property.

Article 2. The purpose of this Act is to ensure:

1. the development of a high-quality and affordable infrastructure and services of general interest through partnership between public authorities and economic operators;
2. responding to societal needs through the involvement of private investment in works and in the provision and the management of services at the best price-quality ratio;
3. effective and efficient spending of public resources and of resources from the European Structural and Investment Funds and programmes;
4. economic efficiency in the management of public property safeguarding the interest of citizens and society.

Article 3. (1) Public authorities may choose whether to award works or services by way of public procurement or concession depending on the available financial resources and the possibility to transfer the operating risk to an economic operator.

(2) Where works and/or services are entrusted without transferring the operating risk to the economic operator, the award shall follow the procedure established by the Public Procurement Act.

Section II Principles

Article 4. (1) A concession shall be awarded subject to the principles of publicity, transparency, proportionality, equal treatment and non-discrimination.

(2) The principles of publicity and transparency may be restricted in cases specified by a law.

(3) The requirements for economic operators must take account of the subject-matter, the value, the extent of works or services, the peculiarities of the object of the concession and the complexity of the concession.

Article 5. (1) The value of a concession may not be determined in such a way as to justify the application of a laxer award procedure or disrespect of the principles referred to in Article 4 (1) herein.

(2) The concessionaire designation procedure may not be conducted in such a way as to provide an undue advantage or to put at a disadvantage specific economic operators or specific works or services.

(3) Concessions shall be awarded and performed subject to the applicable State aid rules.

Section III

Types of Concessions

Article 6. (1) A concession shall be awarded for a fixed duration by one or more public authorities to one or more economic operators by a long-term contract for pecuniary interest, hereinafter referred to as "concession contract".

(2) Depending on the subject-matter thereof, concessions under this Act shall be:

1. works concession;

2. services concession;

3. concession for use of public State property or public municipal property, hereinafter referred to as "use concession".

(3) Depending on the contracting authority, concessions shall be State or municipal.

(4) Where awarded by two or more public authorities, the concession shall be a joint concession. A joint concession may be a State concession, where awarded by two or more ministers, a municipal concession, where awarded by two or more municipality mayors, and a joint State and municipal concession in the rest of the cases.

Article 7. (1) A works concession shall be a public-private partnership whereupon a public authority entrusts the execution of works to an economic operator, in exchange for which the public authority grants the economic operator the right to exploit the construction work while assuming the operating risk.

(2) Works shall be:

1. the execution, or both the design and execution, of a construction work, or

2. the execution, or both the design and execution, of building and erection works and activities listed in Annex 1 hereto, wherethrough an existing construction work is redeveloped, remodelled, restored or overhauled, or

3. the execution of building and erection works for the performance of routine repairs and for maintenance of an existing construction work in a serviceable condition.

(3) A construction work shall be the outcome of building and erection works which is sufficient in itself to fulfil independently an economic or technical function.

(4) The right of the economic operator to exploit the construction work shall include deriving revenue from services provided using the construction work and/or from the performance of another economic activity involving the construction work.

Article 8. (1) A services concession shall be a public-private partnership whereupon a public authority entrusts the provision and the management of one or more services other than works to an economic operator, in exchange for which

the public authority grants the economic operator the right to derive revenue from the operation of the said services while assuming the operating risk, hereinafter referred to as "exploitation of the services".

(2) A services concession shall be awarded for services intended for use by the public, including by the public authority, as well as for the activities referred to in Annex 2 hereto.

(3) Social or other specific services referred to in Annex 3 hereto may be entrusted by a services concession. When any part of the services are social services or other specific services referred to in Annex 3 and the value of the said services is higher than the value of the rest of the services, the rules on social or other specific services under this Act shall apply.

(4) Works referred to in Item 3 of Article 7 (2) herein may be entrusted by a services concession.

(5) The supply of products to a public authority may be entrusted to an economic operator by a services concession if the value of the said supply is lower than the value of the services. Where the value of the supply is higher than the value of the services, the Public Procurement Act shall apply.

Article 9. (1) By a use concession, a public authority shall grant an economic operator the right, for a pecuniary interest, to carry out a particular economic activity using a facility constituting public State property or public municipal property, without entrusting the execution of works or the provision and the management of services. The concessionaire shall pay the grantor concession remuneration and shall assume an obligation to implement an investment programme whereby the concessionaire shall ensure the maintenance of the site in a serviceable condition.

(2) The economic operator has the right to receive the revenue from the economic activity carried out using the object of the concession.

(3) The economic operator shall be obliged to conserve and maintain the object of the concession and, to this end, shall implement the investment programme as proposed and may execute works for its own account, unless this is prohibited by the grantor.

Article 10. (1) Where a public authority entrusts the execution of works referred to in Item 1 or 2 of Article 7 (2) herein as well as the provision and the management of services to an economic operator, the concession shall be designated as a works concession.

(2) Where a public authority entrusts the execution of works and/or the provision and the management of services as well as the provision of the use of a facility constituting public State property or public municipal property, the concession shall be designated as:

1. a works concession: where works referred to in Item 1 or 2 of Article 7 (2) herein are entrusted;
2. a services concession: except in the cases under Paragraph (1).

Article 11. (1) Any works concession and services concession whereof the value exceeds or is equal to the level equivalent of the threshold established by a regulation of the European Commission adopted pursuant to Article 9 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of the concession contracts (OJ L 94/1 of 28 March 2014), hereinafter referred to as "Directive 2014/23/EU", shall be concessions with a cross-border interest.

(2) Any works concession and services concession whereof the value does not exceed the threshold referred to in Paragraph (1), as well as any use concession, shall be a concession without a cross-border interest.

(3) Up-to-date information on the changes to the level of the threshold referred to in Paragraph (1), hereinafter referred to as "the European threshold", shall be maintained on the Internet site of the National Concessions Register.

Article 12. This Act shall furthermore apply to any concession which, regardless of the subject-matter thereof, includes, requires or contains classified information, hereafter referred to as "concession with classified information".

Article 13. (1) Regardless of the subject-matter thereof, any concession may be designated by the grantor as a reserved concession.

(2) A concession shall be reserved where it is performed under sheltered employment programmes for disabled or disadvantaged persons.

(3) Eligibility for a concessionaire of a reserved concession shall be limited to economic operators whereof at least 70 per cent of the factory and office workers are disabled or disadvantaged persons.

Article 14. The nomenclature codes in the Common Procurement Vocabulary shall be referred to when awarding a concession.

Section IV

Objects of Concession

Article 15. (1) The object of a works concession shall be one or more self-contained construction works or part of a construction work of a designated name, location and intended for an independent function, in respect of which the public authority has entrusted the specific works.

(2) The object of a services concession shall be the specific thing or set of things using which the services are provided. The object of a services concession may furthermore be an existing construction work.

(3) The object of a works concession and of a services concession may constitute public property or municipal property, as the case may be, as well as property of the concessionaire or of another person.

(4) The object of a use concession shall be a facility designated by a law as constituting exclusive State property, as well as a facility, an immovable or part of an immovable constituting public State property or public municipal property.

Article 16. (1) In a works concession, the grantor shall designate a concession area to the object of the concession. In a services concession, a concession area shall be designated only where this ensues from the nature of the object of the concession. The grantor may designate one or more accessories to the object of the concession.

(2) The concession area shall be the lot or lots, or part of a lot, whereon or whereunder the object of the concession is located.

(3) Accessory shall be the area adjoining the object of the concession or the concession area, the adjoining physical infrastructure within the meaning given by Item 31 of § 5 of the Supplementary Provisions of the Spatial Development Act and any other self-contained thing which ensure the smooth, normal and safe functioning of the object of the concession or of the provision of the services, as well as areas beyond the object of the concession which are not physically connected to the object of the concession but are necessary for the performance of the activities under the concession.

(4) Until the termination of the concession contract, the parties thereto may not dispose of the whole or any part of the object of the concession, including of any accessory thereof or of the concession area.

(5) Any accretions and improvements to an object of a concession, to the concession area or to an accessory constituting public State property or public municipal property shall become property of the State or, respectively, of the municipality as from the time when the said accretions and improvements materialise.

(6) The ownership of the accretions and improvements to an object of a concession and to any accessory thereof or to a concession area constituting private State property or private municipal property shall be regulated by the concession contract. In all cases, the real rights to any corporeal immovables which are created or arise for the benefit of the concessionaire shall subsist until the termination of the concession contract.

(7) Where the object of the concession is owned by the concessionaire, the concession contract shall regulate the ownership of the said object after the termination of the concession contract, including whether the grantor has the right to acquire ownership of the said object, as well as the price the acquisition or the method of calculation of the said price.

Section V

Parties

Article 17. (1) The public authority which performs the steps for the award of a concession and is a party to the concession contract shall be a contracting authority, hereinafter referred to as "grantor".

(2) The powers of a grantor for State concessions shall be executed by a minister in accordance with the line competence thereof. The powers of a grantor shall furthermore be executed by a minister in cases where the object of the concession constitutes State property and according to a law is managed by, or is allocated for management to, the ministry headed by the said minister, to a central-government department which is a budget authoriser by sub-delegation under the said minister, or to a merchant which is a public undertaking wherein the rights of ownership of the State is exercised by the said minister.

(3) The powers of a grantor for municipal concessions shall be executed by the municipality mayor.

(4) The powers of a grantor for joint concessions shall be executed by an authority designated by an agreement between two or more authorities referred to in Paragraph (2) and/or Paragraph (3).

(5) Upon the execution of the powers thereof, the grantor shall be free to decide and to act except in the cases specified by this Act.

(6) The grantor shall represent the State or, respectively, the municipality in cases concerning the conclusion, validity, performance or termination of the concession contract concerned and the effects of termination.

Article 18. (1) Economic operator shall be any natural person, legal person or other entity, or a group of such persons and/or entities, including a temporary association of undertakings, which offers the execution of works and/or a construction work, the supply of products or the provision of services on the market;

(2) Economic operators may participate in a concessionaire designation procedure either on their own or by associating in a form of their choice, hereinafter referred to as "group of economic operators".

Article 19. (1) Any economic operator, who or which has submitted an application and/or an indicative tender, shall enjoy the rights of a candidate in the concessionaire designation procedure.

(2) As from the date of submission of a tender, the economic operator shall acquire the rights of a participant in the concessionaire designation procedure.

Article 20. (1) Concessionaire shall be the economic operator whereto the concession is awarded by the concession contract.

(2) The concession contract shall be concluded with the participant designated as concessionaire, and in the cases specified by this Act, the said contract shall be concluded with a project company or with a public-private company.

(3) Where the participant designated as concessionaire is a group of economic operators and no provisions are made for the formation of a project company or of a public-private company, the concession contract shall be concluded with all participants in the group. Where so specified in the application, the concession contract shall be concluded with the operator who or which represents the group, or with the lead partner. In all cases, the economic operators participating in the group shall incur solidary liability for the performance of the concession contract.

(4) Where the concession is with payment by the grantor, the concessionaire must be a capital company. In case the participant designated as concessionaire takes another legal form, the concession contract shall be concluded with a project company.

Article 21. (1) The concession contract may be concluded with a project company, which shall be formed to this end in the form of a capital company.

(2) A requirement for the formation of a project company may be set by the grantor as a condition where the participant designated as concessionaire is a group of economic operators. In this case, the economic operators who or which participated in the concessionaire designation procedure as a group shall subscribe for the entire amount of capital in the ratio indicated in the tender.

(3) A project company may be formed on a proposal by economic operators participating in a group, with the possession of the capital being distributed as proposed in the tender.

(4) A project company may be formed on a proposal by an economic operator. In this case, the participant designated as concessionaire shall take over the capital of the project company as sole owner.

(5) The economic operators participating the group, referred to in Paragraphs (2) and (3), as well as the economic operator referred to in Paragraph (4), shall incur solidary liability with the project company for the performance of the contract.

Article 22. (1) The grantor may envisage that the concession contract be concluded with a public-private company.

(2) A public-private company shall be formed for the purposes of concluding a concession contract in the form of a capital company wherein the participant designated as concessionaire, hereinafter referred to as "private partner", and the State, one or more municipalities and/or a public undertaking designated by the grantor, hereinafter referred to as "public partner" shall be partners or shareholders.

(3) The public-private company shall be managed by the private partner. The public partner shall also participate in the management.

(4) The public partner, irrespective of the participating interest held thereby in the capital, shall hold blocking rights upon decision making on:

1. an amendment of the articles of association or of the memorandum of association;
2. increase or reduction of capital;
3. conclusion of any of the transactions referred to in Article 236 (2) of the Commerce Act;
4. effecting transactions disposing of any property which is contributed by the public partner as a non-cash asset;
5. transformation and dissolution of the company.

(5) The private partner shall incur solidary liability with the public-private company for the performance of the concession contract.

(6) The public-private company shall be formed for a period until the termination of the concession contract.

(7) The rights granted to any corporeal immovables which are contributed by the public partner as a non-cash asset shall be presumed to be granted until the dissolution of the company and may not be disposed of on the part of the public-private company. Upon the dissolution of the company, the rights granted shall revert to the State or, respectively, to the municipality or the public undertaking.

Article 23. (1) The project company or, respectively, the public-private entity, shall be bound by the tender of the participant designated as concessionaire.

(2) The participant designated as concessionaire or, where the said participant is a group of economic operators, each of the participants in the said group, shall be obliged to provide the project company or, respectively, the public-private company, with the resources whereby the said participant has proved that the said participant meets the requirements as to professional or technical ability and/or to financial and economic standing and is capable of carrying out one or more of the activities subject to the concession contract as a subcontractor.

(3) The method of providing the resources, as well as the participation of the private partner or the participants in the group as subcontractors, shall be indicated in the tender and shall be included in the financial and economic model.

(4) The Commerce Act shall apply to the project company and to the public-private company, save insofar as otherwise provided for in this Act.

Section VI

Exclusions

Article 24. No concessions shall be awarded in case of a danger to national security and defence, to the life and health of

citizens, to the environment, to protected areas, zones and sites and to public order, as well as in other cases specified by a law.

Article 25. (1) Subsurface resources concessions shall be granted and performed under the terms and according to the procedure established by the Subsurface Resources Act.

(2) Mineral water extraction concessions shall be granted and performed under the terms and according to the procedure established by the Water Act.

Article 26. This Act shall not apply to the award of works or services in the cases specified in Annex 4 hereto.

Section VII

Financial and Economic Elements of Concession

Article 27. (1) A value of the concession shall be determined for each works concession and services concession. The value of the concession shall include the total turnover of the concessionaire over the duration of the concession excluding value added tax (VAT), arrived at as revenue from the exploitation of the construction work or of the services.

(2) Upon the initiation of the concessionaire designation procedure, the value of the concessionaire shall be determined by the grantor as an estimated value.

Article 28. (1) The estimated value of a works concession and a services concession shall include the value of the following possible estimated revenue accruing to the concessionaire:

1. the revenue from the exploitation of the construction work or of the services included in the object of the concession;
2. the revenue from any form of option and from any extension of the duration concession or another modification of the concession contract;
3. the revenue from the payment of fees and fines by the users of the works or of the services other than those envisaged to be collected for the grantor;
4. the payments or any other financial advantages in any form whatsoever made by the grantor to the concessionaire, including compensation for compliance with a public service obligation and subsidies;
5. the grants or any other financial advantages, in any form, from other parties for the performance of the concession;
6. the revenue from sales of any assets which are part of the object of the concession;
7. all the supplies and services that are made available to the concessionaire by the grantor, where such supplies and services are necessary for executing the works or providing the services.

(2) Where the works or services included in the subject-matter of the concession can be entrusted in the form of lots, the estimated value of the concession shall include the value of all such lots.

(3) Where separate lots are awarded by means of separate procedures, the requirements for concessions with a cross-border interest shall apply to each on of the said lots if the aggregate estimated value of the lots exceeds or is equal to the European threshold.

Article 29. (1) The estimated value of a works concession and of a services concession shall be calculated using an objective method according to the ordinance referred to in Article 35 herein, indicated in the concession documents.

(2) The method used to calculate the estimated method of a concession must not be intended to circumvent this Act by designating the concession as a concession without a cross-border interest.

(3) Where upon conduct of the concessionaire designation procedure the initial estimated cost is increased by more than 20 per cent, the valid value of the concession shall be the estimated value by the date of designation of the concessionaire. Where the estimated value of the concession exceeds or is equal to the European threshold, the concessionaire

designation procedure shall be terminated if conducted according to the requirements for a concession without a cross-border interest.

Article 30. (1) In a works concession and in a services concession, an economic balance of the concession shall be maintained, representing equilibrium between the benefits for the concessionaire and the grantor at the risks assumed thereby.

(2) The economic balance of the concession as defined by the contract shall be maintained throughout the period of the concession.

Article 31. (1) The operating risk in a works concession and in a services concession shall always be borne by the concessionaire and shall be deemed to be assumed where, under normal operating conditions, recoupment of the investments made and of the costs incurred in operating the works or the services which are the subject-matter of the concession is not guaranteed by the concession contract.

(2) The operating risk assumed by the concessionaire shall stem from factors which are outside the control of the parties to the concession contract and shall represent a risk of exposure to the vagaries of the market with regard to demand for and/or supply of the object of the concession and/or of the services. Risks linked to mad management, contractual defaults by the economic operator, as well as force majeure, shall not be considered an operating risk.

(3) Demand risk shall be the probability of occurrence of any events, facts or circumstances that may adversely affect the market demand for the object of the concession, for the services provided or for the other economic activities carried out.

(4) Supply risk shall be the probability of the object of the concession, the services offered or the other economic activities carried out not meeting the requirements of the market. The supply risk shall furthermore include the risk on the availability of the services provided. Availability risk shall be the probability of occurrence of any event, fact or circumstance that may affect the provision of the service in the form, extent, quality and time for performance which correspond to what is laid down in the concession contract.

(5) In a works concession, together with the operating risk the concessionaire shall also assume the construction risk. The construction risk shall be the probability of occurrence of any events, facts or circumstances that may affect the value or the time for execution of the works as entrusted.

(6) All other risks in a works concession and a services concession shall be allocated between the concessionaire and the grantor by the concession contract depending on the capabilities of each of the parties to better assess, control and manage the risk concerned. The risks that the parties can relatively equally assess, control and manage shall be allocated between the said parties as shared risks.

(7) In a use concession, all risks shall be assumed by the concessionaire with the exception of the risk of a total loss of the object of the concession.

Article 32. (1) The revenue accruing to the concessionaire from the exploitation of the construction work or of the services shall consist of payments by customers, by customers and the grantor, or by the grantor only.

(2) Payment by the grantor may be envisaged in the following cases:

1. where customers or other persons do not owe direct payments for the services provided by the concessionaire, or if such payments are due, they are not supposed to accrue to the concessionaire;
2. where the purpose is to achieve a socially acceptable cost of the services provided by the concessionaire;
3. where the prices of the services provided by the concessionaire are State-regulated.

(3) In a works concession, payment by the grantor shall be due after the commissioning of the object of the concession and shall be effected only for the time during which the object or the services provided were available.

(4) In a services concession, payment by the grantor shall be effected only for the time during which the services were available.

(5) The conditions whereunder payment by the grantor is effected may not exempt the concessionaire from any risks which the said concessionaire has assumed for the entire duration of the concession.

Article 33. (1) In cases specified by this Act, the concessionaire shall pay the grantor concession remuneration.

(2) In a use concession, as well as in a services concession, where the object of the concession constitutes State property or municipal property, concession remuneration shall always be due.

(3) In a works concession, concession remuneration shall be due where the object of the concession includes an existing construction work constituting State property or municipal property.

(4) The amount of the obligation to pay concession remuneration shall be determined by the grantor on a case-by-case basis, depending on:

1. fair sharing of the economic and financial benefit from the concession between the grantor and the concessionaire;
2. achieving a socially acceptable cost of the services provided by the object of the concession.

Article 34. (1) Any concession shall be awarded for a fixed duration which may not exceed 35 years for a works concession and for a services concession and 25 years for a use concession, unless a special law provides for another duration. The duration of the concession may be extended, but the aggregate duration of all extensions, regardless of the grounds, may not exceed one-third of the specific duration determined by the concession contract.

(2) The notice of initiation of the concessionaire designation procedure, hereinafter referred to as "procedure initiation notice", shall indicate the maximum duration of the concession. The procedure initiation notice shall furthermore indicate the estimated aggregate duration of all permissible extensions, where such extensions are envisaged by a review clause.

(3) The specific duration of a works concession and of a services concession shall be limited to the time that the concessionaire needs to recoup the investments made and the costs of operating the construction work or the services and to obtain a return on the invested capital, taking into account the projected economic balance and the price of the services to be provided. The specific duration of a use concession shall furthermore take into account the type and technical and/or technological and/or resource specificities of the object of the concession and of the accessories and the time that the concessionaire needs for the implementation of the investment programme for maintenance of the object in a serviceable condition.

Article 35. The requirements for determining the financial and economic elements of the concession shall be established by an ordinance adopted by the Council of Ministers.

Chapter Two

STRATEGIC DEVELOPMENT AND PLANNING OF CONCESSIONS. MONITORING, MANAGEMENT AND CONTROL

Article 36. The following authorities shall be entrusted with functions for the strategic development, planning, monitoring, management and control in the field of concessions:

1. the Council of Ministers;
2. the Concessions Coordinating Council, hereinafter referred to as the "Coordinating Council";
3. the Ministers, depending on the line competence thereof;
4. the Minister of Finance;
5. the municipal councils;
6. the municipality mayors;
7. a directorate of the specialised administration of the Council of Ministers, designated by an order of the Prime Minister, hereinafter referred to as "the specialised directorate of the Council of Ministers administration";
8. the Privatisation and Post-Privatisation Control Agency (PPCA);

9. the Bulgarian National Audit Office;
10. the Public Financial Inspection Agency (PFIA);
11. the Commission on Protection of Competition (CPC).

Article 37. The Council of Ministers shall determine the State policy on concessions and, to this end:

1. shall approve a National Concessions Development Strategy and an action plan for State concessions and the amendments and supplements to the said Strategy and plan, acting on a proposal by the Coordinating Council;
2. shall approve, prior to the issuing thereof, the decisions of ministers to initiate and to terminate concessionaire designation procedures and to modify or refuse to modify and to terminate concession contracts for State concessions and for joint State and municipal concessions;
3. shall approve annual reports of ministers regarding the implementation of the projects included in the action plan and of the concession contracts for State concessions and for joint State and municipal concessions;
4. shall approve the work plan of the PPCA for the relevant year, acting on a proposal by the Executive Director of the Agency;
5. shall adopt a decision fixing the stamp duty that is collected and/or accrues for the benefit of a concessionaire of a State concession and of a joint State and municipal concession, as well as the terms and procedure for the collection of the said duty.

Article 38. (1) The Coordinating Council:

1. shall adopt and, acting through the chairperson thereof, shall propose to the Council of Ministers to approve the National Concessions Development Strategy, the action plan for State concessions, as well as amendments and supplements to the said Strategy and plan;
2. shall coordinate the steps for the implementation of the action plan for State concessions;
3. shall consider and provide guidance for remedying systemic problems related to concession awards and to the performance or termination of concession contracts;
4. shall entrust the PPCA with the conduct of extraordinary checks of certain concession contracts;
5. shall adopt an annual report on the state of concessions on the basis of annual reports of the grantors, approved by the Council of Ministers, and of summary information on the concession contracts provided by the PPCA.

(2) The Coordinating Council shall consist of a chairperson, who shall be a deputy prime minister, and of members, who shall be deputy ministers, the Executive Director of the PPCA, the President of the Bulgarian National Audit Office, the Director of the PFIA, the Director of the specialised directorate of the Council of Ministers administration, and the Executive Director of the National Association of Municipalities.

(3) The complement of the Coordinating Council shall be designated by name by order of the Prime Minister.

(4) The Coordinating Council shall adopt rules of organisation and operation thereof. The rules shall establish the terms and procedure for the recruitment of experts to assist the work of the Council.

Article 39. (1) Ministers shall implement the State policy on concessions in accordance with the line competence thereof and, to this end, shall execute the powers of a grantor, as well as:

1. in accordance with the sectoral policy conducted thereby, shall submit proposals to the Coordinating Council regarding the National Strategy, as well as for the inclusion, exclusion and alteration of projects in the action plan for State concessions;
2. shall monitor and control the concession contracts concluded thereby;
3. shall prepare and submit for approval to the Council of Ministers annual reports regarding the implementation of the projects included in the action plan for State concessions falling within the competence thereof and the performance of the concession contracts concluded thereby;

4. shall submit proposals to the Coordinating Council for the adoption of guidance on remedying problems within the competence thereof that are related to concession awards and to the performance or termination of concession contracts.

(2) The Minister of Finance shall implement the State policy regarding the effective and efficient spending of public resources upon the planning and performance of concessions and, to this end:

1. shall issue written instructions regarding the financial and economic elements of the concession when the preparatory steps are taken and the concession contracts are performed;

2. shall submit proposals to the Coordinating Council for the adoption of guidelines regarding the financial and economic elements of the concessions;

3. shall approve annually a cost estimate for financing the expenditures on State concessions;

4. shall carry out a preliminary assessment regarding compliance with fiscal rules and restrictions under the Public Finance Act of projects for State concessions with payments by the grantors prior to the inclusion of any such projects in the action plan for State concessions, under terms and according to a procedure established by the ordinance referred to in Article 35 herein;

5. shall give an opinion regarding the financial and economic elements of the projects for State and municipal concessions with payments by the grantors prior to the initiation of the respective concessionaire designation procedure;

6. may send an observer to attend the meetings of the commissions for conduct of the concessionaire designation procedure in a non-voting capacity.

(3) Grantors shall be obliged to provide the Minister of Finance, in connection with the powers thereof under Paragraph (2), with the information required thereby related to the preparation and conduct of the concessionaire designation procedures as well as to the performance of the concession contracts.

(4) The Minister of Finance may be assisted for the activities referred to in Items 4 and 5 of Paragraph (2) by the Bulgarian Development Bank.

Article 40. (1) The policy on municipal concessions shall be determined by the competent Municipal Council, which shall adopt, by a resolution, an action plan for municipal concessions, and shall be implemented by the municipality mayor.

(2) The Municipal Council:

1. shall approve, prior to the issuing thereof, the decisions of the municipality mayor to initiate and to terminate concessionaire designation procedures and to modify or refuse to modify and to terminate concession contracts, irrespective of the type of the concession;

2. shall approve the annual reports of the municipality mayor regarding the implementation of the projects included in the action plan for municipal concessions and the performance of the concession contracts;

3. shall determine, by a resolution, which local fees, as established by a law, and prices of services are collected and/or accrue for the benefit of a concessionaire of a municipal concession and of a joint State and municipal concession, as well as the terms and procedure for the collection of the said fees.

(3) The municipality mayor shall execute the powers of a grantor, as well as:

1. shall submit proposals to the Coordinating Council regarding the National Concessions Development Strategy;

2. shall submit proposals to the Municipal Council regarding the inclusion, exclusion and alteration of concession projects in the action plan for municipal concessions;

3. shall monitor and control the concession contracts concluded thereby;

4. shall prepare and submit for approval to the Municipal Council annual reports regarding the implementation of the projects included in the action plan for municipal concessions and the performance of the concession contracts concluded thereby;

5. shall submit proposals to the Coordinating Council for the adoption of guidelines on problems related to concession awards and to the performance or termination of concession contracts;

6. shall publish the action plan for municipal concessions in the National Concessions Register.

Article 41. The specialised directorate of the Council of Ministers administration:

1. shall perform the functions of a secretariat of the Coordinating Council and, to this end, shall assist the said Council in expert and technical terms;
2. shall monitor the application of the requirements for the award of concessions, which includes monitoring, analysis and evaluation as to existence of systemic problems, and shall make available to the public the results of the monitoring and, acting at the request of the European Commission, shall draw up and send a monitoring report;
3. shall notify the European Commission annually of the decisions and the rulings of the CPC and of the Supreme Administrative Court under Chapter Seven herein;
4. on the basis of the monitoring, shall summarise the practice and shall issue common instructions for the application of the requirements for the award of concessions;
5. shall exercise ex-ante control as to compliance with the requirements for the award of concessions and, to this end:
 - (a) shall give an opinion on draft decisions to initiate a concessionaire designation procedure, draft procedure initiation notice and draft concession documents;
 - (b) may send an observer to attend the meetings of the commissions for conduct of a concessionaire designation procedure in a non-voting capacity;
 - (c) shall give an opinion on the draft decisions for making or accepting a proposal to modify a concession contract prior to the approval of the said draft decisions by the Council of Ministers or, respectively, by the Municipal Council;
6. shall inform the competent State bodies of the breaches of the requirements for the award of concessions detected upon the conduct of monitoring and the exercise of ex-ante control;
7. shall collect from grantors information regarding the monitoring and control over the performance of concession contracts and shall summarise the said information;
8. on the basis of information as collected and summarised and of the annual reports of the grantors, shall draw up an annual report on the state of concessions and shall lay the said report down for consideration before the Coordinating Council;
9. shall give methodological instructions: general instructions and instructions in response to queries from grantors, and shall make available to the public information and guidelines on the application of this Act, for which no fees shall be collected;
10. shall elaborate drafts of statutory instruments in the field of concessions;
11. shall maintain the National Concessions Register;
12. shall publish the National Concessions Development Strategy and the action plan of State concessions in the National Concessions Register.

Article 42. (1) The Privatisation and Post-Privatisation Control Agency shall exercise independent external control on the performance of particular concession contracts.

(2) The control by the PPCA shall include scheduled checks, which shall be conducted according to a work plan for the relevant year, approved by the Council of Ministers, as well as extraordinary checks assigned by the Coordinating Council.

(3) The Executive Director of the PPCA shall draw up a report on the results of the control exercised for each concession contract, and the said report shall be delivered to the grantor and to the Minister of Finance. Within 30 days from the delivery, the grantor shall submit the report to the Coordinating Council with a schedule for implementing the recommendations.

(4) The Executive Director of the PPCA shall compile annually summary information on the concession contracts over which the PPCA is assigned to exercise control. The information shall be submitted to the Coordinating Council with a proposal for the adoption of guidance for remedying systemic problems related to the performance or termination of

concession contracts.

(5) Upon the conduct of the independent external control, the PPCA shall be assisted by the Ministry of Finance.

(6) Acting on a proposal by a minister, the Council of Ministers may adopt a decision assigning the PPCA to take steps for the award of a State concession and for the performance and termination of the concession contract for the said concession. By the decision the Council of Ministers may establish requirements for the performance of the steps assigned and the fulfilment of conditions for the implementation of the concession, which shall be binding on the PPCA.

Article 43. (1) The Bulgarian National Audit Office and the authorities of the PFIA shall exercise ex-post external control as to the implementation of this Act, each acting within the powers thereof.

(2) The Commission on Protection of Competition shall exercise control as to legal conformity of the decisions and the acts and omissions of grantors in concessionaire designation procedures where appeals are lodged according to the procedure established by Chapter Six herein.

Article 44. The procedure for the implementation of monitoring, management and control, including the scope of the control exercised by the PPCA, shall be established by an ordinance adopted by the Council of Ministers.

Article 45. (1) The National Concessions Development Strategy shall state the general and specific objectives and the key priorities for concession awards in the country.

(2) The action plan for State concessions and, respectively, the action plan for municipal concessions shall be drawn up for each programming period and shall contain the projected:

1. works and services that will be entrusted by way of concessions, as well as the facilities that will be provided for use by way of a concession;
2. maximum durations of the concessions, including time limits for the execution of works as entrusted;
3. public resources for payments by the grantor, disaggregated by amount and source of financing, including from the European Structural and Investment Funds;
4. concession remunerations.

(3) Joint State and municipal concessions shall be included in the action plan for State concessions and in the action plan for municipal concessions.

(4) The content of the plans referred to in Paragraph (2) shall be determined by year and may be amended and supplemented on a current basis.

(5) (Effective 1.12.2018 - SG No. 96/2017) A concessionaire designation procedure may not be initiated unless included in the action plan for State concessions or, respectively, in the action plan for municipal concessions.

(6) The procedure for drawing up the plans referred to in Paragraph (2) shall be established by the ordinance referred to in Article 35 herein.

Article 46. (1) The specific budget resources necessary for payments under concession contracts as concluded shall be included in the State Budget of the Republic of Bulgaria Act in the course of the budget procedure for the relevant year or, respectively, in the municipal budget for the relevant year.

(2) By the resolution adopting the municipal budget for the relevant year, the Municipal Council shall determine:

1. the amount of payments on projects by the end of the budget year, including the residual amount of obligations under concession contracts as concluded;
2. the aggregate amount of payments from the municipal budget to concessionaires for the relevant year under all concession contracts as concluded;
3. the maximum amount of payments which the municipality may assume as an obligation under new concession projects during the year, where said projects are included in the action plan for municipal concessions, in accordance with the requirements of the law.

Article 47. The conclusion and performance of a concession contract may not breach the indicators and the limitations set in the Public Finance Act for each year of the performance of the concession contract.

Article 48. (1) The issuing of a resolution to initiate a concessionaire designation procedure for a concession which has as a subject-matter any State-delegated activity shall be contingent on a favourable opinion given by the State body competent in the field of the State-delegated activity concerned.

(2) The competent State body referred to in Paragraph (1) shall be consulted in the course of the budget procedure according to the procedure applicable thereto.

(3) For projects referred to in Paragraph (1), the payments by the grantor from the block subsidy for State-delegated activities shall be within the limits of the resources approved by the State Budget of the Republic of Bulgaria Act for the relevant year, on the basis of the uniform expenditure standard established for financing the specific activity.

Chapter Three

CONCESSION AWARD

Section I

General Dispositions. Types of Procedure

Article 49. (1) The principles covered under Article 4 (1) herein shall be respected at each stage of the award of concessions.

(2) When organising and conducting the concessionaire designation procedure, the grantor:

1. shall take appropriate measures to combat fraud, favouritism and corruption, and to effectively prevent, identify and remedy conflicts of interest;
2. shall ensure the publication of the notices, of the concession documents and of other documents and information provided for by this Act;
3. shall ensure competitive conditions by not allowing the provision of information in such a way as to provide an undue advantage or put at a disadvantage specific economic operators or specific works, services or supplies related to the works or services.

(3) Upon the conduct of the concessionaire designation procedure, the grantor shall not have the right to provide any economic operator with any information which could place the said operator in a position of advantage vis-a-vis the rest, or to disclose to the rest of the economic operators any information provided by a particular economic operator without the consent of the said operator except in the cases specified by this Act.

Article 50. (1) By means of notices, the grantor shall make available to the public the steps for the award and performance of the concession as specified by this Act. The notices shall be drawn up in the form of an electronic document. According to the step disclosed thereby, notices shall be:

1. a procedure initiation notice;
2. a notice correcting the procedure initiation notice and/or the concession documents, hereinafter referred to as "notice of corrigendum";
3. a concession award notice;
4. a concession award modification notice.

(2) The notice of concessions with a cross-border interest shall be completed in electronic form endorsed by an act of the

European Commission.

(3) The notice on concessions without a cross-border interest shall be completed in electronic form, published on the Internet site of the National Concessions Register.

Article 51. (1) A concession award shall comprise the taking of preparatory steps, the conduct of a concessionaire designation procedure and the conclusion of a concession contract.

(2) The concessionaire designation procedure shall be initiated by a decision of the grantor, shall be conducted by a commission appointed by the grantor, and shall be completed by a decision of the grantor designating a concessionaire.

Article 52. (1) A concessionaire for concessions with a cross-border interest shall be designated by an open procedure, a competitive procedure with negotiation and a competitive dialogue.

(2) A concessionaire for concessions without a cross-border interest shall be designated by an open procedure.

(3) For concessions for social and other specific services, the grantor may determine a concessionaire designation procedure other than those referred to in Paragraph (1), irrespective of whether the concession is with or without a cross-border interest. In such case, the grantor shall respect the principles referred to in Article 4 (1) herein, shall ensure publication of the notices envisaged for the said concessions and shall make known in advance the procedure for conduct of the procedure.

Article 53. (1) An open procedure shall be conducted in a single stage whereat the economic operator shall submit simultaneously an application and a tender. The open procedure shall not include negotiation.

(2) A competitive procedure with negotiation shall be a staged procedure whereupon:

1. the economic operator shall submit an application and shall enter a selection in order to receive an invitation to submit an indicative tender;

2. candidates who or which have received an invitation shall submit an indicative tender and shall participate in negotiations on improving the tenders;

3. after being invited to do so, the candidates who or which participated in the negotiations shall submit a tender.

(3) A competitive dialogue shall be a staged procedure whereupon:

1. the economic operator shall submit an application and an indicative tender and shall enter a selection in order to receive an invitation to participate in the dialogue;

2. the candidates who or which have received an invitation shall participate in a dialogue with a view to clarifying one or more solutions which must meet the needs by the award of the concession;

3. after being invited to do so, the candidates who or which participated in the dialogue shall submit a tender.

Article 54. (1) In concessions with a cross-border interest, the grantor shall determine the type of procedure in accordance with Paragraphs (2) to (4).

(2) An open procedure shall be conducted in concessions with a cross-border interest where the grantor has determined appropriate conditions for the implementation of the concession, financial and economic elements and legal construct and applying the award criteria alone is sufficient for the designation of a concessionaire without holding negotiations.

(3) A competitive procedure with negotiation shall be conducted where the grantor has established the technical, functional or qualitative requirements but the quality, the financial and economic elements, the deadlines, social, environmental or innovative solutions, or benefits to consumers, as well as the legal construct, can be optimised by means of negotiations.

(4) A competitive dialogue shall be conducted where there is a need of the works and/or the services included in the subject-matter of a concession with a cross-border interest which can be met by more than one solution relating to the technical, functional or qualitative requirements, the financial and economic model or the legal construct, as well as where it is possible to include innovations.

Section II

Preparatory Steps

Article 55. The award of a concession shall be initiated by the grantor of its own motion or on a proposal of by economic operator.

Article 56. (1) The proposal of the economic operator for a concession award shall contain a description of the subject-matter and object of the concession, justification and a financial and economic analysis.

(2) Where the concession includes the award of works, the proposal referred to in Paragraph (1) shall be accompanied by a development proposal which shall contain a pre-development study or terms of reference for the preparation of a development-project design, a conceptual design or another phase of a development-project design, which shall identify, inter alia, the projected technical and functional characteristics and technical and economic parameters of the works.

(3) The grantor shall examine the proposal referred to in Paragraph (1) and, if the grantor determines that the said proposal is appropriate, shall take steps for the inclusion of the project in the respective action plan.

(4) The development proposal may be used by the grantor in the establishment of the technical and functional requirements.

(5) Where the grantor has used all or part of the development proposal, the economic operator who or which submitted the said proposal, unless selected as concessionaire, shall be entitled to remuneration. The amount of the remuneration shall be determined by the grantor according to a methodology specified by the ordinance referred to in Article 35 herein and shall be paid within one year from the publication of the procedure initiation notice in the National Concessions Register.

(6) The proposal referred to in Paragraph (1) shall not give rise to any rights or privileges for the economic operator other than the right referred to in Paragraph (5).

Article 57. (1) The grantor shall ensure the taking of preparatory steps so that the possible solutions for the needs that must be met could be identified, the concession award could be justified and the appropriate procedure could be determined. The available information and documents shall be collected, summarised and analysed in the course of the preparatory steps. The preparatory steps shall be taken by a team of experts designated by the grantor by an order.

(2) Depending on the subject-matter and the complexity of the concession, technical, financial and economic, legal and other analyses may be prepared in the course of the preparatory steps.

(3) In a concession whereby works are entrusted, the technical analysis may be replaced by a development proposal which shall contain a pre-development study, terms of reference for the preparation of a development-project design, a conceptual design or another phase of a development-project design.

(4) Where the concession is envisaged to be with payment by the grantor, a financial and economic analysis shall mandatorily be prepared in order to prove the applicable financial and economic elements of the concession. In such cases, the financial and economic analysis shall be sent for an opinion to the Minister of Finance. The minimum requirements for the financial and economic analysis and the procedure for consulting the said analysis shall be set out by the ordinance referred to in Article 35 herein.

Article 58. (1) A justification of the legal conformity and appropriateness of the concession, hereinafter referred to as "concession justification", and a draft procedure initiation notice and draft concession documents shall be drawn up as a result of the preparatory steps.

(2) The concession justification shall reason the legal conformity and appropriateness of the concession and of the procedure initiation decision and shall determine:

1. the subject-matter and the object of the concession and, where applicable, the concession area and/or the accessories to the object of the concession;

2. the requirements for the indicative tenders and/or to the tenders, hereinafter referred to as "minimum requirements for tenders";
3. projected financial and economic elements of the concession, including the maximum duration of the concession;
4. projected legal constructs;
5. the possibility of obtaining financial support in the form of grants to finance expenditures on the concession by means of the European Structural and Investment Funds.

(3) The concession justification shall be sent by the grantor to the Ministry of Defence, the Ministry of Interior, the Ministry of Environment and Water, the Ministry of Culture and the State Agency for National Security. Within 14 days from the receipt of the justification, the head of the central-government department concerned shall give an opinion, acting within the competence thereof, as to the presence or absence of a danger to national security and defence, to the life and health of citizens, to the environment, to protected areas, zones and sites and to public order. If a danger is present, the opinion shall contain legally conforming recommendations for remedying the danger, where applicable. Where the authority fails to submit an opinion within the time limit fixed, the absence of a danger shall be presumed. When an opinion on the presence of a danger is given, the prohibition under Article 24 herein shall apply, except where the recommendations given are implemented.

(4) In the cases referred to in item 5 of Paragraph (2), the competent managing authority shall be consulted on the concession justification.

Section III

Concession Award Conditions

Article 59. A concession shall be awarded where the following conditions are fulfilled:

1. any ground for exclusion does not apply to the participant and to the subcontractors and third parties named thereby;
2. the participant complies with the conditions for participation in the procedure, hereinafter referred to as "conditions for participation";
3. the tender of the participant complies with the minimum requirements for tenders;
4. the grantor has applied the award criteria.

Article 60. (1) If any grounds for exclusion apply, the candidate or participant shall be excluded from the concessionaire designation procedure.

(2) The grounds for exclusion shall be:

1. an enforceable sentence whereby the candidate or participant, or any member of the management or supervisory body thereof, or any person who has powers of representation, decision or control therein, has been convicted of a criminal offence under Article 108a, Articles 159a to 159d, Article 192a, Article 212 (3), Article 248a, Article 253, Article 253a, Article 254b, Articles 301 to 302a, Articles 304 to 305a, Article 307, Article 321 and Article 321a of the Criminal Code, or an enforceable sentence or another judicial instrument for a similar criminal offence in another Member State of the European Union or a third country;
2. an enforceable judicial instrument or administrative act whereby it is established that the candidate or participant is in breach of obligations relating to the payment of taxes or compulsory social security contributions within the meaning given by Item 1 of Article 162 (2) of the Tax and Social Insurance Procedure Code and the interest thereon in the Republic of Bulgaria, or similar obligations under the legislation of the State in which the candidate or participant is established;
3. an enforceable administrative act or judicial instrument whereby the candidate or participant is barred from entering public procurement or concession award procedures or under the legislation of the State in which the candidate or participant is established, or in another Member State of the European Union;
4. an enforceable administrative act or judicial instrument whereby it has been established that the candidate or

participant:

(a) has culpably committed grave professional misconduct, or

(b) has not fulfilled obligations in the fields of environmental, social and labour law, established by national legislation, European Union law, collective agreements or by the international social and environmental conventions listed in Annex 5 hereto, or

(c) has entered into agreement with one or more other economic operators, thereby infringing competition rules;

5. a significant non-fulfilment of an obligation under a concession contract or under a public procurement contract, committed by the candidate or participant, which led to termination of the contract concerned;

6. registration of the candidate or participant, or of any parties related thereto, in a preferential tax treatment jurisdiction within the meaning given in Item 64 of § 1 of the Supplementary Provisions of the Corporate Income Tax Act;

7. declared bankruptcy or liquidation, or initiated bankruptcy proceedings against the candidate or participant, or a similar procedure under the legislation of the State in which the candidate or participant is established.

(3) Any of the following circumstances, established by the grantor upon the conduct of the concessionaire designation procedure and supported by appropriate evidence, shall likewise constitute grounds for exclusion:

1. existence of a conflict of interest which cannot be remedied by the exclusion of the person in respect of whom a conflict of interest exists;

2. an attempt by the candidate or participant to unduly influence the decision-making process of the grantor, to obtain confidential information that may confer upon the said candidate or participant an undue advantage in the concessionaire designation procedure, or to provide untrue, incomplete or misleading information that may have an influence on decisions concerning exclusion from the concessionaire designation procedure, selection or designating a concessionaire;

3. withholding by the candidate or by the participant of the information required for the verification of the absence of grounds for exclusion or the fulfilment of the requirements as to professional or technical ability and/or to financial and economic standing, as established by the grantor;

4. the candidate or participant does not possess the reliability necessary to exclude risks to the security of the Republic of Bulgaria: applicable to concessions with classified information;

5. inability of the candidate or participant to submit the documents required for the verification of the information referred to in Item 4.

(4) The grounds for exclusion under Paragraph (2) shall not apply where:

1. in the cases referred to in Item 1, the candidate or participant has been rehabilitated, as well as where five years have expired or will expire until the completion of the concessionaire designation procedure from suffering the penal sanction imposed and the candidate or participant has provided evidence that it has paid the compensations due in respect of any harm resulting from the criminal offence;

2. in the cases referred to in Item 2:

(a) five years from the effective date of the respective instrument or act have expired or will expire until the completion of the concessionaire designation procedure and the candidate or participant has provided evidence that it has fulfilled the obligations, including any interest accrued or fines, or

(b) the deadline referred to in Littera (a) has not expired, but the candidate or participant has provided evidence that:

(aa) it has fulfilled its obligations by paying, or that the obligations have been rescheduled, deferred or secured, including any interest accrued or fines, or

(bb) it was informed of the exact amount due following its breach at such time that it did not have the possibility to take a measure referred to in Littera (a) before the expiry of the time limit for submitting the application;

3. in the cases referred to in Item 3, the period for which the exclusion was imposed has expired;

4. in the cases referred to in Item 4 (a) and (c) and Item 5, three years have expired or will expire until the completion of the concessionaire designation procedure from the effective date of the instrument or act concerned in item 4 or, respectively, from the termination of the contract or the imposition of a sanction under Item 5, and the candidate or

participant has provided evidence that it has paid the compensations due, including in respect of any harm resulting from the misconduct or infringement concerned;

5. in the cases referred to in Item 4 (b), the candidate or participant has provided evidence that it has fulfilled the obligation or that three years from the effective date of the act whereby the non-fulfilment was established will expire until the completion of the concessionaire designation procedure, as well as evidence that it has paid the compensations due, including in respect of any harm resulting from the non-fulfilment;

6. In the case referred to in Item 6, the candidate or participant has provided evidence of the existence of any of the circumstances referred to in Article 4 of the Act On Economic And Financial Relations With Companies Registered In Preferential Tax Treatment Jurisdictions, Such Companies' Related Parties And Their Beneficial Owners.

Article 61. (1) The conditions for participation shall be requirements to the economic operators according to Paragraphs (2) to (6), which shall be necessary for the performance of the concession contract and shall be indicated in the procedure initiation notice. The conditions for participation shall furthermore apply to subcontractors, unless this Act provides otherwise.

(2) The candidate or participant must be entered in the relevant professional or commercial register where this requirement is established by a law as a condition for the performance of an activity or service included in the subject-matter of the activity.

(3) The candidate or participant must hold a special authorisation or must be a member of a particular organisation, where the legislation of the State in which the candidate or participant is established sets such a requirement as a condition for the performance of a service or economic activity included in the subject-matter of the concession.

(4) Where a concession is designated by the grantor as a reserved concession, the requirement that at least 70 per cent of the factory and office workers of the candidate or of the participant are disabled or disadvantaged persons shall be a condition for participation and shall apply to the candidate, participant or, respectively, to each of the participants in the group where a group of economic operators participates in the concessionaire designation procedure.

(5) For concessions with classified information, the grantor shall set out, as a condition for participation, requirements for the protection of classified information which must be met by the candidate or participant or, respectively, by each of the participants in the group where a group of economic operators participates in the concessionaire designation procedure. The said requirements shall be set out in accordance with the Classified Information Protection Act.

Article 62. (1) The grantor shall furthermore set out, as conditions for participation, one or more requirements to the professional or technical ability of the economic operators and/or to the financial and economic standing thereof.

(2) The requirements referred to in Paragraph (1) must:

1. be in conformity with the subject-matter and the specificities of the concession;
2. ensure genuine competition.

(3) The requirements referred to in Paragraph (1) may not be established as conditions for participation of subcontractors.

(4) The requirements referred to in Paragraph (1), the minimum levels of the fulfilment thereof and the documents whereby performance is proved shall be described in the concession documents and shall be set out in the procedure initiation notice.

Article 63. (1) A candidate or participant may prove the fulfilment of the requirements established by the grantor regarding the professional or technical ability and/or the financial and economic standing of the economic operators by the capabilities of one or more persons, hereinafter referred to as "third parties", regardless of the legal relationship therewith. The grounds for exclusion shall apply to the third parties.

(2) In the case referred to in Paragraph (1), the candidate or participant shall submit documents proving thereby that a ground for exclusion is absent in respect of the third parties, as well as that the candidate or participant will have at its disposal the resources of the third parties upon the performance of the concession contract.

(3) The third party by whose capabilities the financial and economic standing is proved shall incur solidary liability with the concessionaire for the performance of the concession contract.

Article 64. (1) The grantor shall furthermore establish, as conditions for participation, the requirements whereunder a licence may be issued or a registration may be effected for the performance of a service or economic activity included in the subject-matter of the concession, irrespective of the type of the concession.

(2) The conditions referred to in Paragraph (1) shall apply only to a subcontractor who will implement the service or economic activity concerned.

Article 65. (1) The minimum requirements for tenders shall form the mandatory characteristics and the minimum performance levels of the subject-matter and the object of the concession.

(2) In a works concession and a services concession, the minimum requirements for tenders shall be technical and functional requirements, financial and economic requirements and legal requirements, including with regard to the protection of competition, with regard to the object of the concession and the works and/or services included in the subject-matter of the concession.

(3) In a use concession, the minimum requirements for tenders shall be technical and functional requirements, financial and economic requirements and legal requirements to the object of the concession and to the economic activity carried out therewith, including with regard to the concession remuneration and the investment programme.

Article 66. (1) The technical and functional requirements must:

1. be linked to the subject-matter and to the object of the concession and be proportionate to the estimated value and objectives thereof;

2. ensure candidates or participants an equal access to the concessionaire designation procedure and not place unjustified obstacles in the way of awarding the concession under conditions of competition;

3. not refer to a specific make, source or a particular process which characterises the works or services provided by a specific economic operator, or to any trade mark or brand or designation or origin, patent, type or a specific origin or production with the effect of favouring or eliminating specific persons or products.

(2) The requirement referred to in Item 3 of Paragraph (1) shall not apply where a sufficiently precise and intelligible description of the works or services is possible without such a reference. Reference to the characteristics may not have the effect of eliminating or favouring specific economic operators or products. Any reference to a characteristic shall mandatorily be accompanied by the words "or equivalent".

(3) Technical and functional requirements shall define the characteristics and performance levels of the object of the concession and of the works and of the services included in the subject-matter of a works concession and of a services concession.

(4) Technical and functional requirements regarding the works included in the subject-matter of the concession shall include:

1. the planning characteristics and building-development parameters of the concession area and minimum technical, functional and technological characteristics and performance levels of the construction work which is the subject-matter of the concession;

2. the specific requirements for the construction work which ensure conformity of the construction work with the intended use, functionality and technological effectiveness, envisaged by the grantor, for the duration of the concession;

3. the specific requirements for the construction work which ensure the provision, using the said construction work, of the services designated by the grantor in terms of extent, conditions for provision and quality level for the duration of the concession;

4. the requirements of Articles 169 and 169a of the Spatial Development Act which are applicable to the object of the concession.

(5) Technical and functional requirements regarding the services included in the subject-matter of the concession shall include:

1. the characteristics of the service with regard to extent, conditions and procedure for provision, quality level and execution level, checked against the requirements for protection of the life and health of citizens, of the environment, of

the protected areas, zones and sites and of public order for each stage of the provision of the services;

2. the applicable procedures for assessing the conformity of the services provided with the requirements for quality and availability of the services established by the grantor.

Article 67. Financial and economic requirements shall be established by the grantor on the basis of the projected financial and economic elements of the concession.

Article 68. (1) As award criteria, the grantor shall set out objective requirements linked to the subject-matter and the object of the concession, the assessment of which makes it possible to identify the most economically advantageous tender at the best price-quality ratio.

(2) The award criteria must be consistent with the principles referred to in Article 4 (1) herein and must ensure that tenders are assessed in conditions of competition.

(3) The award criteria may include functional, technical and technological parameters and characteristics, quality level, requirements or measures that are related to the specific works or services or to the performance of the concession contract. The award criteria may refer to factors which are not purely economic, but influence the value of a tender from the point of view of the grantor and permit it to identify an overall economic and/or social advantage of the concession award at the best price-quality ratio.

Article 69. (1) The amount of payments by the grantor, where any such are envisaged, shall always be set out as an award criterion.

(2) The following may be set out as award criteria:

1. requirements linked to the subject-matter of the concession, such as:

(a) quality of the works and/or of the management and maintenance of the object of the concession;

(b) quality of the services provided;

(c) lowest price of the works;

(d) lowest price of the services provided;

(e) technical advantages, including technical equipment and facilities;

(f) functional characteristics and/or characteristics of the works and/or of the services;

(g) deadline for completion of the works;

(h) period of provision of the services at a minimum quality level specified by the grantor;

2. environmental protection measures that go beyond the statutory level, where such are required;

3. social criteria;

4. energy efficiency targets;

5. innovation-related criteria;

6. amount of the concession remuneration, where such is provided for;

7. specific duration of the concession and/or aggregate duration of the permissible extensions total allowable extensions envisaged by a review clause;

8. other, depending on the specificities of the concession.

Article 70. (1) The grantor shall set out the award criteria in descending order of importance. The grantor shall list the award criteria in the same ranking order in the concession documents and shall indicate this in the procedure initiation notice.

(2) In an open procedure, the grantor shall furthermore specify the relative weighting given to the award criteria.

(3) In a competitive procedure with negotiation and in a competitive dialogue, the relative weighting given to the award criteria shall be indicated in the invitations to submit tenders.

Section IV

Decision and Notice of Initiation of Concessionaire Designation Procedure. Concession Documents

Article 71. (1) The concessionaire designation procedure shall be initiated by a decision of the grantor, hereinafter referred to as "procedure initiation decision", upon approval by the Council of Ministers or, respectively, by the Municipal Council.

(2) The concessionaire designation procedure for a concession for which a possibility is provided for obtaining financial support in the form of grant aid from the European Structural and Investment Funds shall be initiated after a favourable opinion on the justification of the concession by the competent managing authority.

(3) The authorities referred to in Paragraph (1) shall approve the decision after assessment of the legal conformity and appropriateness thereof, as reasoned by the justification of the concession. The authorities referred to in Paragraph (1) shall not approve the decision when it is established that any of the recommendations contained in the opinion referred to in Article 58 (3) herein has not been implemented and, where applicable, where there is no favourable opinion under Paragraph (2).

Article 72. (1) A procedure initiation notice and concession documents shall be approved by the procedure initiation decision.

(2) Depending on the subject-matter and the value of the concession, the procedure initiation notice shall be in the form of:

1. a concession notice: concerning concessions with a cross-border interest, with the exception of concessions for social and other specific services;
2. a prior information notice: concerning concessions with a cross-border interest for social and other specific services;
3. a national notice: concerning concessions without a cross-border interest.

Article 73. (1) A concession notice shall have the minimum contents set out in Annex 6 hereto.

(2) In all concessionaire designation procedures, the following shall be included in the concession notice as conditions for the implementation of the concession:

1. the factual or legal circumstances whose occurrence or change may lead to a disturbance of the economic balance, where such circumstances are envisaged;
2. applicable obligations in the fields of environmental, social and labour law established by national legislation, European Union law, collective agreements or by the international social and environmental conventions listed in Annex 5 hereto;
3. obligations related to national security and defence, the life and health of citizens, the environment, protected areas, zones and sites and public order, where applicable;
4. obligations to insure the object of the concession, where applicable;
5. estimated price of the basic services included in the subject-matter of the concession.

(3) The fact that the concession is reserved shall be indicated in the concession notice or in the prior information notice.

(4) In an open procedure, the concession notice shall furthermore include:

1. the concession performance conditions established depending on the subject-matter and object, on the specificities of the concession and on the type and characteristics of the services provided;

2. the minimum requirements for tenders.

(5) In a competitive procedure with negotiation and in a competitive dialogue, the concession notice shall indicate the objectives of the grantor and the needs that must be met by the performance of the concession.

Article 74. (1) Where the grantor has set a requirement for the conclusion of the concession contract with a public-private company as a concession performance condition, the following shall be indicated as well:

1. the amount of the participating interest held by the public partner and by the private partner in the capital of the public-private company;

2. the type and amount of the assets which the public partner and the private partner contribute to the capital;

3. the non-cash asset contributed by the public partner to the capital, where such a contribution is envisaged;

4. the conditions for financing the activity of the company;

5. the procedure for notifying the public partner upon any alteration in the control of the private partner and the effects of any such alteration.

(2) The conditions for implementation of the concession under Paragraph (1) shall be indicated in the concession notice.

Article 75. (1) A prior information notice shall have the minimum contents set out in Annex 7 hereto.

(2) A national notice shall have the minimum contents set out in Annex 8 hereto.

Article 76. (1) After the issuing of a procedure initiation decision, an official designated by the grantor shall transmit the concession notice or, respectively, the prior information notice electronically by electronic means to the Publications Office of the European Union for publication in the Official Journal of the European Union and the national notice for promulgation on the Internet site of the State Gazette, hereinafter referred to as "publication".

(2) After taking the steps referred to in Paragraph (1), the official designated by the grantor shall open a record of the procedure in the National Concessions Register and shall publish the procedure initiation decision, the procedure initiation notice, the concession documents and the justification of the concession on the said record.

(3) The procedure initiation notice shall be published in the National Concessions Register in the form in which the said notice was transmitted to the Publications Office of the European Union or, respectively, to the State Gazette. Publication of the concession notice and of the prior information office shall be effected after receiving a notice of publication in the Official Journal of the European Union from the Publications Office of the European Union. Publication in the National Concessions Register may be effected even before the receipt of the notice of publication in the Official Journal of the European Union where, within 48 hours after the receipt of confirmation of the receipt of the notice by the Publications Office of the European Union, the said notice has not been published.

Article 77. (1) The procedure initiation notice and the concession documents may be modified in the cases referred to in Article 79 (4), Article 81 (2) and Article 94 (1) herein.

(2) The modifications shall be effected by a notice of corrigendum, which shall be published under the terms and according to the procedure established by Article 76 (1) and (3) herein.

(3) Where the modifications affect the subject-matter of the concession and the concession award conditions under Article 59 herein, the grantor shall terminate the procedure.

Article 78. (1) Depending on the subject-matter of the procedure and the type of concessionaire designation procedure, the concession documents shall contain:

1. a description of the subject-matter and of the object of the concession;

2. documents certifying the ownership and/or identifying the object of the concession, where applicable;

3. a description of the works and/or of the services included in the subject-matter of the concession, including for each lot, where applicable;
4. a detailed description of the conditions for implementation of the concession;
5. the minimum requirements for tenders;
6. the minimum requirements which the options of the tenders must meet and the manner of presentation thereof, where applicable;
7. conditions for participation;
8. the award criteria, as well as the tender assessment methods;
9. a description of the organisation of the procedure and an indicative completion deadline;
10. documents whereby the absence of a ground for exclusion is certified before the signing of the concession contract;
11. standard forms of an application, a tender (bid and binding bid) in an open procedure and in a competitive procedure with negotiation, as well as of an indicative tender in a competitive procedure with negotiation and in a competitive dialogue;
12. a draft concession contract;
13. review clauses, where applicable;
14. date and time for the receipt of applications or tenders and date and time for the opening of the tenders in an open procedure;
15. other requirements, depending on the subject-matter of the concession.

(2) Where the concession is envisaged to be with payment by the grantor, the concession documents shall be accompanied by the financial and economic analysis referred to in Article 57 (4) herein. In a works concession, the development proposal referred to in Article 57 (3) herein, where such a proposal has been drawn up, shall accompany the concession documents.

(3) In a competitive dialogue, the requirements under Items 3 to 5, Item 8 regarding the tender assessment methods and Item 12 of Paragraph (1) shall not apply. In such case, the grantor shall include in the concession documents a description of the needs that must be met by the award of the concession, and if possible shall define basic technical, functional and qualitative characteristics of the works and/or of the services included in the subject-matter of the concession.

(4) In a competitive procedure with negotiation and in a competitive dialogue, the concession documents shall furthermore set out:

1. the number of candidates who, in a competitive procedure with negotiation, will receive an invitation to submit an indicative tender or, respectively, in a competitive dialogue, who will receive an invitation to participate in the dialogue;
2. objective and non-discriminatory selection criteria;
3. the manner in which the selection criteria are applied.

(5) In concessions with classified information, the concession documents shall set out the requirements for the protection of classified information which apply upon the conduct of the concessionaire designation procedure and upon the performance of the concession contract.

(6) Any information protected by the law, as well as any commercial or other information which, due to exceptional security or technical reasons, or due to a sensitive nature, requires a special level of protection, hereinafter referred to as "sensitive information", shall be deleted upon publication of the concession documents in the National Concessions Register, stating the reason for this. In such cases:

1. the presence of information protected by law or of sensitive information shall be indicated in the procedure initiation notice;
2. the terms and procedure according to which the economic operators can gain access to the deleted information shall be indicated in the published documents.

Article 79. (1) Any person may request clarifications or additional information regarding the procedure for the conduct of the concessionaire designation procedure, the concession award criteria or the concession documents.

(2) A request for clarifications or for additional information shall be submitted within 14 days before the expiry of the time limit for the receipt of applications or tenders.

(3) Within four working days from the receipt of the request but not later than six days before the expiry of the time limit for the receipt of applications or tenders, the official designated by the grantor shall publish clarifications or additional information provided by the commission for conduct of a concessionaire designation procedure on the record of the procedure in the National Concessions Register.

(4) Where the clarifications or the additional information entail any modifications to the procedure initiation notice and/or to the concession documents, the commission for conduct of a concessionaire designation procedure shall propose, and the grantor shall issue a decision approving a notice of corrigendum and the relevant modifications to the concession documents, if any.

(5) The notice of corrigendum shall fix a new time limit for the receipt of applications or tenders, which shall be at least seven days longer than the time limit fixed by the procedure initiation notice.

Section V

Commission for Conduct of Concessionaire Designation Procedure

Article 80. (1) The concessionaire designation procedure shall be organised by the grantor and shall be conducted by a commission for conduct of the concessionaire designation procedure, appointed by the grantor, hereinafter referred to as "the commission".

(2) The commission shall be appointed within three working days from the issuing of the procedure initiation decision.

(3) The commission shall consist of an odd number of members, who shall be not fewer than five, including a chairperson and a deputy chairperson. More than half of the members of the commission must possess professional competence linked to the activities under the subject-matter of the concession or professional experience of the award of concessions. At least one of the members of the commission must be a qualified lawyer.

(4) The commission shall adopt decisions by a majority of more than half of the members thereof.

(5) The following shall be ineligible for membership of the commission:

1. any person in a conflict of interest;

2. any person who is a party related to:

(a) any candidate or participant in the procedure or, where the candidate or participant is a legal person, also to any member of the management or control body of the said person;

(b) any named subcontractor or third party.

(6) Within three days from:

1. the receipt of the order of appointment of the commission, the members of the commission shall be obliged to submit a declaration of non-existence of a conflict of interest;

2. becoming aware of the circumstance that a party related thereto participates in the procedure, the members of the commission shall be obliged to submit a request for release from the commission.

(7) Where a conflict of interest has been identified, where a request for release has been submitted, as well as in other cases in which a member of the commission is objectively unable to discharge the duties thereof, the grantor shall appoint a new member of the commission.

(8) The members of the commission shall be paid remunerations subject to the restrictions laid down by the Labour Code and by the Civil Servants Act and subject to the terms and procedure established by the Public Procurement Act.

Article 81. (1) The commission:

1. shall adopt rules of procedure thereof;
2. shall prepare and provide to the official designated by the grantor the requested clarifications and additional information for publication on the record of the procedure in the National Concessions Register;
3. shall propose to the grantor to remedy any legal non-conformity in the procedure initiation notice and/or in the concession documents;
4. shall take the steps for the admission of the candidates or participants;
5. shall perform the selection in the competitive procedure with negotiation and in the competitive dialogue;
6. shall conduct the dialogue in the competitive dialogue procedure;
7. shall conduct the negotiations in the competitive procedure with negotiation;
8. shall propose to the grantor to prolong the time limit for the receipt of the applications, of the indicative tenders or of the tenders where no application or, respectively, tender has been received within the time limit fixed for the receipt thereof;
9. shall examine, admit and assess the tenders and shall rank the participants, proposing that the highest ranked participant be designated as concessionaire;
10. shall prepare a draft concessionaire designation decision or a draft decision on termination of the concessionaire designation procedure, hereinafter referred to as "procedure termination decision";
11. shall take other steps as well, as specified by this Act.

(2) In the cases referred to in Item 3 of Paragraph (1), the grantor shall issue a decision approving a notice of corrigendum and the relevant modifications to the concession documents, if any, and shall set out a new time for the receipt of applications or tenders under the terms established by Article 79 (5) herein.

(3) The decisions of the commission shall be reasoned. The steps taken by the commission and the decisions adopted with the reasons thereto shall be recorded in a memorandum. Where any member of the commission opposes any decision as adopted, the said member shall sign the memorandum with a dissenting opinion and shall attach the reasons thereof to the said decision.

(4) The commission shall notify the candidates or participants, as provided for by this Act, electronically by electronic means, including electronic mail.

Article 82. (1) By the order of appointment of the commission, the grantor shall designate one or more officials who shall assist the commission in technical terms and shall exchange information with economic operators, candidates or participants, as well as one or more consultants who shall assist the commission in expert terms, and a person provided with access to the National Concessions Register, who shall open and maintain the record of the procedure.

(2) Officials or external experts who or which are natural or legal persons possessing professional competence linked to the activities included in the subject matters of the concession or professional experience of the award of concessions shall be designated as consultants. (8) The members of the commission shall be paid remunerations subject to the restrictions laid down by the Labour Code and by the Civil Servants Act and subject to the terms and procedure established by the Public Procurement Act.

(3) The requirements of Article 80 (5) and (6) herein shall apply to the officials and the consultants.

Section VI

Information Exchange upon Conduct of Concessionaire Designation Procedure

Article 83. (1) The grantor and the commission shall exchange information upon the conduct of the concessionaire designation procedure by one or more of the following means:

1. electronic means, including electronic mail;
2. postal services;
3. signed-for delivery to certify the date, time and person who received the delivery.

(2) The means of information exchange, designated by the grantor, shall be indicated in the procedure initiation notice.

Article 84. (1) The grantor shall provide an electronic communications system for information exchange by electronic means. The electronic communications system must be generally available and interoperable with the information and communication technology products in general use and must not restrict the access of economic operators to the concessionaire designation procedure.

(2) The electronic system referred to in Paragraph (1) shall ensure that the integrity of data and the confidentiality of applications and tenders are preserved.

(3) The electronic system referred to in Paragraph (1) must ensure:

1. access to the system and to the documents transmitted using the system that is limited to empowered persons;
2. electronic signing or transmission of documents using the system;
3. identifying the persons empowered to access the system in the established manner;
4. providing information about the persons who have accessed the data and the information about the time of such access;
5. indication of the exact date and time of the electronic transaction;
6. an impossibility to open particular data and information, as well as the applications and tenders, before the exactly specified date and time;
7. preserving the integrity of documents;
8. preserving the confidentiality of documents;
9. personal data protection.

(4) Data sent or received using the electronic system referred to in Paragraph (1) shall enjoy legal presumption of integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

(5) A document sent using the electronic system referred to in Paragraph (1) or received as an electronic document signed using an electronic signature shall be considered as equivalent to a paper document and as an original, shall be admissible in evidence in proceedings before the Commission on Protection of Competition and in court proceedings, and shall enjoy legal presumption of its authenticity and integrity provided the document does not contain any dynamic features capable of automatically changing the document.

Section VII

Applications and Tenders

Article 85. Economic operators shall submit the following for participation in a concessionaire designation procedure:

1. in an open procedure: an application and a tender;
2. in a competitive procedure with negotiation: an application and, after receiving an invitation, an indicative tender and a tender;
3. in a competitive dialogue: an application and an indicative tender and, after receiving an invitation, a tender.

Article 86. (1) An application shall state:

1. information about the concessionaire designation procedure and about the grantor;
2. information about the candidate or participant regarding:
 - (a) the name or, respectively, the business name of the candidate or participant, the contact details, including an e-mail address;
 - (b) the form of participation: on its own or in a group of economic operators;
 - (c) the persons who represent the candidate or participant according to the register wherein the said candidate or participant is entered, if any such register exists; where the economic operators is not entered in a register, the persons who represent the said candidate or participant according to an equivalent document;
 - (d) the subcontractors designated by the date of submission of the application and information regarding the name or, respectively, the business name, the contact details, including an e-mail address, and the persons who represent each named subcontractor according to the register wherein the said subcontractor is entered, if any such register exists;
 - (e) the third parties;
3. manner of performance of the concession contract:
 - (a) in the case of participation of a group of economic operators: indicating the operator who or which represents the group or the lead partner, as well as the share of the concession and the types of activities from the subject-matter of the concession which each of the partners will be executing;
 - (b) in the case of subcontracting: indicating the share of the concession and the types of activities from the subject-matter of the concession which will be executed by subcontractors;
4. declaring the absence of a ground for conclusion with regard to the candidate or participant, as well as with regard to the named subcontractors and third parties;
5. declaring compliance of the candidate or participant, including of the named subcontractors, where applicable, with the conditions for participation.
 - (2) The application shall be accompanied by documents whereby the candidate or participant proves fulfilment of the requirements for professional or technical ability and/or for financial and economic standing. Where the candidate or participant has indicated that it proves compliance with the requirements for professional or technical ability and/or for financial and economic standing by the capacities of third parties, the said candidate or participant shall accompany the application with evidence that it will have at its disposal the resources of the third parties throughout the period of the concession.

Article 87. (1) An indicative tender in a competitive procedure with negotiation shall state:

1. specific proposals under the award criteria;
2. reasoning of the proposals under the award criteria;
3. a financial and economic model, including an analysis of the concession cash flows, where such an analysis is required by the concession documents;
4. evidence of the feasibility of the proposals under the award criteria;
5. proposals under the draft concession contract;
6. other proposals, developments and information pursuant to the conditions indicated in the concession documents.

(2) In a competitive dialogue, the indicative tender shall contain proposals relating to the possible solutions which must meet the needs by the concession.

Article 88. (1) The tender shall consist of a bid and a binding bid.

(2) The bid shall contain:

1. specific proposals under the award criteria;

2. reasoning of the proposals referred to in Item 1;
3. a financial and economic model, including an analysis of the concession cash flows and a specific duration of the concession which may not exceed the maximum duration indicated in the procedure initiation notice;
4. evidence of the feasibility of the proposals made under the award criteria;
5. the names and professional qualifications of the staff to be responsible for the performance of the concession contract, where this is set out as a requirement in concessions with a cross-border interest, except concessions for social and other specific services;
6. other proposals, developments and information pursuant to the requirements set out by the concession documents;
7. a proposal for the formation of a project company, where applicable;
8. declaring the period of validity of the tender;
9. declaring the origin of the financial resources according to the Measures against Money Laundering Act.

(3) The binding bid shall contain a summary of the specific proposals under the award criteria.

(4) Where the procedure initiation notice authorises the possibility of submitting options of the tender, the participant shall submit a bid and a binding bid for each option proposed.

(5) In the case any discrepancies between the bid and the binding bid, the tender shall be assessed according to the binding bid.

(6) Specific information in the bid may be designated as confidential. The proposals under the award criteria may not be designated as confidential information.

Article 89. (1) The application, the indicative tender, the bid and the binding bid shall be drawn up in standard forms contained in the concession documents.

(2) The application, the indicative tender and the bid shall be submitted on an electronic medium in the form of an electronic document signed using an electronic signature by the person who represents the economic operator.

(3) The binding bid shall be submitted in paper form.

(4) The electronic medium referred to in Paragraph (2) shall furthermore include an electronic image of the documents whereby the economic operator certifies the facts and circumstances asserted thereby. The electronic image shall be captured by means of a scanner in a readable form and manner. The full and exact conformity of the electronic image as captured with the document as scanned shall be certified by an electronic signature

(5) The electronic medium containing the bid shall furthermore include an electronic image of the binding bid.

Article 90. (1) The content of the applications, indicative tenders and tenders shall be in the language indicated in the procedure initiation notice.

(2) Where the notice admits the use of a foreign language, the applications and tenders shall be submitted accompanied by a translation into the Bulgarian language.

(3) The documents contained in the electronic medium referred to in Article 89 (2) herein shall be in the language of issue and shall be accompanied by a translation into the Bulgarian language. In the case of any discrepancy between the language versions, the translation in the Bulgarian language shall prevail, unless otherwise indicated in the documents.

Article 91. Applications and tenders shall be submitted at the address indicated in the procedure initiation notice using the means of communication referred to in Item 2 or 3 of Article 83 (1) herein.

Article 92. (1) The electronic media, which contain the application, the indicative tender and the bid, as well as the binding bid in paper form, shall be inserted each into separate sealed opaque envelopes which shall be marked accordingly, indicating:

1. the contents: "Application", "Indicative Tender", "Bid", "Binding Bid";
2. the name of the concession;
3. the name or, respectively, the business name, address and e-mail address of the candidate or participant.

(2) In an open procedure, the application and the tender shall be submitted inserted together into a single envelope marked "Application and Tender" and the information referred to in Items 2 and 3 of Paragraph (1). The single envelope shall contain the separate envelopes containing the application, the bid and the binding bid.

(3) In a competitive procedure with negotiation, the requirements of Paragraph (2) for a single envelope shall apply to the submission of tenders, with the bid and the binding bid being inserted into the said envelope.

(4) In a competitive dialogue, the requirements of Paragraph (2) for a single envelope shall apply to the submission of the application, with the application and the indicative tender being inserted into the said envelope.

Article 93. (1) The time limits for the receipt of applications, indicative tenders and tenders shall be fixed by the grantor taking account of:

1. the complexity and volume of the concession documents;
2. the need that part of the concession documents be inspected on the spot because a ground to restrict public access thereto, stated in the notice, applies;
3. the time required for drawing up applications or tenders;
4. the need of an on-site visit to the object of the concession and, where applicable, also to the concession area and/or to the accessories to the object of the concession.

(2) The time limit for the receipt of an application in a competitive procedure with negotiation, of an application and an indicative tender in a competitive dialogue, as well as of an application and tenders in an open procedure, shall be fixed by the procedure initiation procedure and may not be less than 30 days commencing from the date on which the said notice was transmitted for publication under Article 76 (1) herein. For concessions without a cross-border interest, the time limit may not be less than 25 days.

(3) The time limit for the receipt of indicative tenders in a competitive procedure with negotiation shall be fixed by the invitation to submit indicative tenders and may not be less than 22 days.

(4) The time limit for the receipt of tenders in a competitive procedure with negotiation and in a competitive dialogue shall commence from the date of the receipt of an invitation to submit tenders and may not be less than ten days.

(5) Where the concession documents as published in the National Concessions Register contains any deleted information protected by law or any sensitive information, as well as where applications, indicative tenders or tenders can be made only after an on-site visit to the object of the concession or to the concession area, the minimum time limits referred to in Paragraphs (2) to (4) shall be at least 40 days or, respectively 32 days and 22 days.

Article 94. (1) Each economic operator or candidate may request prolongation of the time limit for the receipt of applications, indicative tenders or tenders where:

1. the clarifications or additional information as requested have not been provided within the time limit fixed by the grantor, or
2. the additional information or part thereof as requested is protected by law or is sensitive information, or
3. the drawing up of the indicative tender of the tender requires an on-site visit to the object of the concession and, where applicable, also to the concession area and/or to the accessories to the object of the concession, but such access has not been ensured to all participants.

(2) In the cases referred to in Paragraph (1), the grantor shall prolong the time limit for the receipt of applications, indicative tenders or tenders. Where the initial time limit has been fixed by the procedure initiation notice, the official designated by the grantor shall publish a notice of corrigendum. In the rest of the cases, the candidates or participants shall be notified using the means of exchanging information indicated in the procedure initiation notice.

(3) The notice of corrigendum shall fix a new time limit under the terms established by Article 79 (5) herein.

Article 95. (1) Applications, indicative tenders and tenders shall be received up to the appointed date and time using the means of exchanging information indicated in the notice.

(2) Where one or more candidates or participants are present at the place for the receipt at the appointed closing time, the said candidates or participants shall be entered on a list which shall be signed by the official designated by the grantor and by the persons present. The official shall accept the envelopes containing the applications, indicative tenders or tenders of all candidates or participants entered on the list.

(3) The official shall mark the envelope with the sequential number, the date and time of the receipt, shall enter the applications, indicative tenders or tenders in an incoming register in the order in which the said applications, indicative tenders or tenders were received, and shall issue a receipt of entry into the register to the deliverer.

(4) The official shall not accept an application, indicative tender or tender where:

1. the said application, indicative tender or tender was submitted after the expiry of the time limit as fixed, except in the cases referred to in Paragraph (2);

2. the said application, indicative tender or tender was submitted in an unsealed or damaged envelope;

3. the envelope is not marked in accordance with the requirements of Article 92 (1) and (2) herein.

(5) The incoming register shall contain the following information about the applications, indicative tenders or tenders:

1. registration number, assigned in the order in which the applications, indicative tenders or tenders were received;

2. particulars of the candidate or participant;

3. date and time of receipt;

4. manner of receipt: by postal services or signed-for delivery;

5. existence of any circumstance referred to in Paragraph (4);

6. observations on the circumstances entered, including regarding any circumstance referred to in Paragraph (2).

Section VIII

Steps of Commission upon Conduct of Open Procedure

Article 96. (1) After the expiry of the time limit for the receipt of applications and tenders, as fixed by the procedure initiation notice, the commission, at a closed meeting, shall open the applications received in due time and shall take steps for the admission of the participants.

(2) A participant shall be admitted to participation in the concessionaire designation procedure after the commission has verified:

1. whether any ground for exclusion applies to the participant and to the subcontractors and third parties named in the application;

2. whether the participant and, where applicable, the subcontractors named in the application, satisfy the conditions for participation.

Article 97. (1) Should the commission ascertain any non-conformity of the application, consisting in non-submission of documents, non-compliance with the conditions for participation or another non-conformity or deficiency, including an error of fact, the commission shall notify the participant of this.

(2) The participant shall remedy the non-conformities within five days from the notification.

(3) Where the non-conformity consists in non-compliance with the conditions for participation, the participant may, in accordance with the requirements of the grantor, replace any documents submitted or submit new documents whereby the participant presumes that it will satisfy the conditions for participation.

Article 98. (1) Where less than eight working days are left from the notification of non-conformity under Article 97 (1) herein until the time limit for the opening of tenders as indicated in the concession documents, the commission shall fix a new time limit for the opening of tenders. The commission shall also prolong the time limit for the opening of tenders where it determines that any circumstances declared in the application need to be verified.

(2) The commission shall notify all participants of the prolongation of the time limit for the opening of tenders.

Article 99. (1) The commission shall complete the steps for the admission of the participants by a reasoned decision whereby:

1. the commission shall exclude from participation in the concessionaire designation procedure any participant where to a ground for exclusion applies or where any such ground applies to any subcontractor or third party named by the said participant or where the said participant does not comply with the conditions for participation;

2. the commission shall admit to examination the tenders of the participants who or which are not excluded from participation.

(2) The commission shall draw up a memorandum on the opening of the applications and on the steps taken for the admission of the participants.

(3) The decision of the commission on the exclusion of a participant shall be communicated on the day of opening of the tenders and separate appealability shall not apply thereto.

Article 100. (1) On the day and at the time for opening of the tenders, the commission shall hold an open meeting which may be attended by the participants or representatives thereof and other persons.

(2) At the open meeting, the commission shall announce the decision whereby it completed the steps for the admission of the participants and shall open the envelopes containing the binding bids of the tenders admitted to examination in the order in which the tenders were entered in the incoming register.

(3) The opened binding bids shall be read out by a member of the commission and shall be signed on each page by a member of the commission and by participants or representatives thereof who have indicated their willingness to do so.

Article 101. (1) The bids shall be opened, the tenders shall be examined and assessed and the participants shall be ranked at one or more closed meetings of the commission.

(2) Upon examination and assessment of the tenders, the commission shall verify the conformity of:

1. the bid and the binding bid with the requirements of Article 88 herein and with the requirements set out by the concession documents, and

2. the proposals under the award criteria and of the financial and economic model with the award criteria.

(3) Upon examination of the tenders, the commission may verify the circumstances declared by the participants and the probity or authenticity of any accompanying documents, inter alia by approaching competent authorities or other persons.

(4) Where necessary, the commission shall require from the participants to take the following steps within a time limit fixed by the commission which may not be less than three working days:

1. to provide clarifications regarding the developments and information as submitted or regarding the documents accompanying the tender, or

2. to provide additional evidence of the circumstances declared in the tender, or

3. to remedy any technical non-conformities in the bid referred to in Article 88 (2) herein.

(5) The clarifications may not modify the proposals contained in the binding bid referred to in Article 88 (3) herein.

Article 102. (1) The commission shall not admit to examination the tender of any participant who, within the time limit fixed by the commission under Article 101 (4) herein, has failed:

1. to remedy any technical non-conformities in the bid referred to in Article 88 (2) herein, or
2. to submit the clarifications required by the commission, or where the clarifications submitted are insufficient for the assessment of the tender, or
3. to provide the additional evidence required by the commission.

(2) The commission shall not assess any tender:

1. in respect of which a verification has ascertained that the participant has submitted untrue information or a non-authentic or falsified document or a document making a false statement;
2. which does not meet one or more requirements set out by the concession documents;
3. wherein the developments and information submitted do not conform to the award criteria;
4. which was submitted in breach of the requirements of Article 92 (3) and (4) herein.

(3) Where the tender of the participant was submitted in options, the grounds referred to in Paragraph (1) and (2) shall apply to each of the options proposed.

(4) The commission shall adopt a decision designating the tenders, including the options of the tenders, that will not be assessed.

(5) The decision referred to in Paragraph (4) shall be communicated to the participants concerned by the concessionaire designation decision or, respectively, by the procedure termination decision of the grantor, and separate appealability shall not apply thereto.

Article 103. (1) The commission shall assess the admitted tenders under the award criteria by applying the tender assessment methods, assessing the proposals of the participants contained in the binding bid.

(2) On the basis of the assessment of the admitted tenders, the commission shall rank the participants by a decision.

(3) Where one or more tenders contain options which have been admitted to assessment, the commission shall perform an ex-ante assessment of each of the options and shall rank the participants whose option of a tender has been awarded the highest score.

(4) Until the completion of the procedure, the commission, acting of its own motion, shall satisfy itself as to the absence of a ground for exclusion. Where ascertaining an existing or intervening ground for exclusion, the commission shall not assess the tender and shall exclude the participant from participation in the concessionaire designation procedure.

Article 104. (1) After ranking the participants, the commission shall draw up a memorandum on the opening and reading of the binding bids, on the examination and assessment of the tenders and on the ranking of the participants.

(2) On the basis of the memorandum referred to in Paragraph (1), the commission shall draw up a draft decision on designation of the highest ranked participant as concessionaire or a draft procedure termination decision.

(3) The commission shall draw up a draft procedure termination decision where not a single tender has been submitted or not a single participant has been admitted, as well as where any circumstance referred to in Article 102 (1) to (3) herein applies to all tenders submitted.

Section IX

Steps of Commission upon Conduct of Competitive Procedure with Negotiation

Article 105. (1) After the expiry of the time limit for the receipt of applications, as fixed by the procedure initiation notice, the commission shall open the applications and shall take steps for admission under the terms and according to the procedure established by Articles 96 and 97 herein.

(2) Where, by the concession documents, the grantor has limited the number of candidates for continued participation in

the concessionaire designation procedure and the candidates admitted exceed the number fixed, when taking the steps for admission the commission shall furthermore conduct a selection of the candidates admitted.

(3) The selection shall be an assessment of the professional and technical ability and/or the economic and financial standing of the candidates and shall be conducted in the manner and under the selection criteria indicated in the concession documents.

(4) As a result of the selection performed, the commission shall rank the candidates and shall complete the steps for admission and selection by a reasoned decision.

Article 106. (1) By the decision on completion of the steps for admission and selection in a competitive procedure with negotiation, the commission:

1. shall exclude from participation in the concessionaire designation procedure any candidate where to a ground for exclusion applies or where any such ground applies to any subcontractor or third party named by the said candidate, where the said candidate does not comply with the conditions for participation or where, upon the performance of the selection, the said candidate was ranked in a place which precludes the continued participation thereof in the procedure;

2. shall designate the candidates that the commission admits to continued participation in the concessionaire designation procedure;

3. shall approve an invitation to submit indicative tenders.

(2) The tender to submit indicative tenders shall contain a time limit for the receipt of the indicative tenders, as well as instructions and timetable for conduct of the negotiations.

(3) The time limit for the receipt of the indicative tenders may not be less than 22 days.

(4) When establishing the timetable referred to in Paragraph (2), the commission shall set an identical duration for the negotiations with all candidates.

Article 107. (1) The commission shall draw up a memorandum on the opening of the applications and on the steps taken for, and on the decisions adopted on, the admission and selection of the candidates.

(2) The commission shall notify all candidates of the completion of the steps for admission and selection. The notification shall be accompanied by the memorandum referred to in Paragraph (1). The invitation to submit indicative tenders shall also be sent to the candidate admitted to continued participation in the procedure.

(3) Any candidate, who or which has been excluded from participation upon the taking of the steps for admission and selection, may appeal the decision of the commission on exclusion according to the procedure established by Chapter Six herein within 10 days from the notification.

Article 108. (1) An indicative tender must meet the requirements set out by the concession documents.

(2) An indicative tender shall be submitted by the candidates invited to participate and shall be received under the terms and according to the procedure established by Article 95 herein.

Article 109. (1) After the expiry of the time limit fixed by the invitation to submit indicative tenders, the commission, at a closed meeting, shall open the indicative tenders as received. Where the decision on exclusion has been appealed and a suspension of the procedure has been requested, the commission shall open the indicative tenders after the ruling whereby the request for suspension of the procedure is rejected becomes enforceable. Where the procedure is suspended, the commission shall open the indicative tenders after the decision on the appeal becomes enforceable.

(2) The indicative tenders shall be examined by the commission as to compliance with the requirements set out by the concession documents.

(3) By a reasoned decision, the commission shall exclude the candidates whose indicative tenders do not meet one or more requirements set out by the concession documents. The commission shall notify the candidate excluded of the decision.

(4) Any candidate, who or which has been excluded from participation upon the examination of the indicative tenders,

may appeal the decision of the commission referred to in Paragraph (3) according to the procedure established by Chapter Six herein within 10 days from the notification.

- Article 110.** (1) The commission shall conduct the negotiations according to the timetable established by the invitation to submit indicative tenders.
- (2) Negotiations shall be conducted with each candidate on the possibilities for improving the proposals under the award criteria and under the draft concession contract. Candidates may propose to improve the proposals thereof.
- (3) The commission shall notify the candidates regarding the proposals of the rest of the candidates and of the changes ensuing from the negotiations, if any. Upon any such notification, the commission shall not disclose the candidate who or which submitted a particular proposal, as well as the information designated as confidential.
- (4) After each notification of changes to the proposals, the commission may conduct a new round of negotiations. When it determines the last round of negotiations, the commission shall notify all candidates.
- (5) The commission may not negotiate any changes regarding the subject-matter of the concession, the minimum requirements for the tender and the award criteria.
- (6) The commission shall draw up a memorandum on the steps taken for the negotiations.

- Article 111.** (1) After the completion of the negotiations, the commission shall fix a time limit for the receipt of tenders subject to the requirement of Article 93 (4) herein and shall notify the candidates.
- (2) After the candidates are notified under Paragraph (1), the competitive procedure with negotiation shall proceed under the terms and according to the procedure established by Articles 101 to 104 herein.

Section X

Steps of Commission upon Conduct of Competitive Dialogue

- Article 112.** (1) After the expiry of the time limit for the receipt of applications and indicative tenders, as fixed by the procedure initiation notice, the commission shall open the applications and shall take steps for admission under the terms and according to the procedure established by Articles 96 and 97 herein and, where applicable, also the steps for selection under the terms and according to the procedure established by Article 105 (2) to (4) herein.
- (2) The commission shall complete the steps for the admission and selection of the candidates in a competitive dialogue by a reasoned decision whereby:
1. the commission shall exclude from participation in the concessionaire designation procedure any candidate whereto a ground for exclusion applies or where any such ground applies to any subcontractor or third party named by the said candidate, where the said candidate does not comply with the conditions for participation or where, upon the performance of the selection, the said candidate was ranked in a place which precludes the continued participation thereof in the procedure;
 2. the commission shall designate the candidates that the commission admits to continued participation in the procedure.
- (3) The commission shall draw up a memorandum on the opening of the applications and on the steps taken for, and on the decisions adopted on, the admission and selection of the candidates.
- (4) The commission shall notify all candidates of the completion of the steps for admission and selection. The notification shall be accompanied by the memorandum referred to in Paragraph (3).
- (5) Any candidate, who or which has been excluded from participation upon the taking of the steps for admission and selection, may appeal the decision of the commission on exclusion according to the procedure established by Chapter Six herein within 10 days from the notification.

- Article 113.** (1) The commission, at a closed meeting, shall open the indicative tenders of the candidates admitted and

shall examine the proposals contained in the said tenders.

(2) The commission may ask the candidates admitted to provide clarifications or to supplement the proposals contained in the indicative tenders.

Article 114. (1) On the basis of the proposals and, where provided, on the basis of the clarifications and supplements as well, the commission shall conduct a dialogue with the candidates admitted.

(2) The possible solutions for meeting the needs indicated in the concession documents, relating to the technical and functional requirements, the financial and economic requirements and/or the legal requirements, including relating to the legal constructs and the draft concession contract, shall be discussed during the dialogue.

(3) The dialogue shall be conducted at consecutive stages in order to reduce the number of possible solutions which must meet the needs by the award of the concession. After the completion of each stage of the dialogue, the commission shall notify all candidates of the proposals of the rest of the participants without disclosing the participant who or which submitted a particular proposal and the information designated as confidential.

(4) The commission shall draw up a memorandum on the steps taken for the conduct of the dialogue.

Article 115. (1) Where it determines that the possible solutions to the needs are clarified, the commission shall draw up a draft decision on supplementation of the concession documents. The supplemented concession documents shall include:

1. a description of the subject-matter and object of the concession in accordance with the results of the dialogue as conducted;
2. the requirements of Items 3 to 5, Item 8 regarding the tender assessment methods and Item 12 of Article 78 (1) herein;
3. standard form of a tender (a bid and a binding bid).

(2) The grantor shall issue a decision on supplementation of the concession documents and shall notify the candidates of the said decision. The decision shall be appealable within ten days from the notification according to the procedure established by Chapter Six.

(3) After supplementing the concession documents, the commission shall draw up an invitation to submit tenders, which shall contain a time limit for the receipt of tenders and a date and time for the opening of the tenders received.

(4) The invitation to submit tenders and the supplemented documents shall be sent by the commission to all candidates admitted.

(5) After the invitation is sent, the competitive dialogue procedure shall proceed under the terms and according to the procedure established by Articles 101 to 104 herein.

Section XI

Completion and Termination of Concessionaire Designation Procedure

Article 116. (1) The concessionaire designation procedure shall be completed by a reasoned concessionaire designation decision, which shall be issued by the grantor. The highest ranked participant shall be designated as concessionaire.

(2) The concessionaire designation decision shall particularise the technical and functional requirements, the financial and economic requirements and the legal requirements in accordance with the tender of the participant designated as concessionaire and shall fix a time limit for the conclusion of the concession contract.

(3) Where the grantor ascertains any remediable omission or breach in the work of the commission, the grantor shall assign the commission to remedy the non-conformity and carry out a new ranking thereafter.

Article 117. (1) The grantor shall issue a reasoned procedure termination decision where:

1. not a single application, indicative tender or tender has been submitted, or not a single candidate or participant has been admitted;

2. the content of all tenders does not meet the requirements set out by the concession documents;
3. the conduct of the procedure lapses becomes unnecessary as a result of circumstances which were not foreseen when adopting the procedure initiation decision;
4. breaches are ascertained in the initiation and conduct of the procedure which cannot be remedied without this changing the concession award conditions under Article 59 herein;
5. the participant designated as concessionaire and the second highest ranked participant successively decline to conclude a concession contract;
6. where a condition is set to the second highest ranked participant to improve the proposals under the award criteria, no agreement is reached regarding the improvement.

(2) The grantor shall furthermore issue a procedure termination decision where the estimated value of the concession upon the initiation of the procedure was below the European threshold and the procedure was conducted according to the requirements for a concession without a cross-border interest but, as a result of the financial and economic model proposed by the tender of the highest ranked participant, the value increased by more than 20 per cent and exceeded the European threshold. The grantor shall furthermore terminate the procedure where, upon the conduct thereof, the price of a basic service included in the subject-matter of the concession increased by more than 20 per cent of the estimated value of the said service as indicated in the concession notice.

(3) The procedure termination decision shall be issued upon approval by the Council of Ministers or, respectively, by the Municipal Council.

Article 118. (1) The procedure termination decision may include a decision on conduct of a new concessionaire designation procedure or on repetition of the procedure.

(2) A decision on conduct of a new concessionaire designation procedure may be issued in all cases of termination of the procedure. A new procedure initiation notice and new concession documents shall be approved by the decision.

(3) A decision on repetition of the procedure may be issued only in the cases referred to in Items 1, 2 and 5 of Article 117 (2) herein. The said decision may:

1. determine that the procedure be repeated under the terms of the terminated procedure, without alteration of the initially published notice, with the exception of the time limits fixed therein; or
2. approve modifications to the initially published notice and concession documents provided that the said modifications are not significant and do not affect the subject-matter of the concession, the conditions for participation, the award criteria and the minimum requirements for tenders.

(4) After the issuing of the decision referred to in Paragraph (3), the official designated by the grantor shall transmit the following for publication in the State Gazette:

1. the initial notice: in the cases referred to in Item 1 of Paragraph (3);
2. the modified notice in the form of the initially published notice: in the case referred to in Item 2 of Paragraph (3).

(5) Within three working days from the publication of a notice under Paragraph (4), the official designated by the grantor shall furthermore publish the notice on the record of the procedure in the National Concessions Register.

Article 119. (1) The grantor shall notify the candidates and participants concerned of the concessionaire designation decision or, respectively, of the procedure termination decision electronically by electronic means, including electronic mail.

(2) The notification shall be accompanied by the memorandum of the commission on the opening of the proposals, the examination and assessment of the tenders and the ranking of the participants.

(3) The concessionaire designation decision shall enter into effect where all previous decisions in the concessionaire designation procedure have entered into effect and the said decision has not been appealed or, if appealed, a decision on the appeal has become enforceable.

Chapter Four

CONCESSION PERFORMANCE

Section I

Concession Contract: Conclusion

Article 120. (1) A concession contract shall be concluded within the time limit fixed by the concessionaire designation decision.

(2) Where no appeal against the concessionaire designation decision has been lodged, the time limit for the conclusion of the concession contract shall commence from the 15th day from the notification of the participants concerned of the decision. Where the participant designated as concessionaire is the only participant concerned, the concession contract may be concluded before the expiration of this time limit.

(3) Where an appeal against the concessionaire designation decision has been lodged, the time limit for the conclusion of the concession contract shall commence from the effective date of the decision or the ruling whereby anticipatory enforcement is admitted.

(4) The grantor shall not have the right to conclude a contract with the designated concessionaire if a proceeding is pending on an appeal against any decision, act or omission under the concessionaire designation procedure.

Article 121. (1) (Supplemented, SG No. 103/2017, effective 1.01.2018) Before the conclusion of the concession contract, the participant designated as concessionaire shall provide the grantor with evidence certifying the facts and circumstances declared by the application with regard to the grounds for exclusion and the conditions for participation. The grantor shall not be entitled to require the provision of evidence of any facts and circumstances referred to in sentence one:

1. which is accessible, free of charge, through an electronic register open to public inspection, or
2. where the information or, respectively, the access to the said information about the said evidence is provided by the relevant competent authority to the grantor through official channels.

(2) Where the participant designated as concessionaire fails to provide the evidence referred to in Paragraph (1) or declines to conclude the concession contract before the expiration of the time limit for the conclusion of the concession contract, the grantor may issue a decision designating the second highest ranked participant as concessionaire. The decision shall fix a time limit for the conclusion of the concession contract and may set a condition for improving the proposals under the award criteria of the participant concerned.

(3) Where a condition for improving the proposals under the award criteria is set, negotiations shall be conducted. A concession contract may not be concluded with the second highest ranked participant designated as concessionaire where no agreement is reached during the negotiations with regard to improving the proposals under the award criteria made by the said participant.

Article 122. (1) The concession contract shall be concluded in accordance with the tender of the participant designated as concessionaire, and where concluded with the second highest ranked participant, the said contract shall be concluded in accordance with the tender of the said participant or with the results achieved at the negotiations.

(2) The concession contract shall be concluded in writing and shall state:

1. the parties to the contract, particulars of the commercial registration and other registrations of the concessionaire and the persons representing the concessionaire;
2. subject-matter and value of the concession;
3. the requirements and performance levels of the object of the concession, including the requirements regarding the type and quality of the works and/or the services included in the subject-matter of a works concession and of a services concession;

4. a description of the economic activity carried out using the object of the concession in a use concession;
5. a description, characteristics and performance levels of the object of the concession;
6. the effective date of the contract, the prerequisites, if any, the specific duration of the concession and aggregate duration of all permissible extensions envisaged by a review clause;
7. the terms, the procedure and the time limits for delivery of the object of the concession at the commencement and at the end of the concession, as well as in the event of early termination of the concession contract;
8. the conditions for implementation of the concession and the encumbrances, if any;
9. the allocation of risks between the concessionaire and the grantor;
10. the rights and obligations of the parties, including the terms and time limits for the exercise of the said rights and for the fulfilment of the said obligations;
11. the amount, time limits and procedure for effecting payments by the grantor to the concessionaire, where such payments are envisaged;
12. the amount, time limits and procedure for payment of the concession remuneration, where such is envisaged;
13. an indexation clause, where such is envisaged, stating the terms and procedure for updating the initial value of the concession and/or of the payments by and to the concessionaire;
14. the type, amount, time limits and methods for furnishing the guarantees and the security for fulfilment of the obligations under the contract;
15. the applicable obligations related to national security and defence, the life and health of citizens, the environment, protected areas, zones and sites and public order, where applicable;
16. the applicable obligations to insure the object of the concession;
17. the terms and procedure for financing the remediation of environmental damage as inflicted;
18. the terms and procedure for reporting and control of the compliance by the concessionaire with the obligations thereof, including implementation of the financial and economic model;
19. the liabilities for non-fulfilment of the obligations under the contract;
20. the terms, procedure and time limits for information exchange between the parties, including electronically, and for the monitoring and control over the performance of the contract;
21. the terms and procedure for settlement of disputes between the parties;
22. the review clauses, if such are envisaged, as well as the grounds and procedure for early termination of the contract;
23. the requirements regarding the condition in which the object of the concession is delivered to the grantor after the expiry of the duration of the concession;
24. the governing law;
25. the amount of the rate of return for the concessionaire, as determined by the financial and economic model, as well as the procedure for the calculation, reporting and control of the said rate of return;
26. other, depending on the applicable provisions of legislation in force regarding the object of the concession, the works or the services.

(3) The concession contract shall define the specific obligations of the concessionaire in the fields of environmental, social and labour law, established by national legislation, European Union law, collective agreements or by the international social and environmental conventions listed in Annex 5 hereto.

(4) Where applicable, the concession contract shall furthermore state:

1. the economic operator who or which represents the group or, respectively, the lead partner, as well as the share of the concession and the types of activities from the subject-matter of the concession which each of the partners will be executing, where the concessionaire is a group of economic operators;

2. the share of the concession and the types of activities from the subject-matter of the concession which will be executed by subcontractors, and particulars of the commercial registration and other registrations and of the persons representing each of the subcontractors named in the application;

3. the third parties and a description of the resources of the said parties which the concessionaire will have at its disposal for the duration of the concession, as well as particulars of the commercial registration and other registrations and of the persons representing each third party.

(5) The bid and the binding bid of the participant designated as concessionaire shall constitute an integral part of the concession contract.

Article 123. (1) The economic balance of the concession shall be defined by the concession contract for a works concession and for a services concession.

(2) The economic balance may be disturbed where:

1. the conditions for financing, construction, management or management of the object of the concession and/or the conditions for provision of the services have changed as a result of amendments in legislation or of an act of a regulatory authority;

2. any activities under the contract cease continuously as a result of a force majeure;

3. the whole or part of the object of the concession is lost, or the use of the said object for the intended purpose becomes objectively impossible, except in the cases where the loss or the objective impossibility is due to a culpable act or omission of the concessionaire;

4. a danger emerges to national security and defence, to the life and health of citizens, to the environment, to protected areas, zones and sites and to public order.

(3) The contract may furthermore define other factual or legal circumstances, related to the object of the concession, the works and/or the services, upon the occurrence or change thereof the economic balance of the concession may be disturbed.

(4) Should the economic balance be disturbed, each of the parties to the concession contract may request a modification of the contract so as to redress the economic balance, where any such modification is envisaged by a review clause. Any such request shall be addressed to the other party by a reasoned proposal, which shall contain a comprehensive analysis of the circumstances that have led to a disturbance of the economic analysis and shall justify the proposed modifications and the conformity thereof to the review clause.

Article 124. (1) Within one month from the conclusion of the concession contract, the official designated by the grantor shall transmit a concession award notice for publication under the terms and according to the procedure established by Article 76 (1) and (3) herein.

(2) The concession award notice shall be published in the relevant electronic form and shall contain the results of the concessionaire designation procedure as conducted, including:

1. grantor;
2. estimated value and value of the concession;
3. the specific duration of the concession;
4. conditions for entry into effect of the concession contract;
5. information on the concessionaire regarding:
 - (a) the name or, respectively, the business name;
 - (b) the form of participation: on its own or in a group of economic operators;
 - (c) the persons who represent the economic operator according to the register wherein the said operator is entered, if any such register exists;
 - (d) the name or, respectively, the business name of the subcontractors named in the application;

6. the type of procedure conducted;
7. the award criteria;
8. other, indicated in the relevant electronic form.

(3) On the day when the concession award notice is transmitted for publication, an official designated by the grantor shall open a record of the concession in the National Concessions Register and shall publish the concessionaire designation decision and the concession contract on the said record. The information protected by law, the sensitive information, as well as the information designated as confidential shall be deleted in the concession contract as published in the National Concessions Register.

Section II

Concession Contract: Performance

Article 125. (1) The concession agreement shall enter into effect as from the date of signature by the parties.

(2) The entry into effect of the concession contract can be made contingent on the fulfilment of conditions set by the procedure initiation decision or by the legislation in force. Fulfilment of the conditions shall be time-bound.

Article 126. (1) The grantor shall deliver the object of the concession within the time limit, under the terms and according to the procedure established by the concession contract.

(2) Where the subject of the concession is administrated by a regional governor, the delivery shall take place with the cooperation of the said governor.

(3) After the expiration of the duration of the concession, the concessionaire shall deliver the object of the concession to the grantor, except where the object is owned by the concessionaire, in a serviceable condition sufficient for the implementation of the services or, respectively, of the economic activity in conformity with the intended purpose of the said object.

Article 127. (1) Upon the performance of the concession contract, all individual administrative acts related to the implementation of the concession activities shall be issued to the name of the concessionaire and at the request thereof.

(2) Where works are executed by virtue of a concession contract, the concessionaire shall be treated as a person enjoying a right to build in another's immovable within the meaning given by the Spatial Development Act. The acts related to the preparation and approval of the spatial-development plans, the development-project designs, the authorisation and execution of construction, the commissioning of construction works and the other construction files provided for by a statutory instrument shall be issued to the name of the concessionaire and at the request thereof.

Article 128. The pecuniary receivables of the concessionaire arising from the concession contract and the pecuniary receivables of the subcontractors under a subcontract may be transferred, pledged and shall be subject to coercive enforcement. Article 519 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Article 129. (1) Upon the implementation of the concession contract, the concessionaire shall implement a cost accounting system for the services provided and for the other economic activities included in the subject of the contract.

(2) The annual financial statement of the concessionaire shall be subject to mandatory financial audit by a registered auditor under the Independent Financial Audit Act.

Article 130. (1) The occurrence of a ground for exclusion of the concessionaire and of the members of the management and supervisory body thereof, as well as of any person empowered to represent, to make decisions or to exercise control within the said bodies, shall be inadmissible while the performance of the concession contract is in progress. The condition shall furthermore apply to the subcontractors and to the third parties, if any.

(2) The concessionaire shall notify the grantor of the occurrence of any ground for exclusion. Any such notification shall be effected within 30 days from the occurrence of the ground for exclusion or from the receipt of information on the occurrence from the grantor or from another person.

(3) In the notification referred to in Paragraph (2), the concessionaire shall indicate the measures that it will take for remedying the consequences and for effectively preventing further occurrences of the misbehaviour, as well as the time limit for taking the measures. Those measures might consist of personnel and organisational measures, such as the severance of all links with persons or organisations involved in the misbehaviour, staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance, as well as the adoption of internal liability and compensation rules.

(4) Where any ground for exclusion has occurred in respect of a subcontractor, the concessionaire shall be obliged to terminate the subcontract. In this case, the concessionaire shall indicate in the notification referred to in Paragraph (2) the time limit wherewithin it will terminate the subcontract and the manner in which it will continue the performance of the activities under the terminated subcontract: by the concessionaire or by engaging a new subcontractor.

(5) Where any ground for exclusion has occurred in respect of a third party, the concessionaire shall not be entitled to rely on the resources of the said third party. In this case, the concessionaire shall indicate in the notification referred to in Paragraph (2) a new third party and shall provide evidence that the concessionaire will have at its disposal the resources of the said party for the remaining period of the concession, with Article 63 (4) applying *mutatis mutandis*. The concessionaire shall not be required to indicate a new third party if it provides evidence by the notification referred to in Paragraph (2) that the concessionaire meets the requirements for professional or technical ability and/or for financial and economic standing.

Article 131. (1) Upon the performance of the concession contract, the grantor shall monitor and control compliance by the parties to the contract with the obligations thereof and shall audit the concessionaire. To this end, the concessionaire shall send the grantor a report on the performance of the concession contract within a time limit and of a content specified by the contract.

(2) The parties to the concession contract shall be obliged to ensure the keeping and storing of the concession documents and protection of information in connection with the performance of the contract.

(3) The grantor shall ensure publicity of the performance of the concession contract with the exception of any information protected by law, any sensitive information and any information designated as confidential.

Article 132. (1) On or before the 30th day of September, the official designated by the grantor shall submit to the National Concessions Register information on the performance of the concession contract for the previous year in a standard form which shall be available on the Internet site of the National Concessions Register.

(2) On the basis of the information referred to in Paragraph (1) regarding all concession contracts whereto the grantor is a party, the grantor shall draw up an annual report regarding the performance of the projects and concession contracts included in the relevant action plan and shall lay the said report before the Council of Ministers or, respectively, before the Municipal Council for approval.

Section III

Subcontract

Article 133. (1) By a subcontract, the concessionaire shall entrust the performance of specifically identified activities from the subject-matter of the concession to a person named in the application or selected after the conclusion of the concession contract.

(2) A subcontract may be concluded only with a person whereto a ground for exclusion does not apply and who or which complies with the applicable conditions for participation, where such conditions are indicated in the procedure initiation notice.

(3) The concessionaire may subcontract the share of the concession and the type of activities from the subject-matter thereof which the concessionaire has indicated in the application.

(4) The concessionaire shall incur solidary liability with the subcontractor for the performance of the activities entrusted by the subcontract.

Article 134. (1) Within three working days from the conclusion of a subcontract, the concessionaire shall be obliged to provide the said subcontract to the grantor, as well as information regarding the subcontractor including:

1. the name or, respectively, the business name;
2. the contact details, including an e-mail address;
3. the persons who represent the subcontractor according to the register wherein the said subcontractor is entered, if any such register exists;
4. a declaration by the subcontractor regarding the absence of a ground for exclusion and, where applicable, also regarding compliance with the conditions for participation indicated in the concession notice.

(2) The concessionaire shall notify the grantor of any alteration in the information provided under Items 1 to 3 of Paragraph (1) within three working days from the occurrence of any such alteration.

(3) The concessionaire shall replace a subcontractor by another subcontractor, where the concessionaire has indicated this in the notification referred to in Article 130 (2) herein, within the time limit indicated in the said notification. The concessionaire shall replace a subcontractor by another subcontractor or shall perform the activities entrusted by the subcontract on its own where any non-conformity with the requirements for the protection of classified information is ascertained after the conclusion of the subcontract.

(4) The subcontractor shall be held criminally liable under Article 313 (1) of the Criminal Code for supplying untrue data in the declaration submitted under Item 4 of Paragraph (1).

Article 135. (1) Upon an intervening emergence of a danger to national security and defence, to the life and health of citizens, to the environment, to protected areas, zones and sites and to public order, the party to the concession agreement which became aware of this shall be obliged to forthwith notify the other party.

(2) Where the existence of a circumstance referred to in Paragraph (1) had been ascertained by a competent authority, the said authority shall forthwith notify the grantor.

(3) Upon the emergence of any circumstance referred to in Paragraph (1), the concession contract shall be modified if any of the grounds referred to in Article 137 to 139 herein applies or shall be terminated.

Section IV

Concession Contract: Modification

Article 136. (1) A concession contract may be modified only in the cases specified by this Act.

(2) In a works concession and in a services concession, a modification of the concession contract may not eliminate the operating risk assumed by the concessionaire.

Article 137. (1) A concession contract may be modified where:

1. modifiability, irrespective of the monetary value of the modification, has been provided for in a review clause set out in the concession documents, or
2. the value of the modification is below the European threshold, does not exceed 10 per cent of the value of the concession and does not entail an alteration of the overall nature of the concession, or
3. the alteration, irrespective of the value thereof, is not substantial within the meaning given by Paragraph (5).

(2) Where a concession contract is modified successively pursuant to Item 2 of Paragraph (1), the threshold of 10 per cent of the value of the concession shall be assessed on the basis of the sum total of the initial value of the concession and the

value of the previous modifications irrespective of the grounds thereof.

(3) A review clause shall be provided for in the concession documents and shall contain an option or modifiability of the value of the concession or of the duration thereof. The circumstances referred to in Article 123 (3) herein shall likewise be determined by a review clause. A review clause shall clearly, precisely and unequivocally state the scope and nature of possible options and modifications without enabling an alteration of the subject-matter of the concession and the overall nature thereof.

(4) An option shall entitle the grantor to entrust additional works and/or services that were not included in the contract to the concessionaire after the conclusion of the concession contract.

(5) An alteration shall be substantial where:

1. it introduces conditions which, had they been part of the concessionaire designation procedure, would have allowed for the admission of candidates or participants other than those initially admitted, or for the assessment of a tender other than that originally assessed, or would have attracted additional candidates or participants in the procedure;

2. it changes the economic balance of the concession in favour of the concessionaire in a manner which was not provided for in the concession contract;

3. it changes the subject-matter of the concession and the overall nature thereof;

4. it entails a replacement of the concessionaire without the presence of a review clause providing for this, or transformation with a change of the legal form or transformation with universal succession.

(6) Any modification of the concession contract which entails a substantial alteration within the meaning given by Paragraph (5) shall be invalid.

Article 138. (1) Where a circumstance which the grantor could not foresee upon the award of the concession and which necessitates a modification of the concession contract emerges after the conclusion of the concession contract, the contract may be modified if this does not entail an alteration of the overall nature of the concession, an increase in the initial value of the concession by more than 50 per cent, and an extension of the duration of the concession by more than one-third of the specific duration as determined by the contract.

(2) The increase not exceeding 50 per cent under Paragraph (1) shall be assessed on the basis of the initial value of the concession without cumulating the values of previous modification, irrespective of the grounds thereof.

(3) Any modification of the concession contract which does not comply with the conditions under Paragraph (1) shall be invalid.

(4) In a services concession related to the activities referred to in Annex 2 hereto, the concession contract may be modified irrespective of the value of the alteration if the modification does not entail an alteration of the overall nature of the concession.

Article 139. (1) A concession contract may furthermore be modified where the execution of additional works and/or an additional service by the concessionaire become necessary after the conclusion of the contract and the said works and/or services are not provided for by a review clause and may not be entrusted to another concessionaire for economic or technical reasons arising from requirements of interchangeability or interoperability with the works and/or services entrusted by the concession contract, or owing to significant inconvenience or substantial duplication of costs for the grantor that a change of concessionaire would cause.

(2) Additionally entrusted works and/or services may not entail an increase in the initial value of the concession by more than 50 per cent. Article 138 (2) herein shall apply, *mutatis mutandis*.

(3) In the cases referred to in Paragraph (1), the modification of the concession contract may include an extension of the duration of the concession fixed by the contract subject to the condition referred to in sentence two of Article 34 (1) herein.

Article 140. (1) Upon calculation of the value of the concession in the cases referred to in Articles 137 to 139 herein, the value shall be updated in accordance with the indexation clause, where such clause is provided for by the concession contract, and where no such clause is provided for, the value shall be updated by the rate of the average inflation for the preceding 12 months.

(2) The average inflation shall be determined using an index of the National Statistical Institute. Up-to-date information on the index shall be maintained in the National Concessions Register.

Article 141. (1) A concession contract shall be modified by a supplementary agreement after a reasoned proposal by one of the parties to the contract.

(2) The grantor shall make or shall accept, or shall refuse to accept a proposal for modification of the concession contract upon approval by the Council of Ministers or, respectively, by the Municipal Council.

(3) Within 30 days from the conclusion of the supplementary agreement, the official designated by the grantor shall publish a concession award modification notice. The concession award modification notice shall have the minimum contents set out in Annex 9 hereto.

(4) Where the modifications are pursuant to Article 138 or 139 herein, the notice concerning a concession with a cross-border interest shall be completed in an electronic form according to Article 50 (2) herein and shall be published under the terms and according to the procedure established by Article 76 (1) and (3) herein. In the rest of the cases, irrespective of whether the concession is with or without a cross-border interest, the notice shall be completed in an electronic form which shall be available on the Internet site of the National Concessions Register and shall be published in the State Gazette and in the National Concessions Register.

Article 142. (1) Where any of the party asserts that a ground for modification of the concession contract has emerged but no agreement can be reached on the modification of the contract, the dispute shall be resolved by the court according to the procedure established by the Code of Civil Procedure.

(2) After the judgment becomes enforceable, the parties shall sign a supplementary agreement on modification of the contract or the concession contract shall remain unmodified.

Article 143. (1) The concessionaire shall notify the grantor of any planned transformation with universal succession and shall make a proposal for a replacement of the concessionaire by a successor in title. The concessionaire shall accompany the proposal by information on the conditions of the planned transformation, as well as evidence that the successor in title complies with the conditions for participation and that any ground for exclusion does not apply thereto.

(2) Where the successor in title meets the requirements referred to in Paragraph (1), the grantor, upon approval by the Council of Ministers or, respectively, by the Municipal Council, shall issue a decision granting consent to a replacement of the concessionaire. The said decision shall be issued within two months from the submission of the request or from the remedying of the non-conformities of the said request. After the transformation enters into effect, the grantor and the successor in title shall conclude a supplementary agreement on modification of the concession contract by way of replacement of the concessionaire.

(3) Where the successor in title meets the requirements referred to in Paragraph (1), the grantor, upon approval by the Council of Ministers or, respectively, by the Municipal Council, shall issue a decision granting consent to a replacement of the concessionaire.

(4) Upon transformation of the concessionaire by way of a change of the legal form, the concessionaire or the successor in title thereof shall notify the grantor of the transformation as effected. In this case, the requirements of Paragraphs (1) to (3) shall not apply.

Section V

Concession Contract: Termination

Article 144. The concession contract shall be terminated upon the expiry of the duration of the concession.

Article 145. (1) Before the expiry of the duration of the concession, the concession contract shall be terminated by the grantor without notice where:

1. there is evidence that any ground for exclusion applied to the concessionaire by the date of conclusion of the

concession contract;

2. the Court of Justice of the European Union has found in a procedure under Article 260 of the Treaty on the Functioning of the European Union that the concession award has infringed European Union law.

(2) Before the expiry of the duration of the concession, the concession contract shall be terminated:

1. upon the total loss of the object of the concession in a works concession and as from the date of the total loss in a use concession;

2. upon the dissolution of the concessionaire company: as from the date of dissolution of the company;

3. upon the adjudication of the concessionaire in bankruptcy: as from the effective date of the judgment;

4. where the concession contract is terminated by a judgment: as from the effective date of the judgment;

5. on other grounds provided for in a law or by the concession contract: as from the date stated therein.

(3) In the cases referred to in Paragraph (2), the party which became aware of the emergence of the ground for termination shall notify the other party of the termination of the concession contract within ten days after becoming so aware.

Article 146. (1) A concession contract may be terminated unilaterally by the grantor:

1. upon an intervening emergence of a danger to national security and defence, to the life and health of citizens, to the environment, to protected areas, zones and sites and to public order, unless a ground for modification of the contract applies, or

2. where the concessionaire has not notified the grantor of the emergence of a ground for exclusion within the time limit referred to in Article 130 (2) herein or has not taken in due time the measures indicated thereby for remedying the consequences and for effectively preventing further occurrences of the misbehaviour or, respectively, in the cases referred to in Article 130 (4) and (5) herein has not terminated a subcontract or has continued to rely on the resources of the third party;

3. where the transformation of the concessionaire with universal succession has been effected:

(a) without the grantor having issued a decision granting consent to a replacement of the concessionaire, unless the successor in title proves that the said successor complies with the conditions for participation and that any ground for exclusion does not apply thereto, or

(b) where the grantor has issued a decision refusing the replacement of the concessionaire.

(2) The concession contract may be terminated unilaterally or by mutual consent under terms provided for by a law or by the concession contract.

Article 147. Upon non-compliance with an obligation under the concession contract, the party not at fault may terminate the said contract by written notice, allowing the other party a suitable time for performance with a warning that after the expiry of the said time the party not at fault will consider the contract terminated.

Article 148. (1) A concession contract shall be terminated unilaterally, or a proposal for the termination of the contract by mutual consent shall be made or accepted, by decision of the grantor upon approval by the Council of Ministers or, respectively, by the Municipal Council.

(2) In the decision referred to in Paragraph (1), the grantor shall indicate the effects of the termination of the concession contract as provided for in the contract.

Article 149. (1) A concession contract shall furthermore be terminated where declared invalid by an enforceable judgment.

(2) The declared invalidity shall take effect as from the date of conclusion of the concession contract.

Section VI

Concession Contract: Effects of Termination

Article 150. (1) Upon termination of a concession contract by reason of expiry of the duration of the concession, the concessionaire shall not be entitled to compensation for the investments made or the unrecovered costs incurred in operating the works or the services which are the subject-matter of the concession.

(1) Upon early termination of a concession contract for a reason for which the grantor is liable, the concessionaire shall be entitled to compensation amounting to:

1. the unrecovered costs incurred by the concessionaire on investments in the object of the concession, where the said object constitutes State property or, respectively, municipal property, and
2. the sum corresponding to the rate of return for the concessionaire, as determined by the financial and economic model, for the entire duration of the contract, debited with the value of the recovered costs of investments in the object of the concession, where the said object is owned by the concessionaire.

(3) Upon early termination of a concession contract for a reason for which the grantor is liable, the grantor:

1. shall owe the concessionaire compensation amounting to the lesser of the unrecovered costs incurred by the concessionaire on investments in the object of the concession, debited with the rate of return for the concessionaire, as determined by the financial and economic model, for the entire duration of the contract, and the market value of the investments made by the concessionaire in the object of the concession by the date of termination of the contract, where the said object is owned by the State or, respectively, by a municipality;
2. shall not owe the concessionaire any compensation, where the object of the concession is owned by the concessionaire or by a third party.

(4) The recovery of the costs incurred by the concessionaire on investments shall cover the equity capital at a rate of return determined by the financial and economic model and the debt capital at the price thereof, taking account of the allocation of risks according to Article 31 herein.

(5) In the case referred to in Item 1 of Paragraph (3), the grantor shall not owe any compensation where, by the date of termination of the concession contract, the market value of the object of the concession has decreased compared to the market value by the date of conclusion of the contract and the said decrease has resulted from the reason for which the contract is terminated.

(6) In the case referred to in Item 2 of Paragraph (3), the concessionaire shall owe the grantor compensation amounting to the costs on investments in the object of the concession, recovered as a result of operating the object of the concession and accrued until the date of termination of the concession contract.

(7) The amount of depreciation charges and the available financial assets of the concessionaire shall be taken into account in determining the amount of the compensation due.

(8) In addition to the compensations referred to in Paragraphs (2) and (3), the party at fault shall furthermore owe damages for the early termination of the concession contract, where such damages have been agreed.

(9) The concession contract shall fix the time limits and shall establish the procedure for payment of the compensations and damages due. The compensations referred to in Paragraphs (2) and (3) shall be paid in yearly instalments of equal size for the remainder of the term of the terminated contract, unless otherwise agreed.

Article 151. (1) When a concession contract is declared invalid, each of the parties must return to the other party everything received therefrom.

(2) Upon the declaration of the invalidity of a concession contract, the concessionaire shall owe the grantor, inter alia, the revenue from the services provided and/or the revenue from the economic activities carried out using the object of the concession.

(3) Upon the declaration of the invalidity of a concession contract, the grantor shall owe the concessionaire, inter alia, compensation for the accretions and improvements done in the object of the concession under the terms established by Article 150 (2) herein.

Article 152. (1) Compensation shall not be due in the cases of early termination of the concession contract for a reason wherefor neither of the parties is liable.

(2) Where the early termination of the concession contract is by reason of a total loss of the object of the concession which constitutes State property or, respectively, municipal property, the concessionaire shall be entitled to receive part of the insurance benefit amounting to the unrecovered investment costs.

Article 153. (1) Upon the termination of a concession contract, the concessionaire shall be obliged to deliver to the grantor the object of the concession which constitutes State property or, respectively, municipal property, as well as the accretions and improvements. The concessionaire shall not have the right to retain the object.

(2) The grantor shall appoint a commission for the delivery and acceptance of the object of the concession. A memorandum on the delivery shall be drawn up and signed by the members of the commission and by an authorised representative of the concessionaire.

(3) Where the concessionaire refuses to deliver the object of the concession, as well as where the concessionaire is dissolved without a successor in title by the date of termination of the concession contract or delivery of the object is otherwise impossible, the commission referred to in Paragraph (2) shall draw up a memorandum of ascertainment on acceptance of the object, which shall ascertain the condition of the object and shall certify the refusal or impossibility to deliver. The memorandum shall be grounds for the issuing of an order of seizure of the object according to the procedure established by the State Property Act or, respectively, by the Municipal Property Act.

(4) The time limit for the delivery and/or acceptance of the object of the concession shall be 30 days from the date of termination of the concession contract.

(5) As from the date of acceptance of the object, and in the cases referred to in Paragraph (3), as from the date of seizure:

1. the object which constitutes State property shall pass under the administration of the competent regional governor or of another person designated by a statutory instrument, by an act of the Council of Ministers or by the State property registration certificate;

2. the object which constitutes municipal property shall pass under the administration of the municipal mayor;

3. all rights of the concessionaire arising from any individual administrative acts issued to the name thereof upon the performance of the concession contract shall pass to the benefit of the respective person under Item 1 or 2.

(6) Where the object of the concession constitutes State property, the grantor shall furthermore notify the Minister of Regional Development and Public Works or the regional governor of the acceptance of the object of the concession as effected, for the purpose of noting in the State property registration certificate.

(7) Paragraphs (1) to (6) shall apply, *mutatis mutandis*, to the concession area and the accessories which constitute State property or, respectively, municipal property.

Article 154. (1) The provisions of the Commerce Act and of the Obligations and Contracts Act shall apply, *mutatis mutandis*, to any unregulated matters concerning the conclusion, performance, modification and termination of a concession contract.

(2) Any disputes regarding the conclusion, performance, modification and termination of a concession contract shall be settled according to the procedure established by the Code of Civil Procedure.

Chapter Five

FINANCING STATE CONCESSION ACTIVITIES

Article 155. (1) The cash proceeds from concession remunerations for State concessions, from damages, guarantees and compensations shall be credited in revenue to the budget of the relevant grantor.

(2) Where so provided for by law, part of the cash proceeds from concession remunerations for State concessions shall

be transferred by the relevant ministry to the budgets of the municipalities exercising jurisdiction over the location of the object of the concession. Municipalities shall account for the sums transferred as credited in revenue from concessions to the budget thereof.

(3) The expenditures on concession activities shall be projected and financed through the budgets of the relevant budget authorisers and through the budget of the Ministry of Finance.

(4) The expenditures projected on the budget of the Ministry of Finance shall furthermore be effected through the budgets of the relevant ministries on the basis of a cost estimate, approved by the Minister of Finance, for spending the resources and for making changes according to the procedure established by Article 109 and Article 110 of the Public Finance Act.

(5) The requirements regarding the reports of the ministries and the revenue from concessions collected thereby and the expenditures effected thereby shall be set out by the ordinance referred to in Article 35 herein.

Chapter Six

APPEAL. ACTION FOR DECLARATION OF CONCESSION CONTRACT INVALIDITY. ACTION FOR COMPENSATIONS AWARD. SANCTIONS

Section I

Appeal. Institution of Proceeding on Appeal

Article 156. (1) Any decision of the grantor under the concessionaire designation procedure, as well as the decisions of the commission on the exclusion of candidates from participation in a competitive dialogue with negotiation and in a competitive dialogue, shall be appealable according to the procedure established by this Chapter.

(2) The decisions referred to in Paragraph (1) shall be appealed before the CPC as to the legal conformity thereof, including as to the inclusion of any requirements infringing the principles referred to in Article 4 (1) herein in the notice, in the concession document and in any other document drawn up upon the conduct of the concessionaire designation procedure.

(3) Any acts or omissions of the grantor, whereby access to, or participation of persons in, the concessionaire designation procedure is obstructed, shall likewise be appealable according to the procedure established by this Chapter.

(4) Separate appealability shall not apply to the steps of the grantor for issuing the decisions referred to in Paragraph (1), as well as to any decisions of the commission other than those referred to in Paragraph (1). The decision of the commission on the exclusion of a participant in an open procedure shall be appealed together with the concessionaire designation decision or with the procedure termination decision of the grantor.

(5) Any decisions adopted by the Council of Ministers and any resolutions passed by a Municipal Council under this Act shall be unappealable.

Article 157. (1) An appeal shall be lodged within ten days from:

1. the publication in the National Concessions Register of the procedure initiation notice or, respectively, of the notice of corrigendum;

2. the communication or notification of the decision concerned, with the exception of the decision of the commission on the exclusion of a participant in an open procedure, the time limit for appeal whereof shall commence from the notification of the concessionaire designation decision or, respectively, of the procedure termination decision;

3. becoming aware of any act or omission referred to in Article 156 (3) herein, and where the person has not been notified, from the date of expiry of the time limit for performing the act concerned but not later than from the conclusion of the concession contract.

(2) An appeal may be lodged by:

1. any person concerned: in the cases referred to in Item 1 of Paragraph (1);
2. any candidate concerned and any participant concerned: in the cases referred to in Items 2 and 3 of Paragraph (1).

Article 158. (1) An appeal shall be lodged with the CPC, with a copy to the grantor which organised the concessionaire designation procedure.

(2) An appeal must be written in the Bulgarian language and must state:

1. name of the authority wherewith the appeal is lodged;
2. particulars of the appellant:
 - (a) if a legal person: business name, registered office and address of the place of management, and particulars of registration according to the register wherein the person is entered, if any such register exists, as well as an e-mail address and/or a fax number for the receipt of communications and summonses;
 - (b) if a natural person: name, address and identity particulars thereof, as well as an e-mail address and/or a fax number for the receipt of communications and summonses;
 - (c) if a group of economic operators: the respective particulars under Littera (a) or Littera (b) of the operator who or which represents the group or of the lead partner;
3. business name and address, including an e-mail address, of the grantor which organised the concessionaire designation procedure;
4. particulars of the concessionaire designation procedure and of the decision, act or omission which is appealed;
5. alleged violations on which the appeal is based;
6. request by the appellant;
7. signature of the person who lodges the appeal or of the attorney-in-fact thereof.

(3) The appeal shall be accompanied by:

1. a copy of the decision appealed, where not published in the Official Journal of the European Union, in the State Gazette or in the National Concessions Register;
2. evidence of compliance with the time limit referred to in Article 157 (1) herein;
3. a power of attorney, where the appeal is lodged by an attorney-in-fact;
4. documentary proof of payment of stamp duty fixed by a rate schedule approved by the Council of Ministers;
5. proof of dispatch of the appeal to the grantor;
6. other evidence in the possession of the appellant.

(4) Where the appeal does not meet the requirements of Paragraph (2) and Items 1 to 4 of Paragraph (3), the Chairperson of the CPC shall send a communication to the appellant and shall allow five days for remedying the non-conformities.

Article 159. (1) The Chairperson of the CPC shall not institute a proceeding where:

1. the appeal has been lodged after the expiry of the respective time limit referred to in Article 157 (1) herein;
2. the non-conformities have not been remedied within the time limit referred to in Article 158 (4) herein;
3. the appeal was withdrawn before the institution of the proceeding;
4. the instrument, act or omission is unappealable.

(2) In the cases referred to in Paragraph (1), the Chairperson of the CPC shall return the appeal by a directive, which shall be appealable by an interlocutory appeal before a three-judge panel of the Supreme Administrative Court within seven days from being communicated to the parties.

(3) The Court, sitting in camera, shall adjudicate on the interlocutory appeal within 14 days from the institution of the proceeding by a ruling which shall be final.

Article 160. (1) Within three days from the receipt of the appeal or, respectively, from the remedying of the irregularities, the Chairperson of the CPC shall issue a directive instituting a proceeding and, acting of his or her own motion, shall constitute the parties and shall designate a member of the CPC to monitor the inquiry into the appeal and, where necessary, to give instructions.

(2) Where a decision of a commission is appealed, the grantor which organised the concessionaire designation procedure shall be constituted as a party to the proceeding.

(3) The grantor shall be notified of the proceeding on the appeal as instituted and, within three days from the receipt of the notification, shall send a written opinion on the appeal, accompanying the said opinion with the complete case file on the concessionaire designation procedure on an electronic medium, as well as with other evidence in the possession of the grantor.

Article 161. (1) After the institution of the proceeding, the Chairperson of the CPC shall issue an order designating officials of the administration of the CPC to conduct an inquiry into the appeal, hereinafter referred to as "work team".

(2) For a concession with classified information, the members of the work team must be cleared for access to information classified up to the relevant level according to the requirements of the Classified Information Protection Act.

Article 162. (1) After the receipt of the appeal, the grantor or, respectively, the commission may review the issue and remedy the violation alleged in the appeal. Any such remedying shall be effected within seven days from the receipt of the appeal, and where the appeal is against any decision subject to approval by the Council of Ministers or, respectively, by a Municipal Council, any such remedying shall be effected within 14 days from the receipt of the appeal.

(2) The instrument whereby the violation is remedied shall be appealable according to the procedure established by this Chapter, and in this case Paragraph (1) shall not apply.

Article 163. The procedure of Chapter Ten of the Administrative Procedure Code shall apply to all unregulated matters concerning the review procedure before the CPC.

Section II

Suspension of Concessionaire Designation Procedure

Article 164. (1) An appeal against a concessionaire designation decision shall suspend the concessionaire designation procedure until a final settlement of the dispute.

(2) An appeal against a procedure termination procedure, which includes a decision on conduct of a new concessionaire designation procedure or on a repetition of the procedure, shall suspend the new procedure or, respectively, the repetition until a final settlement of the dispute.

(3) Except in the cases under Paragraphs (1) and (2), an appeal shall suspend the concessionaire designation procedure only where suspension of the procedure has been requested.

Article 165. (1) A request for suspension of the concessionaire designation procedure shall be submitted simultaneously with the gentlemen of the appeal. Any such request shall be reasoned, inter alia by producing relevant evidence. Any request which has not been submitted simultaneously with the appeal shall not be examined.

(2) The Commission on Protection of Competition, sitting in a private session, shall pronounce on the request referred to in Paragraph (1) by a reasoned ruling within seven days from the institution of the proceeding on the appeal, leaving the procedure suspended or leaving the request without consideration.

(3) The Commission on Protection of Competition shall pronounce on the request referred to in Paragraph (1) after an

assessment of the possible consequences of a suspension of the procedure for all interests that may be harmed, including the public interest, and the interests related to national security and defence, to the life and health of citizens, to the environment, protected areas, zones and sites and to public order. The said assessment shall be based on the allegations in the appeal, the reasons set forth in the request referred to in Paragraph (1), the opinion of the grantor, if any such has been submitted, and the evidence produced by the parties.

(4) The Commission on Protection of Competition may not grant the request referred to in Paragraph (1) where the adverse consequences for all interests that can be harmed outweigh the benefit of the suspension where the adverse consequences for all interests that may be harmed outweigh the benefit of the imposition of the said measure.

(5) The pronouncement on the request referred to in Paragraph (1) shall not be binding on the CPC upon settlement of the dispute on the merits and shall not affect the other requests of the appellant.

(6) The ruling referred to in Paragraph (2) shall be appealable by an interlocutory appeal before a three-judge panel of the Supreme Administrative Court within five days from being communicated to the parties. The Court, sitting in camera, shall adjudicate on the interlocutory appeal within 14 days from the institution of the proceeding by a ruling which shall be final.

(7) An appellate review of the ruling referred to in Paragraph (2) shall not stay the proceeding on the appeal.

(8) Where suspension of the concessionaire designation procedure has been requested by the appeal, the said procedure shall be suspended until the following become enforceable:

1. the ruling whereby the request for suspension is left without consideration;
2. the directive whereby an institution of proceeding on the appeal has been refused;
3. the decision on the appeal: in the rest of the cases.

Article 166. (1) Where the appeal lodged is against a concessionaire designation decision or against a procedure termination decision which includes a decision on conduct of a new concessionaire designation procedure or on a repetition of the procedure, by the opinion thereof on the appeal, referred to in Article 160 (3) herein, the grantor may request the admission of anticipatory enforcement of the decision appealed by the opinion thereof on the appeal, referred to in Article 160 (3) herein. Any such request shall be reasoned, inter alia by producing relevant evidence. Any request which has been submitted after the expiry of the time limit referred to in Article 160 (3) herein shall not be examined.

(2) The Commission on Protection of Competition, sitting in a private session, shall pronounce on the request referred to in Paragraph (1) by a reasoned ruling within three days from the receipt of the request, admitting anticipatory enforcement or leaving the request without consideration. Any request referred to in Paragraph (1), which does not state reasons, shall be left without consideration.

(3) The Commission on Protection of Competition shall admit anticipatory enforcement by way of exception, in order to safeguard the life and health of citizens, to protect essential State or public interests, or where any delay of enforcement may result in significant or irreparable harm, including to the object of the concession or to the activity which is supposed to be carried out by the concessionaire.

(4) Anticipatory enforcement shall not be admitted where the request is justified by economic interests which lead to disproportionate consequences resulting from a delay of the performance of the concession contract or from the conduct of a new concessionaire designation procedure or a repetition of the procedure, a replacement of the concessionaire under the contract or payment of compensations and/or other sanctions.

(5) The ruling referred to in Paragraph (2) shall be appealable by an interlocutory appeal before a three-judge panel of the Supreme Administrative Court within five days from being communicated to the parties.

(6) The Court, sitting in camera, shall adjudicate within 14 days from the institution of the proceeding by a ruling which shall be final.

(7) The interlocutory appeal shall not suspend the proceeding on the appeal but shall suspend the anticipatory enforcement as admitted.

Article 167. The provisions of Chapter Thirteen of the Administrative Procedure Code shall apply to any unregulated matters concerning the review of the rulings of the CPC under this Section.

Section III

Examination of Appeal

Article 168. (1) Where a proceeding has been instituted on an appeal against a concessionaire designation decision and anticipatory enforcement has not been admitted, the CPC, acting of its own motion, shall verify whether any proceeding on the same concessionaire designation procedure is pending. If the CPC establishes that another proceeding is pending, the CPC shall suspend the proceeding instituted on the appeal until the final settlement of the dispute on the pending proceeding.

(2) The proceeding on the appeal shall be resumed by the CPC either of its own motion or at the request of one of the parties after the decisions on the pending proceedings become enforceable.

(3) Paragraphs (1) and (2) shall furthermore apply where the proceeding is on an appeal against a procedure termination procedure which includes a decision on conduct of a new concessionaire designation procedure or on a repetition of the procedure.

Article 169. (1) The inquiry into the case file shall be conducted by the work team and shall cover the circumstances of the appeal.

(2) The parties to the proceeding, the State bodies and the officials shall be obliged to cooperate with the CPC and with the work team upon the discharge of the duties entrusted thereto by this Act.

Article 170. (1) After the completion of the inquiry, the work team shall submit to the monitoring member of the CPC a report, which shall contain a factual and legal analysis of the case, as well as a proposal for the manner of closing the proceeding.

(2) The monitoring member of the CPC shall notify the Chairperson of the completion of the inquiry. The Chairperson of the CPC shall issue an endorsement scheduling a public session for examination of the case file.

(3) The parties shall be notified of the completion of the inquiry and shall be summoned to the session, the time limit for summoning being at least three days before the session.

(4) Until the day before the session, the parties shall have the right to familiarise themselves with the evidence gathered under the case file.

Article 171. (1) Communications and summonses shall be served electronically at an email address or by fax as follows, on:

1. the grantor: at the address indicated in the procedure initiation notice;
2. the appellant: at the address or fax number indicated in the appeal;
3. the rest of the parties: at the address whereat the said parties have received notifications during the concessionaire designation procedure, unless the said parties have indicated another address or fax number in the review procedure.

(2) The communications and summonses shall be presumed to be validly served upon the entry thereof in the stated information system or, respectively, upon the receipt of an automatically generated message confirming the dispatch by fax, and shall be certified by a copy of the electronic record of this entry or, respectively, of a copy of the automatically generated message.

(3) Where the appellant or, respectively, the parties referred to in Item 3 of Paragraph (1) are of an unknown address or fax number, or cannot be found at the address indicated thereby, the said appellant or parties shall be presumed to be notified by means of publication of a communication in the public register on the Internet site of the CPC.

Article 172. (1) Oral and written evidence and expert opinions shall be admitted in the proceeding before the CPC. The Commission on Protection of Competition may refer to information which is publicly accessible or which has come to the

knowledge of the Commission in connection with the activities thereof.

(2) Upon recourse to expert opinions, the costs of the expert fees shall be borne by the party which requested the expert examination and shall be remitted in advance. Should an expert examination be ordered on the initiative of the CPC, the costs of the expert fee shall be awarded against the appellant, where the appeal is left without consideration or the proceeding is terminated, and against the grantor in the rest of cases.

(3) The evidence gathered in the proceeding before the CPC may not be disclosed if the said evidence constitutes any information protected by law, any sensitive information and any information designated as confidential. Where any such evidence contains any data constituting classified information, the Classified Information Protection Act shall apply.

(4) The parties shall be obliged to provide all evidence thereof not later than until the day before the session for an examination of the appeal.

Article 173. (1) For the valid transaction of business at sessions, they must be attended by at least four of the members of the CPC.

(2) In a concession with classified information, the members of the CPC who participate in the proceeding for an examination of the case file must be cleared for access to information classified up to the relevant level according to the requirements of the Classified Information Protection Act.

(3) No member of the CPC may participate in a proceeding under this Act if the said member has an interest in the outcome of the said proceeding or where there are reasonable doubts as to the impartiality thereof. Any such member of the Commission shall be recused either on his or her own initiative or at the request of the parties.

(4) The session shall commence by addressing the preliminary matters regarding the validity of the proceeding.

(5) Questions may be put to the parties to the proceeding according to a procedure established by the Chairperson of the CPC.

(6) When the person presiding over the session determines that the circumstances concerning the appeal have been clarified, the said person shall afford the parties an opportunity to present opinions.

(7) After the clarification of the dispute, the person presiding over the session shall declare the session closed.

Section IV

Commission on Protection of Competition: Decisions and Rulings. Termination of Proceeding

Article 174. (1) The Commission on Protection of Competition shall adopt decisions and shall render rulings by an open ballot and by a majority of four votes. Where fewer than seven members attend the session, the decision shall be adopted only provided at least four of the members of the Commission have voted in favour of the said decision.

(2) The Commission on Protection of Competition shall pronounce on the appeal by a decision within two months from the institution of the proceeding, where the concession is with a cross-border interest, and within one month, where the concession is without a cross-border interest.

Article 175. (1) The Commission on Protection of Competition, sitting in a private session, shall adopt a decision whereby:

1. the Commission shall leave the appeal without consideration;

2. the Commission shall set aside the legally non-conforming procedure initiation decision;

3. the Commission shall set aside the legally non-conforming decision or step or shall ascertain the legally non-conforming omission and, with binding instructions, shall revert the case file for continuation of the concessionaire designation procedure as from the last legally conforming decision or step or, where applicable, for termination of the procedure, or

4. shall declare the invalidity of the decision.

(2) Where a concessionaire designation procedure has been appealed and anticipatory enforcement has been admitted as a result of which a concession contract has been concluded, the CPC shall ascertain the legal non-conformity of the decision without setting aside the said decision and shall impose the sanction referred to in Article 183 (1) herein on the grantor.

(3) Where the concession contract has been concluded before the commencement of the time limit for the conclusion thereof under Article 120 (2) or (3) herein or in violation of Article 120 (4) herein but a breach of the concessionaire designation procedure, the CPC shall impose the sanction referred to in Article 183 (2) herein on the grantor.

(4) In the cases referred to in Paragraph (2), the concession contract shall continue in effect, whereas any person concerned may bring an action for compensation, Article 181 herein applying *mutatis mutandis*.

(5) The decision of the CPC shall be in writing and shall state:

1. date, place of adoption and number;
2. number of the proceeding whereunder the decision is adopted;
3. factual and legal grounds for the adoption thereof;
4. reasons;
5. operative part;
6. the party against which the costs are awarded;
7. the authority before which the decision may be appealed, and time limit for appeal.

(6) Any member of the CPC who disagrees with the decision shall sign the said decision with a reasoned dissenting opinion, which shall be attached to the decision.

(7) The decision with the reasons, as well as the dissenting opinions, if any, shall be drawn up and made public not later than 14 days after the session whereat the examination of the case file has been completed.

Article 176. (1) The Commission on Protection of Competition shall pronounce on the liability for the costs under the terms and according to the procedure established by Article 143 of the Administrative Procedure Code.

(2) Within the time limit for appeal of the instrument concerned, the CPC, acting at the request of the parties, may supplement or amend the instrument in the part thereof concerning the costs.

(3) The Commission on Protection of Competition shall communicate the request referred to in Paragraph (2) to the opposing party with an instruction to submit a response within three days.

(4) The ruling on the request referred to in Paragraph (2) shall be rendered in a private session and shall be served on the parties. The ruling shall be appealable according to the procedure established by Article 177 (2) herein or, respectively, Article 178 (1) herein.

Article 177. (1) The Commission on Protection of Competition shall terminate the proceeding by a ruling:

1. where the appeal is inadmissible;
2. where the natural-person appellant has died or if the legal-person appellant has been dissolved without a successor in title;
3. upon withdrawal of the appeal.

(2) The ruling referred to in Paragraph (1) shall be appealable according to Article 167 herein before a three-judge panel of the Supreme Administrative Court within five days from being communicated to the parties. An appellate review shall suspend the enforcement of the ruling referred to in Paragraph (1). The Court, sitting in camera, shall adjudicate within 14 days from the institution of the proceeding by a ruling which shall be final.

Section V

Appellate Review of Decisions of Commission on Protection of Competition before Supreme Administrative Court

Article 178. (1) The decision of the CPC shall be appealable before a three-judge panel of the Supreme Administrative Court within 14 days from being communicated to the parties.

(2) The Supreme Administrative Court shall adjudicate within one month from the receipt of the appeal, and the judgment of the said Court shall be final.

(3) The terms and procedure established by Chapter Twelve of the Administrative Procedure Code shall apply to any unregulated matters concerning the review procedure before the Supreme Administrative Court.

Section VI

Action for Declaration of Concession Contract Invalidity

Article 179. (1) A concession contract shall be invalid if concluded:

1. without publication of a concession notice and, where applicable, of a prior information notice in the Official Journal of the European Union: in a concession with a cross-border interest;

2. without publication of a national notice in the State Gazette: in a concession without a cross-border interest;

3. contrary to a procedure initiation notice published in the Official Journal of the European Union or, respectively, in the State Gazette;

4. without conduct of a concessionaire designation procedure;

5. where, despite a suspension imposed on the concessionaire designation procedure, steps have been taken under the procedure;

6. before the commencement of the time limit for the conclusion of the contract.

(2) A concession contract shall furthermore be invalid where:

1. the concession is not included in the relevant action plan;

2. the concessionaire designation procedure was opened without approval by the competent authority;

3. the specific duration exceeds the maximum duration indicated in the procedure initiation notice;

4. the contract contains a review clause which includes a possibility to extend the duration of the concession beyond the estimated aggregate duration of all permissible extensions indicated in the procedure initiation notice;

5. upon conduct of the concessionaire designation procedure, a ground for the termination of the said procedure emerges under sentence two of Article 117 (2) herein;

6. the content of the contract does not conform to the minimum contents defined in Article 122 (2) herein or is contrary to another requirement of this Act.

(3) It shall be inadmissible to bring an action for the declaration of the invalidity of a concession contract which has been concluded on the basis of an enforceable ruling on the admission of anticipatory enforcement.

(4) Any person concerned may bring an action for the declaration of the invalidity of a concession contract.

(5) The action referred to in Paragraph (4) shall be brought according to the procedure established by the Code of Civil Procedure within two months from the publication of the concession award notice in the National Concessions Register.

(6) Where a contract award notice has not been published, the action shall be brought within two months from becoming

aware but not later than one year from the conclusion of the concession contract.

Article 180. (1) Any economic operator, who has or has had an interest in the conduct of a new concessionaire designation procedure, may bring an action for the declaration of invalidity of a supplementary agreement modifying a concession contract pursuant to Article 137 (6) or Article 138 (4) herein according to the procedure established by the Code of Civil Procedure.

(2) The action referred to in Paragraph (1) shall be brought within two months from the publication of the concession award modification notice in the National Concessions Register. Where a notice has not been published, the action shall be brought within two months from becoming aware but not later than one year from the conclusion of the supplementary agreement.

Section VII

Action for Compensation

Article 181. Any person, who has appealed against any decision, act or omission according to the procedure established by this Act, may bring an action for compensation in respect of any harm inflicted thereon as a result of a legally conforming decision, act or omission, under the terms and according to the procedure established by Article 203 (1), Article 204 (1), (3) and (4) and Article 205 of the Administrative Procedure Code.

Article 182. Any person concerned, who has sustained harm resulting from any decision, act or omission of a public authority upon the conduct of a concessionaire designation procedure, may bring an action under the Act on the Liability for Damage Incurred by the State and the Municipalities.

Section VIII

Sanctions

Article 183. (1) Where a concession contract has been concluded after the admission of anticipatory enforcement and legal non-conformity of the concessionaire designation decision has been ascertained or the decision appealed has been declared invalid, the CPC, by the decision referred to in Article 175 (2) herein or, respectively, the Supreme Administrative Court, by the judgment referred to in Article 178 (2) herein, shall impose on the grantor a sanction amounting to 5 per cent of the value of the concession.

(2) A sanction amount to 1 per cent of the value of the concession shall be imposed on a grantor in the cases referred to in Article 175 (3) herein.

Article 184. Sanctions under this Section shall be imposed and shall be paid from the budget of the grantor which organised the concessionaire designation procedure, including where the ascertained violation was committed by the commission appointed by the said grantor.

Chapter Seven

RECTIFYING INFRINGEMENTS IN CONCESSIONAIRE DESIGNATION PROCEDURE FOR CONCESSION WITH CROSS-BORDER INTEREST, ESTABLISHED BY EUROPEAN COMMISSION

Article 185. (1) Where, prior to the conclusion of a concession contract for a concession with a cross-border interest, the

European Commission notifies the Permanent Representation of the Republic of Bulgaria to the European Union that a serious infringement of the European Union law in the field of concessions has been committed, the Permanent Representation shall forward the notification to the specialised directorate of the Council of Ministers administration, as well as to the Ministry of Foreign Affairs and the Ministry of Economy, on the day when the notification is received or on the next working day at the latest.

(2) On the day when the notification is received, the Director of the specialised directorate of the Council of Ministers administration shall transmit a copy of the said notification to the grantor concerned.

(3) Where an appeal has been lodged with regard to the violation notified by the European Commission, the grantor shall notify the specialised directorate of the Council of Ministers administration of this within three days from the receipt of the notification referred to in Paragraph (2) and shall provide information on the progress of the review procedure.

(4) Except in the cases under Paragraph (3), the grantor shall conduct a check regarding the reasons of the European Commission to believe that a serious infringement has been committed.

(5) As a result of the check referred to in Paragraph (4), within 14 days from the receipt of the notification referred to in Paragraph (2) the grantor:

1. shall rectify the infringement, or
2. shall terminate the procedure by a decision under Item 4 of Article 117 (1) herein, or
3. shall issue a decision terminating the concessionaire designation procedure, where the grantor determines that the allegations of the European Commission are unfounded and, on the day of issuing the decision, shall approach the CPC with a request to ascertain the absence of legal non-conformity.

(6) Within three days from taking the respective step under Paragraph (5), the grantor shall notify the specialised directorate of the Council of Ministers administration of this and shall provide relevant evidence.

Article 186. (1) Where the infringement ensues from the application of a statutory instrument which does not conform to European Union law, the grantor shall continue the procedure and shall approach the competent State body within three days from the receipt of the notification referred to in Article 185 (2) herein.

(2) Within 14 days from being approached, the body referred to in Paragraph (1) shall notify the grantor and the specialised directorate of the Council of Ministers administration of the measures to bring the statutory instrument into conformity with European Union law.

Article 187. (1) In the cases referred to in Item 3 of Article 185 (5) herein, the CPC, within three days from being approached, shall institute a proceeding and shall notify the grantor and the specialised directorate of the Council of Ministers administration of this.

(2) The procedure established by Chapter Six herein shall apply to the proceeding referred to in Paragraph (1), *mutatis mutandis*, with the candidates or participants concerned being constituted as parties by the Chairperson of the CPC, acting of his or her own motion.

(3) The Commission on Protection of Competition shall adopt a decision ascertaining the absence of legal non-conformity or, where legal non-conformity applies, the said Commission shall adopt the relevant decision referred to in Items 2 to 4 of Article 175 (1) herein.

(4) The suspension of the procedure, effected by decision of the grantor under Item 3 of Article 185 (5) herein, shall be in effect until a final settlement of the dispute by an enforceable decision of the CPC.

(5) The Commission on Protection of Competition and the Supreme Administrative Court shall notify the grantor of any decision, judgment and ruling in the proceeding referred to in Paragraph (1) within three days from the adoption or, respectively, of the rendition thereof.

Article 188. (1) On the day following the date of receipt of the information referred to in Article 185 (3) herein or the evidence referred to in Article 185 (6) herein but not later than 21 days from the receipt of the notification referred to in Article 185 (1) herein, the specialised directorate of the Council of Ministers administration shall transmit a response to the European Commission regarding the infringement alleged by the European Commission to the Permanent Representation of the Republic of Bulgaria to the European Union, with a copy to the Ministry of Foreign Affairs and to the Ministry of Economy, which shall contain as a minimum:

1. a confirmation that the infringement has been rectified, or
 2. information about the instrument whereby the procedure was suspended and/or a proceeding before the CPC was instituted, and where the infringement ensues from a statutory instrument, information regarding the measures taken to bring the statutory instrument into conformity with European Union law.
- (2) The response referred to in Paragraph (1) shall be accompanied by relevant evidence.

Article 189. The Commission on Protection of Competition and the Supreme Administrative Court shall transmit the decisions, judgments and rulings in the proceedings under this Chapter to the specialised directorate of the Council of Ministers Administration within seven days from being made public.

Article 190. The notifications under this Chapter, as well as the information and documents accompanying the said notifications, shall be transmitted electronically accompanied by an electronic signature or by fax.

Chapter Eight

NATIONAL CONCESSIONS REGISTER

Article 191. (1) The Council of Ministers, through the specialised directorate of the Council of Ministers administration, shall maintain a National Concessions Register, wherein data on the concessions shall be entered.

(2) (Effective 31.01.2019 - SG No. 96/2017) The National Concessions Register shall be maintained as a centralised electronic information system which shall contain a database:

1. on the concessionaire designation procedures conducted according to the procedure established by this Act;
2. on all concessions, irrespective of the procedure according to which they are awarded or granted;
3. with a reference section, which shall include the National Concessions Development Strategy, the action plans for State and municipal concessions, the applicable statutory instruments concessions, the guidelines, instructions and other documents and information relating to the monitoring, management and control of concessions;
4. with other information relating to concession, which shall be determined by a decision of the Council of Ministers

(3) (Effective 31.01.2019 - SG No. 96/2017) The database shall be in electronic form and shall be built electronically by means of exchange of electronic documents and of an electronic image of other documents.

(4) (Effective 31.01.2019 - SG No. 96/2017) The electronic database shall be created and maintained in a manner which:

1. guarantees protection of the data against deletion and unauthorised modification;
2. affords access to the electronic information system for entry of data by empowered persons;
3. provides information indicating the exact data and time when data are entered.

(5) (Effective 31.01.2019 - SG No. 96/2017) The National Concessions Register may enable selective retrieval of information and analytical searches in order to facilitate strategic development, planning, monitoring, management and control in the field of concessions.

(6) The National Concessions Register shall be open to public inspection and shall be accessible via the Internet.

Article 192. (Effective 31.01.2019 - SG No. 96/2017) (1) The National Concessions Register shall contain distinct records, which shall be assigned a unique identifier, disaggregated by type of concession (State, municipal and joint) for each concessionaire designation procedure and for each concession award, allocated to grantors.

(2) The record of each concessionaire designation procedure under this Act shall contain, as a minimum:

1. identifier of the record and date of opening thereof;

2. type of the concession;
3. name of the concession;
4. type of the concessionaire designation procedure;
5. procedure initiation notice as sent for publication in the Official Journal of the European Union or, respectively, in the State Gazette;
6. decisions and notices of corrigendum, if any;
7. concession documents, wherein the information protected by law and the sensitive information is deleted;
8. clarifications and additional information provided by the commission upon the conduct of the concessionaire designation procedure;
9. concession award or grant decisions of the grantor, as well as concession contract modification and termination decisions, where any such have been issued;
10. appeals lodged upon the conduct of the concessionaire designation procedures, as well as the rulings and decision on the said appeals;
11. report on the procedure in writing, completed in a standard form, which shall contain at least the following information:
 - (a) particulars of the grantor;
 - (b) particulars referred to in Items 2 to 4;
 - (c) name of the concession;
 - (d) number of candidates or participants who or which submitted an application;
 - (e) number of candidates or participants who or which were excluded;
 - (f) number of participants whose tenders were ranked, as well as business name and nationality of the said participants;
 - (g) business name and nationality of the participant designated as a concessionaire;
 - (h) estimated value of the concession and value of the concession as determined in the procedure;
 - (i) maximum duration of the concession and duration of the concession as determined in the procedure;
 - (j) date of completion or, respectively, termination of the procedure;
 - (k) grounds for termination of the procedure.
- (3) The record of each concession shall contain as a minimum:
 1. identifier of the record and date of opening thereof;
 2. type of the concession;
 3. name of the concession;
 4. concession award notice, where publication of any such notice is required;
 5. an electronic image of the original of the concession contract wherein the information protected by law, the sensitive information and the information designated as confidential is deleted;
 6. concession contract modification decisions and notices, if any;
 7. an electronic image of each supplementary agreement to the concession contract, where any such agreement has been concluded;
 8. information on performance of the concession contract, completed in a standard form;
 9. information on the subcontracts, completed in a standard form.

(4) The Council of Ministers shall adopt a decision approving the contents of the records referred to in Paragraphs (2) and (3), including standard forms of the report in writing referred to in Item 11 of Paragraph (2) and of the information referred to in Item 8 of Paragraph (3), as well as a nomenclature of the analytical searches referred to in Article 191 (5) herein. By the decision referred to in Item 4 of Article 191 (2) herein, the Council of Ministers may set out requirements regarding the inclusion of information, as well as a standard form for the provision of the said information to the National Concessions Register.

(5) All changes regarding the data as entered shall also be included on the record of each concession.

(6) A link shall be provided between the record of the procedure and the record of the concession with regard to any concessions awarded according to the procedure established by this Act.

Article 193. (Effective 31.01.2019 - SG No. 96/2017) (1) The opening of a record, the entry of data and the publication of documents in the National Concessions Register shall be effected by one or more officials designated by the grantor.

(2) The persons referred to in Paragraph (1) shall access the National Concessions Register by means of a unique identifier, which shall be provided by the specialised directorate of the Council of Ministers administration at the request of the grantor.

(3) The persons referred to in Paragraph (1) shall enter the data in the National Concessions Register by means of electronic forms which shall be maintained on the Internet site of the Register.

(4) The persons referred to in Paragraph (1) shall enter the data and shall publish the documents in the National Concessions Register within the time limits fixed by this Act and, with regard to entries for which no express time limit is fixed, within 30 days from the taking of the step or from the drawing up of a document subject to entry or, respectively, to publication.

(5) The National Concessions Register shall be maintained by officials at the specialised directorate of the Council of Ministers administration who shall be designated by an order of the Prime Minister or of an official designated thereby.

Article 194. The Electronic Government Act shall apply to any unregulated matters regarding the entry of data and the publication of documents in the National Concessions Register, as well as the maintenance thereof.

Chapter Nine

ADMINISTRATIVE PENALTY PROVISIONS

Article 195. (1) Any grantor, who has infringed any principle referred to in Article 4 (1) herein upon the award of a concession, including where the said grantor has not ensured the publication of the relevant procedure initiation notice, shall be liable to a fine amounting to the lesser of 2 per cent of the value of the concession, inclusive of value added tax, and BGN 50,000.

(2) The penalty referred to in Paragraph (1) shall furthermore be imposed on any grantor who concludes a contract with the characteristics of a concession contract without conduct of a procedure under this Act, except in the cases referred to in Annex 4 hereto. A penalty shall not be imposed where the contract has been concluded after conduct of a procedure according to the procedure established by the Public Procurement Act.

(3) Any grantor, who concludes a supplementary agreement to a concession contract if there is no ground for modification under Articles 137 to 139 herein, shall be liable to a fine of BGN 10,000 or exceeding this amount but not exceeding BGN 15,000.

Article 196. (1) Any grantor, who determines the estimated value of a concession in breach of the requirements of Article 28 herein, shall be liable to a fine of BGN 5,000 or exceeding this amount but not exceeding BGN 10,000.

(2) Where the violation referred to in Paragraph (1) is combined with a concession award according to a laxer procedure than the procedure provided for in this Act, the grantor shall be liable to a fine amounting to the lesser of 2 per cent of the value of the concession contract as concluded, inclusive of value added tax, and BGN 20,000, and where there is no written contract, to a fine amounting to the lesser of 2 per cent of the costs incurred or of the obligation assumed to incur

costs and BGN 20,000.

Article 197. Any member of a commission, who fails to submit a request for release from the commission in the case referred to in Item 2 of Article 80 (6) herein, shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 2,500 unless the act constitutes a criminal offence.

Article 198. (1) Any official, who fails to comply with an obligation to open any record, to enter any data or to publish any document in the National Concessions Register within the time limit laid down, shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000.

(2) Any official, who publishes untrue data in the National Concessions Register, shall be liable to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 5,000 unless the act constitutes a criminal offence.

Article 199. Any person, who represents a public partner in a public-private company which is the contractor of a concession contract and who fails to exercise the blocking rights under Article 22 (4) herein, shall be liable to a fine of BGN 15,000 or exceeding this amount but not exceeding BGN 20,000, unless the act constitutes a criminal offence.

Article 200. Any grantor, who fails to submit the report of the PPCA referred to in Article 42 (3) herein to the Coordinating Council of who submits the said report without a schedule for implementing the recommendations, shall be liable to a fine of BGN 5,000.

Article 201. (1) The written statements ascertaining any violations under this Act, ascertained by authorities of the Bulgarian National Audit Office, shall be drawn up by empowered auditors within six months from the day on which the offender was detected but not later than three years after the commission of the violation.

(2) The penalty decrees shall be issued by the President of the Bulgarian National Audit Office or by officials empowered thereby.

Article 202. (1) The written statements ascertaining any violations under this Act shall be drawn up by officials of the Public Financial Inspection Agency within six months from the day on which the offender was detected by authorities of the Agency upon the conduct of a financial inspection or verification but not later than three years after the commission of the violation.

(2) The penalty decrees shall be issued by the Minister of Finance or by officials empowered thereby.

Article 203. The ascertainment of violations, the issuing, appellate review and enforcement of the penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

Article 204. (1) Any person, who or which fails to comply with any enforceable decisions and/or rulings of the CPC, shall be liable to a fine or, respectively, a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 50,000.

(2) The Commission on Protection of Competition shall ascertain the violation committed and shall impose the penalties referred to in Paragraph (1) by a decision which shall be appealable before the Supreme Administrative Court according to the procedure established by Chapter Ten of the Administrative Procedure Code.

SUPPLEMENTARY PROVISIONS

§ 1. Within the meaning given by this Act:

1. "Electronic signature" shall be an advanced electronic signature or a qualified electronic signature within the meaning given by Article 13 (2) and (3) of the Electronic Document and Electronic Trust Services Act.

2. "Electronic means" shall be devices (means of electronic equipment) for the electronic processing, including digital compression, storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.
3. "Candidate concerned" shall be a candidate that has not been excluded from participation in the concessionaire designation procedure when taking the steps for admission and/or selection but has not been notified of the exclusion or the review procedure for the decision whereby the said candidate has been excluded has not been closed.
4. "Participant concerned" shall be a participant that is ranked but is not designated as a concessionaire, as well as a participant that has been excluded from the concessionaire designation procedure but the decision whereby the said participant has been excluded has not entered into effect.
5. "Person concerned" shall be any person who or which has or has had an interest in concluding a concession contract and who or which has been or risks being harmed by an alleged violation.
6. "Legislation of the State in which the candidate or participant is established" shall be:
 - (a) in the case of natural persons: the national law (*lex patriae*) thereof, within the meaning given by Article 48 of the Private International Law Code;
 - (b) in the case of legal persons: the law of the State determined according to Article 56 of the Private International Law Code;
 - (c) in the case of a group of economic operators: the law of the State of the participant who or which represents the group or the lead partner.
7. "Innovation" shall be the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations.
8. "Conflict of interest" shall be the existence of a private interest in the award of the concession within the meaning given by the Conflict of Interest Prevention and Ascertainment Act for the grantor, staff members of the grantor or other persons who are involved in the organisation and conduct of the concessionaire designation procedure or may influence the outcome of the said procedure.
9. "Common Procurement Vocabulary (CPV)" shall be a hierarchically structured nomenclature for classification, divided into divisions, groups, classes, categories and subcategories, as adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV).
10. Information shall be "confidential" where designated as trade or technical secret in the tenders of economic operators or in concession contracts.
11. "Postal services" shall be services comprehending the clearance, transport and distribution of postal items and express mail services within the meaning given by the Postal Services Act.
12. "Programming period" shall be the period which concurs with the respective multiannual financial framework of the European Union.
13. "Professional competence" shall be the availability of knowledge obtained through education or further training, and/or of skills acquired in the process of holding a particular post or position in pursuit of employment, civil-service or civil-law relationships.
14. "Public resources" shall have the meaning given to this term in the Financial Management And Control In The Public Sector Act.
15. "Public undertaking" shall be a State-owned undertaking established according to the procedure established by Article 62 (3) of the Commerce Act, as well as a commercial company whereof the capital is wholly owned by the State or by the municipality concerned.
16. "Related parties" shall be:
 - (a) lineal relatives up to any degree of consanguinity;
 - (b) collateral relatives up to the fourth degree of consanguinity inclusive;
 - (c) affines up to the second degree of affinity inclusive;

- (d) spouses or de facto cohabitants;
- (e) partners;
- (f) any two persons, of whom one participates in the management of the company of the other;
- (g) a company and a person who holds more than 5 per cent of the voting interests or shares issued in the company;
- (h) a company whereof the capital is wholly owned by the State or by a municipality and a person who exercises the rights of the State or, respectively, of the municipality, in the said company.

17. "Similar procedure under the legislation of the State in which a candidate or participant is established" shall be any procedure similar to bankruptcy or liquidation within the meaning given by the Commerce Act whereupon the assets of the economic operator are managed by a liquidator, by a trustee in bankruptcy or by the court, where the economic operator has entered into an arrangement with creditors and has suspended business activities, or other according to the national legislation of the economic operator.

18. "Grave professional misconduct" shall be any violation by an economic operator of applicable provisions of primary or secondary legislation or ethical standards of the profession to which the person belongs, as well as any infringement of intellectual property rights.

19. "Legal construct" shall be the overall legal model governing the relations between grantor and concessionaire, between grantor and concessionaire, of the one part, and a financing institution, of the other part, the manner of financing and furnishing security, relations with consumers, liability to other persons upon the execution of works and/or services, suspensive conditions or conditions subsequent, acquisition and transfer of ownership or return of the object of the concession, as well as all other legal matters relevant to the concession award. The legal construct shall furthermore include relations between partners in a public-private company, the relations between grantor and concessionaire in the cases where a group of economic operators participates or provisions are made for the formation of a project company.

20. "NUTS" shall be the nomenclature of territorial units for statistical purposes according to Regulation (EC) No. 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS).

§ 2. This Act transposes the requirements of:

1. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.
2. Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (89/665/EEC) regarding the requirements related to works concessions and services concessions.

TRANSITIONAL AND FINAL PROVISIONS

§ 3. This Act shall supersede:

1. the Concessions Act (promulgated in the State Gazette No. 36 of 2006; amended, SG Nos. 53, 65 and 105 of 2006, Nos. 41, 59 and 109 of 2007, Nos. 50, 67 and 102 of 2008, Nos. 47, 99 and 103 of 2009, Nos. 52 and 54 of 2010, Nos. 50 and 73 of 2011, Nos. 45 and 102 of 2012, Nos. 15, 24 and 66 of 2013, Nos. 98 and 107 of 2014, No. 14 of 2015 and Nos. 13 and 43 of 2016);
2. the Public-Private Partnership Act (promulgated in the State Gazette No. 45 of 2012; amended in Nos. 87 and 102 of 2012, No. 15 of 2013, No. 13 of 2016 and No. 85 of 2017).

§ 4. (1) Where a decision to initiate a concession granting procedure under Article 39 of the Concessions Act as superseded has been adopted until the entry into force of this Act, any such procedure shall be completed according to the hitherto effective procedure.

(2) Where an appeal has been lodged with the CPC or with the Supreme Administrative Court, as the case may be, until

the entry into force of this Act, the proceeding on any such appeal shall be instituted and completed according to the hitherto effective procedure.

§ 5. (1) Any concession contracts concluded until the entry into force of this Act shall continue in effect and shall be performed in accordance with the terms agreed therein.

(2) The provisions of this Act regarding the modification, including of the duration, and the termination of concession contracts shall apply to any contracts referred to in Paragraph (1). Upon modification of any contract referred to in Paragraph (1), a concession award modification notice shall be published in accordance with Article 141 (3) herein.

(3) The effects of the termination of any contracts referred to in Paragraph (1) shall be regulated according to the procedure established by the law applicable by the date of the conclusion of the contract.

(4) The provisions of this Act shall furthermore apply to the subcontractors of any contracts referred to in Paragraph (1).

§ 6. Within six months from the entry into force of this Act, the Council of Ministers:

1. shall adopt the ordinances referred to in Articles 35 and 44 herein;

2. shall bring the Rules of Organisation of the Privatisation and Post-Privatisation Control Agency into conformity with this Act;

3. shall approve a rate schedule of fees collected in proceedings under Chapter Six herein.

§ 7. Within six months from the entry into force of this Act, the Council of Ministers shall approve the National Concessions Development Strategy.

§ 8. Within three months from the approval of the National Concessions Development Strategy, the Council of Ministers and the municipal councils shall approve an action plan for State concessions and, respectively, an action plan for municipal concessions.

§ 9. The Water Act (promulgated in the State Gazette No. 67 of 1999; amended in No. 81 of 2000, Nos. 34, 41 and 108 of 2001, Nos. 47, 74 and 91 of 2002, Nos. 42, 69, 84 and 107 of 2003, Nos. 6 and 70 of 2004, Nos. 18, 77 and 94 of 2005, Nos. 29, 30, 36 and 65 of 2006; corrected in No. 66 of 2006; amended in Nos. 105 and 108 of 2006, Nos. 22 and 59 of 2007, Nos. 36, 52 and 70 of 2008, Nos. 12, 32, 35, 47, 82, 93, 95 and 103 of 2009, Nos. 61 and 98 of 2010, Nos. 19, 28, 35 and 80 of 2011, Nos. 45, 77 and 82 of 2012, Nos. 66 and 103 of 2013, Nos. 26, 49, 53 and 98 of 2014, Nos. 12, 14, 17, 58, 61, 95 and 101 of 2015, Nos. 15, 51, 52 and 95 of 2016 and Nos. 12 and 58 of 2017) shall be amended and supplemented as follows:

1. In Article 17a (1), the words "according to the procedure established by the Concessions Act" shall be deleted.

2. In Article 20:

(a) In Paragraph (1), the text before Item 1 shall be amended to read as follows: "The concession documents for mineral water extraction, as well as for water development systems and water development facilities constituting public municipal property, shall determine:";

(b) Paragraph (2) shall be amended to read as follows:

"(2) The concession contract shall lay down the specific obligations of the concessionaire to ensure the common use of the waters and the water sites and the existing rights to use the waters in the water reservoir.";

(c) in Paragraph (5), the word "granted" shall be replaced by "awarded".

3. In Article 21, Paragraphs (4) and (5) shall be repealed.

4. In Article 47:

(a) Paragraph (1) shall be amended to read as follows:

"(1) A mineral water extraction concession for mineral water constituting exclusive State property and public municipal

property shall be granted after taking preparatory steps and conducting a procedure. The procedure for the preparation and conduct of the concession granting procedure, as well as for the performance, modification and termination of the concession contracts for mineral water, shall be established by an ordinance of the Council of Ministers. The Concessions Act shall apply to any unregulated matters related to the strategic development and planning of mineral water extraction concessions, the monitoring, management and control, the financing of the activity and the National Concessions Register.";

(b) in Paragraph (2), Item 4 shall be repealed;

(c) in Paragraph (4), the word "royalty" shall be replaced by "remuneration", the number "30" shall be replaced by "50" and the words "the concession right is created, under the terms and according to the procedure established by Article 81 of the Concessions Act" shall be replaced by "the object of the concession is located ";

(d) Paragraph (5) shall be amended to read as follows:

"(5) The object of the concession referred to in Paragraph (1) shall be the mineral water of a mineral water occurrence discovered by a particular water withdrawal facility, together with the water withdrawal facility and the inner belt of the sanitary protected area thereof.";

(e) in Item 1 of Paragraph (6), the word "royalty" shall be replaced by "remuneration";

(f) there shall be inserted a new Paragraph (8):

(8) The following participants shall be excluded from participation in the procedure referred to in Paragraph (1):

1. any participants in respect of whom a ground for exclusion defined by the Concessions Act is present;
2. any participants who do not meet the requirements as to professional and technical ability or as to the financial and economic standing of the participants, as defined by the procedure initiation decision.";

(g) in Paragraph (9), the words "of the Council of Ministers to initiate a State concession granting procedure or, respectively, in the resolution of the Municipal Council regarding a municipal concession" shall be replaced by "to initiate the procedure";

(h) Paragraph (10) shall be amended to read as follows:

"(10) The amount of the annual concession remuneration shall be payable on the basis of the actually used quantity of mineral water but may not be less than 80 per cent of the resource allocated.";

(i) There shall be added a Paragraph (12):

"(12) A mineral water extraction concession shall be granted for a maximum duration of 35 years."

5. Article 47a shall be amended to read as follows:

"Article 47a. (1) A works concession, a services concession or a use concession for any water development systems and facilities, including for any hydraulic-engineering, hydro-power, irrigation, water-supply and sewerage systems and facilities, shall be awarded under the terms and according to the procedure established by the Concessions Act.

(2) Joint concessions shall be awarded for any water development systems intended for multiple-purpose use where different public authorities are competent for the management thereof.

(3) The draft decision on initiation of the concessionaire designation procedure and the justification of the concession for water development systems and facilities shall be consulted with the Minister of Environment and Water with regard to conformity with the effective river basin management plans and the flood risk management plans."

6. Articles 47b and 47c shall be repealed.

7. In Chapter Six, the heading "Specific Right to Water Withdrawal and to Use of Water Development Systems and Facilities" shall be deleted.

8. Articles 93, 94, 95, 96 and 97 shall be repealed.

9. Article 99 shall be repealed.

10. There shall be inserted a new Article 102:

"Article 102. (1) A mineral water extraction concession granting procedure shall be initiated by a decision of the Council of Ministers on a motion by the Minister of Environment and Water or, respectively, by a resolution of the Municipal Council on a motion by the municipality mayor.

(2) The decision or resolution referred to in Paragraph (1) shall determine:

1. the subject-matter and the object of the concession;
2. the maximum duration of the concession;
3. the starting date of the concession;
4. the conditions for implementation of the concession;
5. the principal rights and obligations under the concession contract;
6. the conditions and/or prohibitions for renting the object of the concession and for subcontracting any activities for the maintenance of the said object;
7. the type and amount of the performance guarantees for the obligations under the concession contract and/or other types of security;
8. the conditions for payment and the amount of the concession remuneration, including:
 - (a) the amount of the lump-sum concession remuneration due by the effective date of the concession contract;
 - (b) the mechanism for annual adjustment of the concession remuneration;
 - (c) the procedure for payment of the concession remuneration;
 - (d) the maximum grace period during which the concessionaire shall be exempted from the obligation to pay an annual concession remuneration, where such grace period is envisaged;
9. the conditions and timetable for the phased drawdown of the resource allocated;
10. the requirements related to national security and national defence;
11. the conditions for protection of the environment, human health and protected areas, zones and sites;
12. the obligation of the concessionaire to insure the object of the concession for the duration of the concession for the account of the concessionaire and for the benefit of the grantor;
13. the obligations of the concessionaire to construct and maintain, on its own resources, an infrastructure and facilities for public use of the unused mineral water resources which are not covered by the concession contract;
14. the factual or legal circumstances whereof the occurrence or change may lead to disturbing the balance between benefits and risks for the concessionaire and the grantor, as defined by the contract, as well as the effects of disturbing the said balance;
15. other requirements related to the nature of the concession.

(3) The procedure shall be concluded by a concessionaire designation decision or resolution, adopted by the Council of Ministers or, respectively, by the Municipal Council.

(4) The decisions or resolutions referred to in Paragraphs (1) and (3) shall be promulgated in the State Gazette and shall be appealable within 14 days according to the procedure established by the Administrative Procedure Code.

(5) Within one month from the entry into effect of the decision or resolution referred to in Paragraph (3), the Minister of Environment and Water or, respectively, the municipality mayor shall conclude a concession contract with the participant in the procedure which has been designated as concessionaire.

(6) The provisions of the Commerce Act and of the Obligations and Contracts Act shall apply, *mutatis mutandis*, to any unregulated matters in connection with the conclusion, performance, modification and termination of the mineral water extraction concession contract.

(7) Any disputes regarding the conclusion, performance, modification and termination of a mineral water extraction concession contract shall be settled according to the procedure established by the Code of Civil Procedure."

11. In Chapter Six, Section II with Articles 102a to 102f shall be repealed.

12. In Item 4 of Article 194 (1), the word "royalty" shall be replaced by "remuneration";

13. Article 195 shall be amended to read as follows:

"Article 195. The concessionaire shall pay the grantor concession remuneration for mineral water extraction."

14. In Article 198c (4):

(a) in Item 1, the words "select a water and sewerage utility" shall be replaced by "send representatives to the commission which conducts the concessionaire designation procedure";

(b) in Item 6, the words "the concession royalty, if such has been determined, or from" shall be deleted.

15. In Item 1 of Article 198d, the words "or select a water and sewerage utility according to the procedure established by the Concessions Act" shall be deleted.

16. In Article 198e (4), the words "from the concession royalty or" shall be deleted.

17. In Article 198p (2), the words "referred to in Article 46 (1) of the Concessions Act" shall be replaced by "for conduct of the concessionaire designation procedure".

§ 10. The provision of Item 4 of Article 118g (1) of the Water Act shall not apply to water withdrawal for any hydroelectric power plants which were commissioned by the 9th day of August 2010.

§ 11. The Code of Civil Procedure (promulgated in the State Gazette No. 59 of 2007; amended in No. 50 of 2008; [modified by] Constitutional Court Decision No. 3 of 2008, [promulgated in] No. 63 of 2008; amended in No. 63 of 2008; amended in No. 69 of 2008, Nos. 12, 19, 32 and 42 of 2009; [modified by] Constitutional Court Decision No. 4 of 2009, [promulgated in] No. 47 of 2009; amended in No. 82 of 2009, Nos. 13 and 100 of 2010; [modified by] Constitutional Court Decision No. 15 of 2010, [promulgated in] No. 5 of 2011; amended in Nos. 45, 49 and 99 of 2012, Nos. 15 and 66 of 2013, Nos. 53 and 98 of 2014, No. 50 of 2015, Nos. 15 and 43 of 2016 and Nos. 8, 13, 63 and 86 of 2017) shall be amended as follows:

1. In Article 73 (4), the words "one-half the amount of the stamp duty for inventory" shall be replaced by "one-half of the amount of the stamp duty for enforcement of a pecuniary receivable".

2. In Item 2 of Article 365, the words "a concession agreement or public-private partnership contract" shall be replaced by "and a concession contract".

§ 12. The Civil Aviation Act (promulgated in the State Gazette No. 94 of 1972; amended in No. 30 of 1990, No. 16 of 1997, No. 85 of 1998, No. 12 of 2000, Nos. 34 and 111 of 2001, Nos. 52 and 70 of 2004, Nos. 88 and 102 of 2005, Nos. 30, 36, 37, 105 and 108 of 2006, Nos. 10, 41 and 109 of 2007, Nos. 36, 66 and 67 of 2008, Nos. 35, 47, 82 and 102 of 2009, Nos. 63, 73 and 94 of 2010, Nos. 41, 81 and 99 of 2011, Nos. 38, 60 and 82 of 2012, Nos. 15 and 66 of 2013, Nos. 12, 53 and 98 of 2014, Nos. 28 and 89 of 2015, Nos. 15 and 95 of 2016 and No. 58 of 2017) shall be amended and supplemented as follows:

1. In Item 9 of Article 16a, the words "which as not conceded" shall be replaced "for which a concession has not been awarded".

2. Article 43b shall be amended to read as follows:

"Article 43b. (1) Civil airports for public use which constitute State property shall be used under the terms established by this Act by airport-operator merchants who have been awarded a works concession or a services concession according to the procedure established by the Concessions Act or by commercial corporations wherein the State is the sole owner of the capital.

(2) A services concession may furthermore be granted according to the procedure established by the Concessions Act and under the terms established by this Act to civil airports for public use constituting State property for:

1. passenger handling and/or freight, baggage and mail handling, and/or carrying out an accessory activity in a self-contained part of an airport designated by an effective master plan for the development of the airport, and/or

2. a service provided within the perimeter of the airport, other than the groundhandling activities referred to in Article 48e (3).

(3) The powers of a grantor with regard to a concession referred to in Paragraphs (1) and (2) shall be executed by the Minister of Transport, Information Technology and Communications.

(4) In the concessionaire designation procedure for a concession referred to in Paragraph (1), the requirements for an airport operator referred to in Items 2 and 3 of Article 48d (2) shall be established as a condition for participation in the procedure. By the tenders thereof, the participants in the procedure shall submit proposals regarding the organisation, equipment and technology whereby they will ensure conformity to the established standards and procedures for ensuring flight safety and security at the airport concerned, as well as proposals regarding the manner of management and operation of the airport. An airport operator licence shall be issued to the concessionaire after the conclusion of the concession contract within the time limits agreed therein where the concessionaire meets the requirements for the issuing of a licence, as defined by this Act.

(5) The concession contract for a concession referred to in Paragraph (1) shall furthermore lay down the rights and obligations related to the activities referred to in Article 48a (3) and Items 3 to 5 and 7 of Article 48e (3) which are carried out by the concessionaire. The contract shall grant the concessionaire the right to collect airport charges under Article 120 (1), establishing the terms and procedure for this and, inter alia, specifying the portion of the charges which the concessionaire shall collect for the benefit thereof as revenue from the operation of the airport and/or of the services.

(6) The accessory activity referred to in Item 1 of Paragraph (2) shall be any activity related to passenger, freight and mail handling whereof the carrying out is justified by the traffic at the airport and the economic activities carried out and which does not obstruct and/or does not impede the provision of groundhandling activities, aviation security and safety.

(7) By the concession contract for a concession referred to in Item 1 of Paragraph (2), the concessionaire shall assume the operational risk as well as the risk of connecting the self-contained part to the physical infrastructure necessary for the operation thereof. The contract shall grant the concessionaire the right to collect airport charges under Article 120 (1), establishing the terms and procedure for this and, inter alia, specifying the part of the charges which the concessionaire is to collect for the benefit thereof as revenue of operating the services.

(8) The concession contract for a concession referred to in Paragraph (2) shall specify the facilities wherein or wherethrough the service is to be provided and shall lay down the rights and obligations of the concessionaire in connection with the use of the facilities referred to in Item 1.

(9) The concession contract referred to in Paragraph (2) shall mandatorily determine the relations of the concessionaire with the airport administration."

3. Article 43c shall be amended to read as follows:

"Article 43c. An airport which is owned by a municipality shall be used under the terms established by this Act by an airport-operator merchant who has been awarded a works concession or a services concession according to the procedure established by the Concessions Act."

4. In Article 120, Item 2 of Paragraph (5) shall be amended to read as follows:

"2. by the concessionaire, under terms and according to a procedure established in the concession contract;".

5. In Article 122c:

(a) in Paragraph (1), the words "an airport for public use constituting public State property wherefor a concession has been granted and the concession contract, in accordance with the decision of the Council of Ministers to initiate a concession granting procedure, provides otherwise" shall be replaced by "an airport for public use constituting State property wherefor a concession has been awarded and the concession contract provides otherwise";

(b) in Paragraph (3):

(aa) in Item 3, the words "and where a concession has been provided for a civil airport for public use, according to the decision of the Council of Ministers to initiate a concession granting procedure and the concession contract" shall be deleted;

(bb) there shall be added a new item 4:

"4. other activities laid down in the concession contract, where a concession has been awarded for the civil airport for public use.";

(c) Paragraph (5) shall be amended to read as follows:

"(5) The activities for ensuring flight security and safety, the construction, maintenance, development and upkeep of civil airports for public use constituting State property, for which a concession has been awarded and the concessionaire has been granted the right to collect the whole or part of the charges under Article 120 (1) for the benefit thereof, shall be financed under terms and according to a procedure established in the concession contract."

§ 13. In the Value Added Tax Act (promulgated in the State Gazette No. 63 of 2006; amended in Nos. 86, 105 and 108 of 2006; [modified by] Constitutional Court Decision No. 7 of 2007, [promulgated in] No. 37 of 2007; amended in Nos. 41, 52, 59, 108 and 113 of 2007, No. 106 of 2008, Nos. 12, 23, 74 and 95 of 2009, Nos. 94 and 100 of 2010, Nos. 19, 77 and 99 of 2011, Nos. 54, 94 and 103 of 2012, Nos. 23, 30, 68, 98, 101, 104 and 109 of 2013, Nos. 1, 105 and 107 of 2014, Nos. 41, 79, 94 and 95 of 2015, Nos. 58, 60, 74, 88, 95 and 97 of 2016 and Nos. 85 and 92 of 2017), in Item 1 (1) of Article 3 (5), the words "granting of a works concession, a service concession or an extraction concession" shall be replaced by "the award of a works concession, a services concession, a use concession and the granting of an extraction concession".

§ 14. In the State Gazette Act (promulgated in the State Gazette No. 89 of 1995; corrected in No. 92 of 1995; amended in No. 123 of 1997, No. 56 of 1999, No. 1 of 2000, No. 97 of 2001, Nos. 9 and 42 of 2003, No. 31 of 2005, No. 36 of 2006, Nos. 16 and 110 of 2008, No. 15 of 2013 and No. 13 of 2016), in Article 7, Paragraph (2) shall be amended to read as follows:

"(2) The notices which must be published under the Concessions Act shall be promulgated on the Internet site of the State Gazette."

§ 15. The State Property Act (promulgated in the State Gazette No. 44 of 1996; amended in No. 104 of 1996, Nos. 55, 61 and 117 of 1997, Nos. 93 and 124 of 1998, No. 67 of 1999, Nos. 9, 12, 26 and 57 of 2000, No. 1 of 2001; [modified by] Constitutional Court Decision No. 7 of 2001, [promulgated in] No. 38 of 2001; amended in No. 45 of 2002, No. 63 of 2003, Nos. 24 and 93 of 2004, No. 32 of 2005, Nos. 17, 30, 36, 64 and 105 of 2006, Nos. 41, 59, 92 and 113 of 2007, Nos. 52 and 54 of 2008, Nos. 10, 17, 19, 33 and 41 of 2009, Nos. 18 and 87 of 2010, Nos. 19 and 47 of 2011, Nos. 45, 82 and 99 of 2012, No. 27 of 2013; [modified by] Constitutional Court Decision No. 6 of 2013, [promulgated in] No. 65 of 2013; amended in Nos. 66 and 109 of 2013, Nos. 40, 98 and 105 of 2014, Nos. 52, 60 and 61 of 2015, No. 81 of 2016 and Nos. 13 and 58 of 2017) shall be amended and supplemented as follows:

1. There shall be inserted a new Article 15a:

"Article 15a. A concession for immovables constituting State property may be awarded under the terms and according to the procedure established by the Concessions Act."

2. In Article 16:

(a) in Paragraph (1) at the end, there shall be added "and Article 15a";

(b) there shall be inserted a new Paragraph (3)

"(3) Any works and/or services within the meaning of the Concessions Act and of the Public Procurement Act may not be awarded by the lease agreement except where the estimated value of the revenue accruing to the tenant for the duration of the contract exceeds the European threshold within the meaning of the Concessions Act.";

(c) in Paragraph (5), the words "persons whereto rights to facilities constituting public State property have been granted by a concession contract under the Concessions Act or by a public-private partnership contract under the Public-Private Partnership Act" shall be replaced by "concessionaires", and after the word "facilities" there shall be added "or by the concession contract".

3. In Article 19:

(a) in Paragraph (1), the words "except in the cases provided for in the Public-Private Partnership Act" shall be deleted;

(b) there shall be added a new Paragraph (7):

"(7) The prohibition under Article 16 (3) against the award of works and services shall furthermore apply to the lease agreement for an immovable or parts of an immovable constituting private State property."

4. In Article 43 (2), sentence two shall be deleted.

5. In Article 47 (1), the words "except in cases provided for in the Public-Private Partnership Act" shall be deleted.

6. There shall be inserted a new Article 48a:

"Article 48a. Except in the cases under Articles 47 and 48, the creation of limited real rights to any immovable constituting private State property and the disposition of any immovables constituting private State property may be performed in accordance with the concessionaire designation procedure for a works concession and/or a services concession as conducted under the terms and according to the procedure established by the Concessions Act."

7. In Article 56 (1), the words "except in cases provided for in the Public-Private Partnership Act" shall be deleted.

8. In Article 57 (2), the words "except in cases provided for in Article 57a (1)" shall be deleted and there shall be added sentences two, three and four: "Upon the formation of a public-private company within the meaning of the Concessions Act, the decision of the Council of Ministers whereby an initiation of the concessionaire designation procedure is approved shall furthermore contain a decision on the formation of the company. In such cases, the rights of ownership of the State in the company shall be exercised by the minister who is vested with the powers of a concession grantor. The minister shall establish the conditions for participation in the company in accordance with the concessionaire designation procedure as conducted."

9. Article 57a shall be amended to read as follows:

"Article 57a. (1) The State, the State-owned enterprises referred to in Article 62 (3) of the Commerce Act and commercial corporations in the capital whereof the State holds a participating interest exceeding 50 per cent may form or participate in commercial corporations whereof the capital is not wholly owned thereby after a decision of the Council of Ministers. Any such participation may be in the form of cash or non-cash contribution.

(2) Where the contribution consists of a real right to an immovable or a thing constituting private State property, the contributor of the said asset shall hold blocking rights upon decision making on:

1. an amendment of the articles of association or of the memorandum of association;
2. increase or reduction of capital;
3. conclusion of any of the transactions referred to in Article 236 (2) of the Commerce Act;
4. effecting transactions disposing of any property which is contributed by the public partner as a non-cash asset;
5. transformation and dissolution of the corporation."

10. In Article 58 (2), the words "or under the terms and according to the procedure established by the Public-Private Partnership Act" shall be deleted.

11. In Article 73, the word "granting" shall be replaced by "award", and the words "or under a public-private partnership contract" shall be deleted.

12. In § 1a of the Supplementary Provisions, Item 5 shall be repealed.

13. § 6c of the Transitional and Final Provisions shall be repealed.

§ 16. In the Railway Transport Act (promulgated in the State Gazette No. 97 of 2000; amended in Nos. 47 and 96 of 2002, Nos. 70 and 115 of 2004, Nos. 77 and 88 of 2005, Nos. 36, 37, 62, 92 and 108 of 2006, Nos. 22, 35, 74 and 81 of 2009, No. 87 of 2010, No. 47 of 2011, Nos. 15 and 68 of 2013, Nos. 17 and 47 of 2015, Nos. 19 and 58 of 2016), In Article 3 (1), the words "which have received a concession" shall be replaced by "whereto a concession has been awarded".

§ 17. In the Obligations and Contracts Act (promulgated in the State Gazette No. 275 of 1950; corrected in No. 2 of 1950; amended in No. 69 of 1951, No. 92 of 1952, No. 85 of 1963, No. 27 of 1973, No. 16 of 1977, No. 28 of 1982, No. 30 of 1990, Nos. 12 and 56 of 1993, Nos. 83 and 104 of 1996, Nos. 83 and 103 of 1999, No. 34 of 2000, No. 19 of 2003, Nos. 42 and 43 of 2005, No. 36 of 2006, Nos. 59 and 92 of 2007 and No. 50 of 2008), in Item 2 of Article 136, the word "payments" shall be replaced by "remunerations".

§ 18. The Economic and Financial Relations with Companies Registered in Preferential Tax Treatment Jurisdictions, the

Persons Controlled Thereby and the Beneficial Owners Thereof Act (promulgated in the State Gazette No. 1 of 2014; amended in Nos. 22 and 102 of 2015 and No. 48 of 2016) shall be amended as follows:

1. In Article 3:

(a) Item 7 shall be amended to read as follows:

"7. participate in a concessionaire designation procedure, as well granting of a subsurface resources extraction concession or a licence for prospecting and exploration or for exploration of subsurface resources under the Subsurface Resources Act;"

(b) in Item 18, the words "participate in procedures for the award of a concession" shall be deleted;

(c) in Item 19, the words "participate in procedures for the granting of a concession" shall be deleted;

(d) Item 22 shall be repealed.

2. In Article 5 (1):

(a) Item 2 shall be amended to read as follows:

"2. under Article 3, Item 7: the candidate or participant shall be excluded from participation in the concessionaire designation procedure or, respectively, the granting of the concession or of the licence for prospecting and exploration or for exploration shall be refused thereto, or, respectively, the concession contract shall be terminated or the licence as issued shall be withdrawn;"

(b) in Item 10, the words "the candidate shall be excluded from participation in a concession or shall be refused" shall be replaced by "shall be refused";

(c) Item 12 shall be repealed.

§ 19. The Cultural Heritage Act (promulgated in the State Gazette No. 19 of 2009; [modified by] Constitutional Court Decision No. 7 of 2009, [promulgated in No. 80 of 2009; amended in Nos. 92 and 93 of 2009, No. 101 of 2010, No. 54 of 2011, Nos. 15, 38, 45, 77 and 82 of 2012, Nos. 15 and 66 of 2013, No. 98 of 2014 and Nos. 16, 52 and 74 of 2016) shall be amended and supplemented as follows:

1. In Article 12 (3), Item 3 shall be repealed.

2. In Article 14 (1), Item 10 shall be amended to read as follows:

"10. execute the powers of a grantor upon the award of concessions for immovable cultural assets constituting State property;"

3. In Article 17:

(a) an Item 3 shall be added in Paragraph (1):

"3. execute the powers of a grantor upon the award of concessions for immovable cultural assets constituting municipal property;"

(b) in Paragraph (2), Item 2 shall be repealed.

4. In Item 4 of Article 81 (2), the word "granted" shall be replaced by "awarded".

5. Article 86 shall be amended to read as follows:

"Article 86. (1) A concession may be awarded for any immovable cultural assets constituting State and municipal property under the terms and according to the procedure established by the Concessions Act and subject to the requirements of this Act.

(2) Upon the award and performance of a concession for an immovable cultural asset, the regimes for the protection of the cultural asset and the conditions for carrying out integrated conservation shall be complied with.

(3) One or multiple single or group cultural assets or parts thereof may be the object of a concession.

(4) The grantor shall designate a concession area which shall cover the territorial scope of the object of the concession, to the extent to which the immovables falling within the said scope constitute State property or, respectively, municipal

property. A supporting zone may be designated as an accessory to the object of the concession, constituting an area necessary for carrying out the activities under the concession, to the extent to which the immovables falling within the said zone constitute State property or, respectively, municipal property.

(5) The concession area and the surface area of the supporting zone shall be defined by a detailed spatial-development plan, complying with the protection regimes for the particular immovable cultural asset.

6. Article 87 shall be amended to read as follows:

"Article 87. (1) In the case of a concession for an immovable cultural asset, construction of physical infrastructure, buildings or facilities may be carried out in the concession area and/or in the supporting zone.

(2) Construction may be carried out only if it is compatible with the regimes for the protection of the immovable cultural asset concerned and is necessary for the activities under the concession.

(3) Where the execution of works is entrusted by the grantor, the concession shall be designated as a works concession and the grantor shall determine the type and extent of the works and the requirements regarding the execution thereof.

(4) Irrespective of the subject-matter of the concession, upon the performance of the concession contract the concessionaire may place movable amenities related to the performance of the concession within the concession area and within the supporting zone subject to the requirements of this Act."

7. In Article 88, in the text before Item 1, the word "granted" shall be replaced by "awarded".

8. Article 89 shall be amended to read as follows:

"Article 89. (1) At least one representative of the NIICH shall be involved when taking the preparatory steps and in commissions for the conduct of a concessionaire designation procedure for a concession for an immovable cultural asset, and where the object of the concession includes archaeological cultural assets as well, the said steps and commissions shall furthermore involve a representative of the National Archaeological Institute with Museum at the Bulgarian Academy of Sciences (NAIM at BAS).

(2) A concessionaire designation procedure for a concession for an immovable cultural asset shall be initiated after a favourable opinion regarding compliance with the requirements of this Act from the Ministry of Culture, and on archaeological immovable cultural assets, also from the NAIM at BAS. The grantor shall attach the justification of the concession to the request for the expression of an opinion."

9. In Article 90:

(a) in Paragraph (2), the words "the grounds of the property under concession" shall be replaced by "the concession area";

(b) Paragraph (3) shall be amended to read as follows:

"(3) The concession shall be awarded for a maximum duration of 20 years. Where the concession is for use, the duration of the concession may be extended by up to 15 years, unless non-compliance with the obligations under the concession contract is established according to the due procedure. When the concession is for works or for services, the modification of the concession contract, including the duration of the concession, may be effected only under the conditions and according to the procedure established by the Concessions Act, as well as subject to the requirements of this Act."

10. In Article 91:

(a) in Paragraph (1), the word "payments" shall be replaced by "remunerations", and the words "under the terms and according to the procedure of Article 81 of the Concessions Act" shall be deleted;

(b) in Paragraph (3), the word "payments" shall be replaced by "remunerations".

§ 20. The Medicinal Plants Act (promulgated in the State Gazette No. 29 of 2000; amended in Nos. 23 and 91 of 2002, Nos. 30 and 65 of 2006, No. 94 of 2007, Nos. 36 and 43 of 2008, Nos. 80 and 103 of 2009, No. 28 of 2011, No. 82 of 2012, No. 66 of 2013, No. 98 of 2014 and No. 58 of 2017) shall be amended as follows:

1. In Article 3, the words "shall be regulated in accordance with the provisions" shall be replaced by "shall be awarded by a use concession under the terms and according to the procedure".

2. In Article 8, the words "the concession agreement" shall be replaced by "the concession contract", and the words "the

specific right" shall be replaced by "the right".

§ 21. In the Local Taxes and Fees Act (promulgated in the State Gazette No. 117 of 1997; amended in Nos. 71, 83, 105 and 153 of 1998, No. 103 of 1999, Nos. 34 and 102 of 2000, No. 109 of 2001, Nos. 28, 45, 56 and 119 of 2002, Nos. 84 and 112 of 2003, Nos. 6, 18, 36, 70 and 106 of 2004, Nos. 87, 94, 100, 103 and 105 of 2005, Nos. 30, 36 and 105 of 2006, Nos. 55 and 110 of 2007, Nos. 70 and 105 of 2008, Nos. 12, 19, 41 and 95 of 2009, No. 98 of 2010, Nos. 19, 28, 31, 35 and 39 of 2011; [modified by] Constitutional Court Decision No. 5 of 2012, [promulgated in] No. 30 of 2012; amended and supplemented in Nos. 53, 54 and 102 of 2012, Nos. 24, 30, 61 and 101 of 2013, No. 105 of 2014, No. 14, 35, 37, 79 and 95 of 2015, Nos. 32, 43, 74, 80 and 97 of 2016 and Nos. 88 and 92 of 2017), Article 9a shall be supplemented as follows:

1. In Paragraph (3) at the end, there shall be added "unless otherwise provided for by the resolution referred to in Paragraph (6)".

2. There shall be added a new Paragraph (6):

"(6) The Municipal Council may specify by resolution which local fees, as established by a law, are not collected according to the procedure established by Paragraph (1) but are collected by a concessionaire which has been entrusted with the provision of the services for which such fees are paid. By the said resolution, the Municipal Council shall determine the right of the concessionaire to retain the whole or part of the amount of the fees collected."

§ 22. In the Measures Against Money Laundering Act (promulgated in the State Gazette No. 85 of 1998; amended in Nos. 1 and 102 of 2001, No. 31 of 2003, Nos. 103 and 105 of 2005, Nos. 30, 54, 59, 82 and 108 of 2006, Nos. 52, 92 and 109 of 2007, Nos. 16, 36, 67 and 69 of 2008, Nos. 22, 23 and 93 of 2009, Nos. 88 and 101 of 2010, Nos. 16, 48, 57 and 96 of 2011, Nos. 44, 60 and 102 of 2012, No. 52 of 2013, Nos. 1, 22 and 53 of 2014, Nos. 14 and 79 of 2015 and Nos. 27 and 81 of 2016), Item 14 of Article 3 (2) shall be amendeded to read as follows:

"14. ministers and municipality mayors upon the conclusion of concession contracts;"

§ 23. The Maritime Space, Inland Waterways and Ports of the Republic of Bulgaria Act (promulgated in the State Gazette No. 12 of 2000; amended in No. 111 of 2001, Nos. 24 and 70 of 2004, No. 11 of 2005; [modified by] Constitutional Court Decision No. 5 of 2005, [promulgated in] No. 45 of 2005; amended in Nos. 87, 88, 94, 102 and 104 of 2005, Nos. 30, 36, 43, 65, 99 and 108 of 2006, Nos. 41, 54 and 109 of 2007, Nos. 67, 71, 98 and 108 of 2008, Nos. 47 and 81 of 2009, Nos. 61 and 88 of 2010, No. 23 of 2011, Nos. 32 and 53 of 2012, Nos. 15, 28, 66 and 109 of 2013; [modified by] Constitutional Court Decision No. 3 of 2014, [promulgated in] No. 24 of 2014; amended in No. 98 of 2014, Nos. 14 and 52 of 2015, No. 26 of 2016 and Nos. 13 and 58 of 2017) shall be amended and supplemented as follows:

1. In Article 52 (1), the words "The granting of a special right of use over" shall be replaced by "The award of a use concession for", and the words "the Concessions Act and" shall be replaced by "the Concessions Act or".

2. In Article 112b (5):

(a) in Item 1, the words "announcing a concession granting procedure for" shall be replaced by "initiating a concessionaire designation procedure for a works concession, thereby awarding";

(a) in Item 2, the words "announcing a concession granting procedure for" shall be replaced by "initiating a concessionaire designation procedure".

3. In Article 112c (2), the words "under the concession contract the construction or extension is carried out on the concessionaire's funding" shall be replaced by "the construction or extension is included in the subject-matter of a works concession awarded".

4. In Article 112n:

(a) in Paragraph (1), the word "granted" shall be replaced by "awarded";

(b) in Paragraph (2), the words "in cases where, under the concession contract, the reconstruction and rehabilitation are carried out on the concessionaire's funding" shall be replaced by "where the carrying out of the reconstruction or rehabilitation is included in the subject-matter of the concession contract".

5. In Article 116a:

(a) Paragraph (3) shall be amended to read as follows:

"(3) Ancillary activities in public transport ports of national importance may be carried out by a person where to a concession has been awarded under Article 117c (1). In such cases, the carrying out of the ancillary activity shall be included in the subject-matter of the concession contract, and the revenue of the said activity shall be included in the value of the concession.";

(b) in Paragraph (4), the words "by a person who has obtained a concession" shall be replaced by "by way of a concession awarded".

6. In Article 117a:

(a) in Paragraph (2), the words "granted with" shall be replaced by "provided by way of the award of";

(b) in Paragraph (5), the words "be subject to" shall be replaced by "be included in the subject-matter of", and the word "concession" shall be replaced by "concession contracts".

7. Article 117c shall be amended to read as follows:

"Article 117c. (1) The provision of a port service under Items 2 and 3 of Article 116 (2) and of maritime technical port services, whereof the implementation requires the use of port territory and/or port facilities, at one or more terminals of a public transport port of national importance shall be awarded by a services concession under the terms and according to the procedure established by the Concessions Act.

(2) The provision of the maritime technical port service of receiving and processing of waste resulting from navigation shall also be awarded by a services concession where the implementation of the said service requires the use of port reception facilities durably affixed to the ground.

(3) Where the execution of construction referred to in Item 1 or 2 of Article 7 (2) of the Concessions Act is awarded by the concession referred to in Paragraph (1) or (2), the said concession shall be designated as a works concession."

8. Article 117d shall be amended to read as follows:

"Article 117d. The powers of a grantor with regard to the concessions referred to in Article 117c shall be executed by the Minister of Transport, Information Technology and Communications."

§ 24. The Investment Promotion Act (promulgated in the State Gazette No. 97 of 1997; corrected in No. 99 of 1997; amended in Nos. 29 and 153 of 1998, No. 110 of 1999, No. 28 of 2002, No. 37 of 2004; corrected in No. 40 of 2004; amended in Nos. 34, 59, 65, 80, 82 and 86 of 2006, Nos. 42 and 53 of 2007, No. 69 of 2008, Nos. 41 and 82 of 2009, Nos. 18, 88 and 100 of 2010, Nos. 38, 45 and 82 of 2012, Nos. 15, 16 and 66 of 2013, No. 98 of 2014, Nos. 14, 32 and 61 of 2015 and No. 85 of 2017) shall be amended as follows:

1. In Item 7 of Article 2, the words "public-private partnership" shall be deleted.

2. In Item 2 of Article 13a, the words "extraction of natural resources" shall be replaced by "use concession".

3. In Item 3 of Article 22f(2), the words "or public-private partnership" shall be deleted.

§ 25. The Public Procurement Act (promulgated in the State Gazette No. 13 of 2016; amended in No. 34 of 2016 and Nos. 63 and 85 of 2017) shall be supplemented as follows:

1. In Article 13 (1):

(a) there shall be inserted an Item 8a:

" 8a. to any services provided to the Bulgarian National Bank, related to:

(a) exchange of financial messages, communication and maintenance of systems for exchange of financial messages, as well as related licences and services;

(b) allowing continuous real-time access to financial and economic information, including means to retrieve and analyse asset prices and other economic and financial data, as well as platforms for trading and listing financial and other assets on international markets;

(c) manufacture of Bulgarian regular-issue and commemorative coins;"

(b) there shall be added an Item 19:

"19. to any contracts for the provision of security of installations and to any contracts for carrying out fire extinguishing and rescue activities and State fire control by officials of the Ministry of Interior, concluded on the basis of the Ministry of Interior Act."

2. In Item 47 (a) of § 2 of the Supplementary Provisions, after the word "concessions" there shall be inserted "or by the Subsurface Resources Act".

§ 26. The Municipal Property Act (promulgated in the State Gazette No. 44 of 1996; amended in No. 104 of 1996, No. 55 of 1997, Nos. 22 and 93 of 1998, Nos. 23, 56, 64, 67, 69 and 96 of 1999, No. 26 of 2000, No. 34 of 2001, No. 120 of 2002, No. 101 of 2004, Nos. 29, 30 and 36 of 2006, Nos. 59, 63 and 92 of 2007, Nos. 54, 70 and 100 of 2008, Nos. 10, 17, 19 and 41 of 2009, No. 87 of 2010, Nos. 15 and 19 of 2011, Nos. 45 and 91 of 2012, No. 15 of 2013; [modified by] Constitutional Court Decision No. 6 of 2013, [promulgated in] No. 65 of 2013; amended in Nos. 66 and 109 of 2013, Nos. 98 and 105 of 2014, Nos. 13 and 43 of 2016 and No. 13 of 2017) shall be amended and supplemented as follows:

1. In Article 8:

(a) in Paragraph (2), the words "except where the Public-Private Partnership Act is applicable" shall be deleted;

(b) in Paragraph (9):

(aa) in the text before Item 1, in sentence one, after the word "adopt" there shall be inserted "an action plan for the municipal concessions in accordance with the Concessions Act and", and in sentence three the words "the section on municipal public-private partnerships of the Programme for Implementation of the Municipal Development Plan" shall be replaced by "the action plan for the municipal concessions";

(bb) in Item 2, the words "for public-private partnership or granted on concession" shall be replaced by "as well as for award by way of";

(c) in Paragraph (10), after the words "the strategy referred to in Paragraph (8)", there shall be inserted "the action plan for the municipal concessions";

(d) in Paragraph (11), the words "Public-Private Partnership" shall be replaced by "Concessions";

(e) Paragraph (12) shall be repealed.

2. In Article 9 (4), sentence two, the word "granted" shall be replaced by "awarded", and the words "and, in cases of public-private partnership – by the contracted partner" shall be deleted.

3. In Article 51a:

(a) Paragraph (1) shall be amended to read as follows:

(1) The municipality and commercial corporations in the capital whereof the municipality holds a participating interest exceeding 50 per cent may form or participate in commercial corporations whereof the capital is not wholly owned thereby after a resolution of the municipal council. Any such participation may be in the form of cash or non-cash contribution.";

(b) Paragraphs (2) and (3) shall be repealed.

4. In Article 51b:

(a) in Paragraph (1), sentence two shall be deleted;

(b) there shall be inserted a new Paragraph (2):

"(2) Where there is a private participating interest in the commercial corporation to the capital whereof the non-cash asset is contributed, the municipality shall hold blocking rights upon decision making on:

1. an amendment of the articles of association or of the memorandum of association;

2. increase or reduction of capital;

3. conclusion of any of the transactions referred to in Article 236 (2) of the Commerce Act;

4. effecting transactions disposing of any property which is contributed by the public partner as a non-cash asset;
5. transformation and dissolution of the company.";

(c) the existing Paragraph (2) shall be renumbered to become Paragraph (5) and sentence three therein shall be deleted.

5. In Article 54, the words "respectively granted" shall be deleted, after the words "Public Procurement Act" there shall be inserted "and to", and the words "or the Public-Private Partnership Act" shall be deleted.

6. In § 1 of the Additional Provisions, Item 9 shall be repealed.

7. § 19a and 19b of the Transitional and Final Provisions shall be repealed.

§ 27. In the Municipal Debt Act (promulgated in the State Gazette No. 34 of 2005; amended in No. 105 by 2005, Nos. 30 and 37 of 2006, No. 80 of 2007, Nos. 93 and 110 of 2008, No. 99 of 2010, Nos. 35, 93 and 99 of 2011, No. 45 of 2012, Nos. 15 and 61 of 2015 and Nos. 43 and 98 of 2016), in Item 5 of Article 4, the words "public-private partnership" shall be replaced by "works concessions or services concessions with payments by the grantor".

§ 28. In the Agricultural Land Conservation Act (promulgated in the State Gazette No. 35 of 1996; amended in Nos. 14 and 26 of 2000, No. 28 of 2001, No. 112 of 2003, Nos. 18, 29 and 30 of 2006, Nos. 13 and 64 of 2007, Nos. 36 and 43 of 2008, Nos. 10 and 103 of 2009, No. 87 of 2010, Nos. 19 and 39 of 2011, Nos. 22, 38 and 91 of 2012, Nos. 27 and 66 of 2013, No. 98 of 2014, Nos. 14, 61 and 100 of 2015, No. 61 of 2016 and No. 58 of 2017), in Article 17a (3), the words "of a concession granted by decision of the Council of Ministers" shall be replaced by "performance of a concession contract".

§ 29. The Privatisation and Post-Privatisation Control Act (promulgated in the State Gazette No. 28 of 2002; amended in No. 78 of 2002, Nos. 20 and 31 of 2003; [modified by] Constitutional Court Decision No. 5 of 2003, [promulgated in] No. 39 of 2003; amended in Nos. 46 and 84 of 2003, Nos. 55 and 115 of 2004, Nos. 28, 39, 88, 94, 103 and 105 of 2005, Nos. 36, 53, 72 and 105 of 2006, No. 59 of 2007, Nos. 36, 65, 94, 98 and 110 of 2008, Nos. 24, 82 and 99 of 2009, Nos. 18, 50, 89 and 97 of 2010, Nos. 19 and 98 of 2011, Nos. 20, 38, 54 and 60 of 2012, Nos. 15, 23, 66 and 68 of 2013, No. 98 of 2014, Nos. 14, 34, 41 and 61 of 2015, Nos. 13 and 60 of 2016 and Nos. 13 and 58 of 2017) shall be amended and supplemented as follows:

1. Article 5 shall be amended to read as follows:

"Article 5. (1) In cases of a share sale by public offering, the Privatisation and Post-Privatisation Control Agency or the municipal councils shall commission investment intermediaries, selected by a competitive procedure, to prepare and conclude a privatisation transaction."

(2) The Privatisation and Post-Privatisation Control Agency and the municipal councils may commission third parties to carry out expert activities related to the preparation for privatisation or to post-privatisation control, including representation by counsel, under terms and according to a procedure established by the Council of Ministers. Independent valuers shall be commissioned to prepare valuations according to the Independent Valuers Act."

2. In Article 22a (2), there shall be added a sentence two: "Other functions as well, defined by a law, may be entrusted to the Privatisation and Post-Privatisation Control Agency."

3. In Article 22b:

(a) in Paragraph (4), Item 10 shall be amended to read as follows:

"10. may bring actions related to or arising from concluded privatisation contracts, or from agreements concluded, or an arrangement referred to in Item 8 in conjunction with Paragraphs (5) to (8), or from contracts for trust accounts, bank guarantees or other transaction documents, and may be a respondent in such actions before a court or arbitration.";

(b) in Paragraph (5), after the word "damages" there shall be inserted "and/or receivables for a price", and after the word "decision" there shall be inserted "or for which a writ of execution has been issued".

4. In the heading of Chapter Eight, the words "Award of Concessions" shall be deleted.

5. Articles 36, 37, 37a and 38 shall be repealed.

6. In the Supplementary Provisions, there shall be inserted a new § 8:

"§ 8. The provisions of the Public Procurement Act shall not apply upon commissioning under Article 5 (1) and (2) herein."

§ 30. The Subsurface Resources Act (promulgated in the State Gazette No. 23 of 1999; amended in No. 28 of 2000, No. 108 of 2001, No. 47 of 2002, No. 86 of 2003, Nos. 28 and 94 of 2005, Nos. 30, 36, 37 and 55 of 2007, No. 70 of 2008, Nos. 19 and 82 of 2009, Nos. 46, 61 and 100 of 2010, No. 19 of 2011, Nos. 14 and 45 of 2012, No. 66 of 2013, No. 98 of 2014 and Nos. 14 and 56 of 2015) shall be amended and supplemented as follows:

1. In Article 2 (3), the words "or under the Concessions Act" shall be deleted.

2. In Article 18:

(a) the existing text shall be redesignated as Paragraph (1);

(b) there shall be added a Paragraph (2):

"(2) A record for each concession granted shall be opened and maintained in the National Concessions Register under the terms and according to the procedure established by the Concessions Act."

3. In Article 43 (5), sentence two, the words "the Ministry of Finance" shall be deleted, and after the words "the Council of Ministers" there shall be added "as well as to other central-government departments at the discretion of the Minister of Energy."

4. In Article 44 (7), the words "the Ministry of Finance" shall be deleted.

5. In Article 45 (7), the words "the Ministry of Finance" shall be deleted.

6. In Article 61 (3), the words "under the terms and according to the procedure of Article 81 of the Concessions Act" shall be deleted passim.

7. Article 62 shall be amended to read as follows:

"Article 62. (1) The cash proceeds from concession payments, damages, guarantees and compensations shall be credited in revenue to the budget of the Ministry of Energy.

(2) The amounts referred to in Article 59 (1) shall be credited to the budget of the Ministry of Energy.

(3) The amounts referred to in Article 60 (1) shall be credited to the budget of the Ministry of Energy.

(4) In the cases referred to in Article 61 (3), municipalities shall account for the amounts transferred as revenue from concessions.

(5) The expenditure on concession activities shall be planned and financed through the budgets of the corresponding spenders of budgets and the budget of the Ministry of Finance.

(6) The expenditures projected on the budget of the Ministry of Finance shall furthermore be effected through the budget of the Ministry of Energy on the basis of a cost estimate, approved by the Minister of Finance, for spending the resources and for making changes according to the procedure established by Articles 109 or 110 of the Public Finance Act.

(7) the Minister of Finance shall establish the requirements regarding the reports of the Ministry of Energy on the revenue collected from, and expenditures incurred on, concessions."

8. In Article 71, the words "and the Concessions Act" shall be deleted.

§ 31. The Roads Act (promulgated in the State Gazette No. 26 of 2000; amended in No. 88 of 2000, Nos. 111 of 2001, Nos. 47 and 118 of 2002, Nos. 9 and 112 of 2003, Nos. 6 and 14 of 2004, Nos. 88 and 104 of 2005, Nos. 30, 36, 64, 102, 105 and 108 of 2006, No. 59 of 2007, Nos. 43 and 69 of 2008, Nos. 12, 32, 41, 42, 75, 82 and 93 of 2009, No. 87 of 2010, Nos. 19, 39, 55 and 99 of 2011, No. 38, 44, 47 and 53 of 2012, Nos. 15 and 66 of 2013, Nos. 16, 53 and 98 of 2014, Nos. 10, 14, 37, 61, 95 and 101 of 2015, Nos. 30 and 75 of 2016 and Nos. 11 and 89 of 2017) shall be amended and supplemented as follows:

1. In Article 11:

(a) in Paragraph (1), the word "granted" shall be replaced by "awarded";

(b) in Paragraph (2), the words "with the decision to start the procedure for the granting of the concession" shall be replaced by "by the documents for participation under Article 78 (1) of the Concessions Act".

2. In Item 2 of Article 19 (2), the word "granting" shall be deleted.

3. In Article 19a (2), Item 2 shall be repealed.

4. In Article 20 (3), there shall be added a sentence two: "The Minister of Regional Development and Public Works shall award concessions for the national roads and for the road facilities constituting State property (bridges and tunnels)."

5. In Article 21 (3), Item 6 shall be amended to read as follows:

"6. assist the Minister of Regional Development and Public Works upon the taking of preparatory steps and the exercise of control over the performance of the concession contracts for national roads and for road facilities constituting State property (bridges and tunnels);".

6. In Article 21c (1), Item 8 shall be repealed.

7. In Article 21d, Item 4 shall be repealed.

§ 32. In the National Audit Office Act (promulgated in the State Gazette No. 12 of 2015; amended in No. 98 of 2016), Item 8 of Article 6 (2) shall be amended to read as follows:

"8. the privatisation of state and municipal property, as well as the public resources and public assets provided to persons outside the public sector, including upon the performance of concession contracts;".

§ 33. In the Tourism Act (promulgated in the State Gazette No. 30 of 2013; amended in Nos. 68 and 109 of 2013, No. 40 of 2014, Nos. 9, 14 and 79 of 2015, Nos. 20, 43, 59 and 75 of 2016 and Nos. 58 and 85 of 2017), Article 6 shall be amended as follows:

1. In Item 28, the words "and on the basis of public-private partnership" shall be deleted.

2. Item 35 shall be amended to read as follows:

"35. executes the powers of a grantor for the concessions for seaside beaches, inter alia organises and carries out the activity of renting the coastal beaches for which a concession has not been awarded;".

§ 34. (Effective 1.01.2019 - SG No. 103/2017) The Black Sea Coast Development Act (promulgated in the State Gazette No. 48 of 2007; amended in Nos. 36 and 67 of 2008, Nos. 19, 82 and 92 of 2009, Nos. 45 and 82 of 2012, Nos. 27, 28 and 66 of 2013; [modified by] Constitutional Court Decision No. 12 of 2013, [promulgated in] No. 105 of 2013; amended in Nos. 40 and 98 of 2014, Nos. 9, 61 and 101 of 2015, Nos. 20 and 36 of 2016 and No. 58 of 2017) shall be amended and supplemented as follows:

1. In Article 1, Item 3 shall be amended to read as follows:

"3. the conditions for the management of coastal beaches and for the provision of beach services."

2. In Article 7:

(a) Paragraph (1) shall be amended to read as follows:

"(1) Seaside beaches or parts thereof with the contiguous sea area thereof shall be managed and maintained by way of the award of a concession under the terms and according to the procedure established by the Concessions Act and subject to the requirements of this Act. The width of the contiguous sea area included in the object of a concession may not exceed 200 metres. The maximum duration of a concession for a seaside beach shall be 20 years.";

(b) Paragraph (2) shall be amended to read as follows:

"(2) By the concession for a seaside beach, the concessionaire shall be entrusted with providing lifeguard services, ensuing safety of the contiguous sea area, health and medical services and maintaining sanitation and hygiene of the seaside beach, hereinafter referred to as "mandatory activities", as well with providing beach services under the terms of the concession contract. The concessionaire shall afford open and free access to the seaside beach and shall place direction signs showing maps of the separate zones and the conditions of the concession.";

(c) there shall be inserted new Paragraphs (3) and (4):

"(3) The concessionaire shall pay the grantor concession remuneration under the terms established by the Concessions Act.

(4) Any seaside beaches or parts thereof, for which a concession has not been awarded, shall be managed by the Minister of Tourism.";

(d) Paragraph (5) shall be amended to read as follows:

"(5) The Minister of Tourism may rent the seaside beaches referred to in Paragraph (4) or parts thereof for a maximum period of five years, provided that the estimated value of the revenue accruing to the tenant does not exceed the European threshold within the meaning of the Concessions Act. The tenant of a seaside beach shall be obliged to carry out the mandatory activities and to pay a rental charge. A seaside beach shall be rented by auction under the terms and according to the procedure established by the Regulations for Application of the State Property Act.";

(e) in Paragraph (7), the words "which have not been granted on concession" shall be replaced by "for which a concession has not been awarded", the word "leased" shall be replaced by "rented", and the words "official website" shall be replaced by "Internet site";

(f) In Paragraph (8), there shall be added sentences two and three: "The plan shall be submitted by 30 April of the relevant year. The provision of lifeguard services shall be awarded by the Minister of Tourism and/or by the Regional Governor by way of a public procurement.";

(g) Paragraph (9) shall be amended to read as follows:

"(9) A concession may not be awarded for any seaside beaches with the contiguous sea area thereof within the boundaries of the protected areas listed in Annex 2 to the Protected Areas Act, as well as for any seaside beaches for environmentally friendly tourism listed in the annex hereto, nor may any such beaches be rented.";

(h) Paragraph (10) shall be amended to read as follows:

"(10) A works concession to build artificial seaside beaches on any immovables constituting State property may be awarded under the terms and according to the procedure of the Concessions Act.";

(i) Paragraph (11) shall be repealed.

3. In Article 8:

(a) Paragraph (1) shall be amended to read as follows:

"(1) The Minister of Tourism shall execute the powers of a concession grantor, shall open the rental auctions, and shall conclude and control the performance of the lease contracts for seaside beaches.";

(b) in Paragraph (2), the word "payment" shall be replaced passim by "remuneration", and the words "Article 81 of" shall be deleted;

(c) in Paragraph (3), the word "payment" shall be replaced by "remuneration".

4. Chapter Two "a" with Articles 8a to 8o shall be repealed.

5. In Article 22a:

(a) in Paragraph (1), the word "payments" shall be replaced by "remunerations", and the word "payment" shall be replaced passim by "remuneration";

(b) in Paragraph (2) the word "payments" shall be replaced by "remunerations", and the words "guarantees, indemnities and from sale of tender documentation" shall be replaced by "guarantees and compensations";

(c) Paragraph (3) shall be repealed;

(d) Paragraph (5) shall be amended to read as follows:

"(5) The activities of awarding concessions for seaside beaches shall be financed according to the Concessions Act."

6. In § 1 of the Supplementary Provisions, Item 1 shall be repealed.

§ 35. The Spatial Development Act (promulgated in the State Gazette No. 1 of 2001; amended in Nos. 41 and 111 of 2001, No. 43 of 2002, Nos. 20, 65 and 107 and 2003, Nos. 36 and 65 of 2004, Nos. 28, 76, 77, 88, 94, 95, 103 and 105 of 2005, Nos. 29, 30, 34, 37, 65, 76, 79, 80, 82 and 108 of 2006, Nos. 41, 53 and 61 of 2007, Nos. 33, 43, 54, 69, 98 and 102 of 2008, Nos. 6, 17, 19, 80, 92 and 93 of 2009, Nos. 15, 41, 50, 54 and 87 of 2010, Nos. 19, 35, 54 and 80 of 2011, Nos. 29, 32, 38, 45, 47, 53, 77, 82 and 99 of 2012, Nos. 15, 24, 27, 28, 66 and 109 of 2013, Nos. 49, 53, 98 and 105 of 2014, Nos. 35, 61, 62, 79 and 101 of 2015, Nos. 15 and 51 of 2016 and Nos. 13, 63 and 92 of 2017) shall be amended and supplemented as follows:

1. In Article 131 (1), the words "the owners and the holders of limited rights in rem" shall be replaced by "The owners, the holders of limited rights in rem and the concessionaires", and the words "as well as the persons which have been awarded a concession" shall be deleted.
2. In Item 6 of Article 134 (2), there shall be inserted after "immovables" "and the concessionaires".
3. In Article 161, Paragraph (3) shall be repealed.
4. In Article 232, Paragraph (7) shall be repealed.

§ 36. The Physical Education and Sports Act (promulgated in the State Gazette No. 58 of 1996; [modified by] Constitutional Court Decision No. 8 of 1997, [promulgated in] No. 53 of 1997; amended in No. 124 of 1998, Nos. 51 and 81 of 1999, No. 53 of 2000; corrected in No. 55 of 2000; amended in No. 64 of 2000, No. 75 of 2002; [modified by] Constitutional Court Decision No. 6 of 2002, [promulgated in] No. 95 of 2002; amended in No. 120 of 2002, No. 96 of 2004, Nos. 88 and 103 of 2005, Nos. 30, 34, 36 and 80 of 2006, Nos. 41, 46 and 53 of 2007, No. 50 of 2008, No. 74 of 2009, Nos. 50 and 96 of 2010, Nos. 35 and 99 of 2011, Nos. 45, 87 and 102 of 2012, Nos. 15 and 68 of 2013, Nos. 21 and 66 of 2014, Nos. 14, 61, 79 and 101 of 2015, No. 43 of 2016 and No. 91 of 2017) shall be amend and supplemented as follows:

1. In Item 13 of Article 4, there shall be added at the end "by way of the award of concessions".
2. In Item 7 of Article 4a, there shall be added at the end "by way of the award of concessions".
3. Article 50b shall be repealed.
4. Article 50c shall be amend to read as follows:

"Article 50c. (1) The Minister of Youth and Sports and the municipality mayors shall award works concessions or services concessions for sports sites and facilities and for social tourism sites constituting State or municipal property under the terms and according to the procedure established by the Concessions Act and subject to the requirements of this Act.

(2) A concessionaire designation procedure for a concession for sports sites and facilities and for social tourism sites constituting municipal property shall be initiated after a favourable opinion from the Minister of Youth and Sports regarding compliance with the requirements of this Act.

(3) The concessionaire shall be obliged to ensure public access of citizens to the object of concession and use of the said object for the implementation of activities related to physical education, sports and tourism, and to pupils and students for training and competitions, as well as for other activities in accordance with Article 50 (2) to (5). The requirements to ensure public access and use of the object of concession for the implementation of particular activities shall be laid down as conditions related to the concession, and the procedure for the fulfilment of the said requirements shall be established by the concession contract."

5. In § 1 of the Supplementary Provision, Item 29 shall be repealed.

§ 37. In the Labour Code (promulgated in the State Gazette Nos. 26 and 27 of 1986; amend in No. 6 of 1988, Nos. 21, 30 and 94 of 1990, Nos. 27, 32 and 104 of 1991, Nos. 23, 26, 88 and 100 of 1992; [modified by] Constitutional Court Decision No. 12 of 1995, [promulgated in] No. 69 of 1995; amend in No. 87 of 1995, Nos. 2, 12 and 28 of 1996, No. 124 of 1997, No. 22 of 1998; [modified by] Constitutional Court Decision No. 11 of 1998, [promulgated in] No. 52 of 1998; amend in Nos. 56, 83, 108 and 133 of 1998, Nos. 51, 67 and 110 of 1999, No. 25 of 2001, Nos. 1, 105 and 120 of 2002, Nos. 18, 86 and 95 of 2003, No. 52 of 2004, Nos. 19, 27, 46, 76, 83 and 105 of 2005, Nos. 24, 30, 48, 57, 68, 75, 102 and 105 of 2006, Nos. 40, 46, 59, 64 and 104 of 2007, Nos. 43, 94, 108 and 109 of 2008, Nos. 35, 41 and 103 of 2009, Nos. 15, 46, 58 and 77 of 2010; [modified by] Constitutional Court Decision No. 12 of 2010, [promulgated in] No. 91 of 2010; amend in Nos. 100 and 101 of 2010, Nos. 18, 33, 61 and 82 of 2011, Nos. 7, 15, 20 and 38 of 2012; [modified by] Constitutional Court Decision No. 7 of 2012, [promulgated in] No. 49 of 2012; amend in No. 77 and 82

of 2012, Nos. 15 and 104 of 2013, Nos. 1, 27 and 61 of 2014, Nos. 54, 61, 79 and 98 of 2015, Nos. 8, 57, 59, 98 and 105 of 2016 and Nos. 85 and 86 of 2017), Article 123a shall be amendeded as follows:

1. The heading shall be amendded to read as follows: "Non-termination of Employment Relationship upon Rental or Lease of Enterprise or Self-Contained Part Thereof as Well as Upon Award of Concession"

2. Paragraph (1) shall be amendded to read as follows:

"(1) The employment relationship with the factory or office worker shall not be terminated upon change of employer in the cases of rental or lease of the enterprise or of a self-contained part thereof. The employment relationship with a factory or office worker shall not be terminated, either, upon the award of a concession the subject-matter whereof includes activities related to the nature of the work subject to the employment contract, or the site where the workplace is located is included in the object of the concession."

3. In Paragraph (4), the word "concession" shall be replaced by "the concession contract".

§ 38. In the Environmental Protection Act (promulgated in the State Gazette No. 91 of 2002; corrected in No. 98 of 2002; amendded in No. 86 of 2003, No. 70 of 2004, Nos. 74, 77, 88, 95 and 105 of 2005, Nos. 30, 65, 82, 99, 102 and 105 of 2006, Nos. 31, 41 and 89 of 2007, Nos. 36, 52 and 105 of 2008, Nos. 12, 19, 32, 35, 47, 82, 93 and 103 of 2009, Nos. 46 and 61 of 2010, Nos. 35 and 42 of 2011, Nos. 32, 38, 53 and 82 of 2012, Nos. 15, 27 and 66 of 2013, Nos. 22 and 98 of 2014, Nos. 62, 95, 96 and 101 of 2015, No. 81 of 2016 and Nos. 12, 58 and 76 of 2017), in Item 3 of Article 36 (2), the words "granting" shall be replaced by "award".

§ 39. In the Bulgarian Development Bank Act (promulgated in the State Gazette No. 43 of 2008; amendded in No. 82 of 2009, No. 99 of 2011, No. 102 of 2012, No. 107 of 2014, No. 14 of 2015 and No. 63 of 2017), in Article 4 (2), there shall be ended at the end "as well as the activities referred to in Items 4 and 5 of Article 39(2) the Concessions Act".

§ 40. In the Protected Areas Act (promulgated in the State Gazette No. 133 of 1998; amendded in No. 98 of 1999, Nos. 28, 48 and 78 of 2000, Nos. 23, 77 and 91 of 2002, Nos. 28 and 94 of 2005, Nos. 30 and 65 of 2006, Nos. 24 and 62 of 2007, Nos. 36 and 43 of 2008, Nos. 19, 80 and 103 of 2009, No. 19/2011, No. 38/2012, Nos. 27 and 66 of 2013, No. 98 of 2014, No. 61 of 2015 and No. 58 of 2017), there shall be inserted an Article 75:

"Article 75. (1) In the case of a concession for a protected area constituting exclusive State property, 50 per cent of the cash proceeds from concession remunerations for the said concession shall be transferred by the ministry concerned to the budget of the municipality exercising jurisdiction over the location of the concession area and of the accessories to the object of the concession, determined according to the Concessions Act.

(2) When the concession area and/or accessory is located within the territory of multiple municipalities, the amount referred to in Paragraph (1) shall be allocated in proportion to the surface areas of the concession area and/or the accessories located within the territory of the respective municipality."

§ 41. This Act shall enter into force one month after the promulgation thereof in the State Gazette with the exception of:

1. Article 45 (5) herein, which shall enter into force 12 months after the promulgation of the Act in the State Gazette;

2. Article 191 (2) to (5) and Articles 192 and 193 herein, which shall enter into force as from the 31st day of January 2019;

3. (New, SG No. 103/2017, effective 1.01.2018) Paragraph 34 herein which shall enter into force as from the 1st day of January 2019.

This Act was adopted by the 44th National Assembly on the 16th day of November 2017 and the Official Seal of the National Assembly is affixed thereto.

Annex 1

to Item 2 of Article 7 (2)

BUILDING AND ERECTION WORKS AND ACTIVITIES

SECTION F	CONSTRUCTION		CPV CODE		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: - construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.1	Demolition and wrecking of buildings; moving	This class includes: - demolition of earth buildings and other structures; - clearing of building sites; - earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.; - site preparation for mining; - overburden removal and other development and preparation of mineral properties and sites. This class also includes: - building site drainage; - drainage of agricultural or forestry land.	45110000
		45.1	Test drilling and boring	This class includes: - test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: - drilling of production oil or gas wells, see 11.20; - water well drilling, see 45.25; - shaft sinking, see	45120000

45.25;

- oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.

45.2 Building of complete constructions or parts thereof; civil engineering 45200000

45.2 General This class includes: 45210000
1 construction of buildings and types of buildings and civil engineering works with the exception of: - construction of all types of buildings and civil engineering constructions; 45220000
- bridges, including those for elevated highways, viaducts, tunnels and subways; 45231000
45232000
- long-distance pipelines, communication and power lines;
- urban pipelines, urban communication and power lines;
- ancillary urban works;
- assembly and erection of prefabricated constructions on the site.
This class excludes:
- service activities incidental to oil and gas extraction, see 11.20;
- erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28;
- construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports

installations, see
45.23;
- building
installation, see
45.3;
- building
completion, see
45.4;
- architectural and
engineering
activities, see 74.20;
- project
management for
construction, see
74.20.

45.2 Erection of roof This class includes: 45261000

2 covering and - erection of roofs;
frames - roof covering;
- waterproofing.

45.2 Construction of This class includes: 45212212 и DA03

3 highways, roads, - construction of 45230000
airfields and highways, streets,
sports facilities roads, other with the exception of:

vehicular and
pedestrian ways; - 45231000

- construction of - 45232000
railways;

- construction of - 45234115
airfield runways;

- construction work,
other than buildings,
for stadiums,
swimming pools,
gymnasiums, tennis
courts, golf courses
and other sports
installations;

- painting of
markings on road
surfaces and car
parks.

This class
excludes:

- preliminary earth
moving, see 45.11.

45.2 Construction of This class includes: 45240000

4 water projects - construction of
waterways, harbour
and river works,
pleasure ports
(marinas), locks,
etc.;
- dams and dykes;
- dredging;
- subsurface work.

45.2 Other construction This class includes: 45250000

5 work involving - construction 45262000
special trades activities
specialising in one
aspect common to

different kinds of structures, requiring specialised skill or equipment;

- construction of foundations, including pile driving;
- water well drilling and construction, shaft sinking;
- erection of non-self manufactured steel elements;
- steel bending;
- bricklaying and stone setting;
- scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms;
- erection of chimneys and industrial ovens.

This class excludes:

- renting of scaffolds without erection and dismantling, see 71.32.

45.3	Building installation	45300000
45.3	Installation of electrical wiring and fittings	This class includes: 45213316 in buildings or other construction with the exception of: projects of: - electrical wiring and fittings; – 45316000 - tele-communications systems; - electrical heating systems; - residential antennas and aerials; - fire alarms; - burglar alarm systems; - lifts and escalators; - lightning conductors, etc.
45.3	Insulation work activities	This class includes: 45320000 - installation in buildings or other construction

		<p>projects of thermal, sound or vibration insulation. This class excludes:</p> <ul style="list-style-type: none"> - waterproofing, see 45.22.
45.3	Plumbing 3	<p>This class includes: 45330000</p> <ul style="list-style-type: none"> - installation in buildings or other construction projects of: <ul style="list-style-type: none"> - plumbing and sanitary equipment; - gas fittings; - heating, ventilation, refrigeration or air conditioning equipment and ducts; - sprinkler systems. <p>This class excludes:</p> <ul style="list-style-type: none"> - installation of electrical heating systems, see 45.31.
45.3	Other building 4 installation	<p>This class includes: 45234115</p> <ul style="list-style-type: none"> - installation of illumination and signalling systems for roads, railways, airports and harbours; - installation in buildings or other construction projects of fittings and fixtures n.e.c.
45.4	Building completion	45400000
45.4	Plastering 1	<p>This class includes: 45410000</p> <ul style="list-style-type: none"> - application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.
45.4	Joinery 2 installation	<p>This class includes: 45420000</p> <ul style="list-style-type: none"> - installation of not self - manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials; - interior completion

such as ceilings, wooden wall coverings, movable partitions, etc.

This class excludes:

- laying of parquet and other wood floor coverings, see 45.43.

45.4 Floor and wall covering 3 This class includes: 45430000

- laying, tiling, hanging or fitting in buildings or other construction projects of:
 - ceramic, concrete or cut stone wall or floor tiles;
 - parquet and other wood floor coverings carpets and linoleum floor coverings;
 - including of rubber or plastic;
 - terrazzo, marble, granite or slate floor or wall coverings;
 - wallpaper.

45.4 Painting and glazing 4 This class includes: 45440000

- interior and exterior painting of buildings;
 - painting of civil engineering structures;
 - installation of glass, mirrors, etc.;
- This class excludes:
- installation of windows, see 45.42.

45.4 Other building completion 5 This class includes: 45212212 и DA04 45450000

- installation of private swimming pools;
- steam cleaning, sand blasting and similar activities for building exteriors;
- other building completion and finishing work n.e.c.

This class excludes:

- interior cleaning of buildings and other structures, see 74.70.

45.5	Renting of construction or demolition equipment with operator	45500000
45.5 0	Renting of construction or demolition equipment with operator	This class excludes: 45500000 - renting of construction or demolition machinery and equipment without operators, see 71.32.

Annex 2

to Article 8 (2)

ACTIVITIES FOR THE CARRYING OUT OF WHICH A SERVICES CONCESSION CAN BE AWARDED (SECTORAL ACTIVITIES)

1. Activities relating to natural gas and heat:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;

(b) the supply of gas or heat to such fixed networks.

The supply of gas or heat to fixed networks which provide a service to the public shall not be considered to be an activity under Item 1 where the following conditions are met:

(aa) the production of gas or heat is the unavoidable consequence of carrying out an activity other than those referred to in Item 1 or in Items 2 and 3;

(bb) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 per cent of that producer's turnover on the basis of the average for the preceding three years, including the current year.

Supply includes the generation/production, wholesale and retail sale of gas and excludes production of gas in the form of extraction.

2. Activities relating to electricity:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;

(b) the supply of electricity to such fixed networks.

Supply of electricity includes generation/production, wholesale and retail sale of electricity.

The supply of electricity to fixed networks which provide a service to the public shall not be considered to be an activity under Item 2 where the following conditions are met:

(aa) the production of electricity takes place because its consumption is necessary for carrying out an activity other than those referred to in Item 1 to 3;

(bb) supply to the public network depends only on that producer's consumption and has not exceeded 30 per cent of that producer's total production of energy, on the basis of the average for the preceding three years, including the current year.

3. Activities relating to the provision or operation of networks providing a service to the public in the field of transport by automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

4. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

5. Activities relating to the provision of:

(a) postal services;

(b) other services than postal services, in respect of which the conditions set out in Article 130 of the Public Procurement Act are not satisfied and if the said services are provided by an entity which also provides services referred to in Littera (a).

For the purposes of this Annex:

(aa) "postal item" shall be an item addressed in the final form in which it is to be carried, irrespective of weight; in addition to items of correspondence, such items also include books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(bb) "postal services" shall be services consisting of the clearance, sorting, routing or delivery of postal items, regardless of whether they fall within or outside the scope of the

universal postal service within the meaning given by the Postal Services Act;
(cc) "other services than postal services" shall be services provided in the following areas:
- mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");
- services concerning postal items not included in Littera (a), such as direct mail bearing no address.

Annex 3

to Article 8 (3)

SOCIAL AND OTHER SPECIFIC SERVICES

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5 and; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services);	Health, social and related services
85321000-5 and 85322000-2 (Administration and defence services), 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92342200-2; from 92360000-2 to 92700000-8; 79950000-8 (Exhibition, fair and congress organisation services), 79951000-5 (Seminar organisation services), 79952000-2 (Event services), 79952100-3 (Cultural event organisation services), 79953000-9 (Festival organisation services), 79954000-6 (Party organisation services), 79955000-3 (Fashion shows organisation services), 79956000-0 (Fair and exhibition organisation services);	Administrative social, educational, healthcare and cultural services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1;	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3;	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0;	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 (55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service); 55520000-1 (Catering services), 55522000-5 (Catering services for transport enterprises), 55523000-2 (Catering services for other enterprises or other institutions), 55524000-9 (School catering services); 55510000-8 (Canteen services), 55511000-5 (Canteen and other restricted-clientele cafeteria services), 55512000-2 (Canteen management services),	Hotel and restaurant services

55523100-3 (School-meal services);	
from 79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to Item 5 (d) of Section I of Annex 4 to Article 26
from 75100000-7 to 75120000-3; 75123000-4; from 75125000-8 to 75131000-3;	Other administrative services and government services
from 75200000-8 to 75231000-4;	Provision of services to the community
from 75231210-9 to 75231230-5; from 75240000-0 to 75252000-7; 794300000-7; 98113100-9;	Prison related services, public security and rescue services, to the extent not excluded pursuant to Item 5 (g) of Section I of Annex 4 to Article 26
79700000-1 to 79721000-4 (Investigation and security services, security services, alarm-monitoring services, guard services, surveillance services, tracing system services, absconder-tracing services, patrol services, identification badge release services, investigation services and detective agency services), 79722000-1 (graphology services), 79723000-8 (waste analysis services);	Investigation and security services
98900000-2 (Services provided by extra-territorial organisations and bodies) and 98910000-5 (Services specific to international organisations and bodies);	International services
64000000-6 (Postal and telecommunications services), 64100000-7 (Post and courier services), 64110000-0 (Postal services), 64111000-7 (Postal services related to newspapers and periodicals), 64112000-4 (Postal services related to letters), 64113000-1 (Postal services related to parcels), 64114000-8 (Post office counter services), 64115000-5 (Mailbox rental), 64116000-2 (Post-restante services), 64122000-7 (Internal office mail and messenger services);	Postal Services
50116510-9 (Tyre-remoulding services), 71550000-8 (Blacksmith services).	Miscellaneous services

Annex 4

to Article 26

ACTIVITIES OR CONTRACTS COVERING WORKS OR SERVICES WHERE TO THIS ACT DOES NOT APPLY

Section I

List of Exclusions from the Scope of Application of the Act

1. Contracts for services executed by an economic operator on the basis of an exclusive right. A right shall be exceptional where it has arisen by virtue of a statutory instrument or an administrative act which is compatible with the rules on access to the market laid down by the Treaty on the Functioning of the European Union, and with European Union law, whereby the ability to exercise an activity is limited to a single economic operator.
2. Contracts for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, or for public passenger transport services concessions within the meaning of Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.
3. Contracts which the grantor is obliged to award or organise in accordance with procedures established by:
 - (a) an international agreement concluded in conformity with the Treaty on the Functioning of the European Union between the Republic of Bulgaria and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint

implementation or exploitation of a project by their signatories;

(b) the rules of an international organisation or an international financing institution, where the concession concerned is fully financed by that organisation or institution; in the case of concessions co-financed for the most part by an international organisation or international financing institution, the parties shall agree on applicable award procedures.

4. Contracts in the fields of defence and security:

(a) which are governed by specific procedural rules:

(aa) pursuant to an international agreement or treaties concluded by the Republic of Bulgaria alone or by the Republic of Bulgaria and other Member States of the European Union with one or more third countries;

(bb) laid down by an international agreement or treaties relating to the stationing of troops and concerning the undertakings of a Member State of the European Union or of a third country;

(cc) of an international organisation purchasing for its purposes, or to concessions which must be awarded by a Member State of the European Union in accordance with those rules;

(b) for which the application of the Act involves the supply by the Republic of Bulgaria of information the disclosure of which is contrary to the essential interests of security or where the award and performance of the concession are declared to be confidential or must be accompanied by special security measures in accordance with the legislation in force with a view to protecting essential interests of the security of the State;

(c) which are awarded within the framework of a cooperative programme referred to in Item 4 of Article 149 (1) of the Public Procurement Act;

(d) which are awarded by the Republic of Bulgaria to another Member State of the European Union relating to:

(aa) works and services which are directly linked to military equipment or to equipment related to classified information;

(bb) works and services specifically for military purposes or for the purposes of protecting classified information;

(e) which are awarded in a third country and are carried out when forces are deployed outside the territory of the European Union where operational needs require those contracts to be concluded with economic operators located in the area of operations;

(f) whereupon the protection of the essential interests of the security of the Republic of Bulgaria cannot be guaranteed by less intrusive measures like, for instance by imposing requirements aimed at protecting the confidential nature of information which the grantor makes available in a concession award procedure as provided for in this Act.

5. Contracts for services for:

(a) acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or of rights thereon;

(b) acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded to radio media service providers or audiovisual media service providers, or concessions for broadcasting time or programme provision, that are awarded to radio media service providers or audiovisual media service providers;

(c) arbitration and conciliation services;

(d) legal services relating to:

(aa) legal representation of a client by a law firm or by a lawyer in an arbitration or conciliation held in a Member State of the European Union, a third country or before an international arbitration or conciliation instance, or in proceedings before the courts, tribunals or public authorities of a Member State of the European Union or a third country or before international courts, tribunals or institutions;

(bb) legal advice given by a law firm or by a lawyer in preparation of any of the proceedings referred to in Littera (aa), as well as legal advice on matters that may become the subject of proceedings referred to in Littera (aa);

(cc) document authentication and certification which must be effected by notaries;

(dd) legal services whereof the providers are designated by a court or competent authority, or by virtue of a law, the provision of the services being under the supervision of the court or competent authority;

(ee) the exercise of functions of State authorities, including enforcement services provided by an enforcement agent;

(e) upon financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning given by Article 3 of the Markets in Financial Instruments Act, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

(f) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

(g) civil defence, civil protection, and danger prevention services that are provided by not-for-profit legal entities, and which are covered by CPV codes: 75250000-3, 75251000-0,

75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;

(h) political campaign services, which are covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign.

6. Contracts for services for lottery services, which are covered by CPV code 92351100-7, awarded to an economic operator on the basis of an exclusive right,

7. Contracts relating to the provision or exploitation of public electronic communications networks, or to the provision of one or more public electronic communications services within the meaning given by Item 39 and, respectively, Item 40 of § 1 of the Supplementary Provisions of the Electronic Communications Act.

8. Concession contracts which, irrespective of the subject-matter thereof, are awarded by a grantor to a legal person in respect of which all of the following conditions are fulfilled:

(a) the grantor alone, or jointly with one or more other grantors, exercises over the legal person a control which is similar to that which it exercises over its own departments;

(b) more than 80 per cent of the activities of the legal person are carried out in the performance of activities entrusted by the grantor or by self-contained structures thereof or by other legal persons controlled by that grantor;

(c) there is no direct private capital participation in the legal person with the exception of non-controlling and non-blocking forms of private capital participation which do not exert a decisive influence on the activities of the legal person.

9. Concession contracts which, irrespective of the subject-matter thereof, are concluded between two or more grantors, where all of the following conditions are fulfilled:

(a) a cooperation between the parties is established or implemented by the contract with the aim of ensuring that services for the benefit of society they have to perform are provided with a view to achieving objectives they have in common;

(b) the implementation of the cooperation is governed solely by considerations relating to the public interest;

(c) the participating grantors have been performing on the open market less than 20 per cent of the activity concerned by the cooperation during the preceding three years.

10. Concession contracts awarded to a legal person under Item 8 by one or more grantors, provided that the joint venture has been set up in order to carry out the activity which is the subject-matter of the concession over a period of at least three years and that the instrument setting up the joint venture stipulates that the grantors, which form it, will be part thereof for at least the same period.

Section II

Specific Rules for the Application of Some of the Exclusions

1. In the cases referred to in Item 8 (a) of Section I:

(a) the grantor shall exercise over the legal person a control similar to that which it exercises over its own departments, where it exercises a decisive influence over the strategic objectives and significant decisions of that legal person; that control may also be exercised by another legal person, which is itself controlled in the same way by the grantor;

(b) the grantors shall exercise joint control over a legal person where the following conditions are simultaneously fulfilled:

(aa) the management and supervisory bodies of the legal person are composed of representatives of all grantors participating in the control, and individual representatives may represent several or all of the participating grantors;

(bb) those grantors are able to jointly exert decisive influence over the strategic objectives and significant decisions of the legal person;

(cc) the legal person does not have any interests which are contrary to those of the controlling grantors.

2. In the cases referred to in Items 8 and 9 of Section I, the average total turnover or an appropriate alternative measure of the performance of the activity for the preceding three years shall be taken into consideration for the determination of the percentage of activities.

3. In the cases referred to in Items 8 and 9 of Section I, where, because of the date on which the legal person or the grantor was created or commenced activities or because of a reorganisation of the activities thereof, the turnover is either not available or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of its business programme.

4. Where any of the conditions necessary for the conclusion of a contract under Items 8 and 9 of Section I no longer applies, the contract shall be terminated by the conclusion, according to the procedure established by this Act, of a new contract with the same subject-matter. In such case, the grantor shall initiate a new concessionaire designation procedure within six months from the time when the ground concerned ceases to apply.

Annex 5

to Item 4 (b) of Article 60 (2)

LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS

1. Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, adopted at San Francisco on 17 June 1948 (ratified by decree, State Gazette No. 19 of 1959) ([Convention promulgated in] State Gazette No. 35 of 1997).
2. Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, adopted at Geneva on 8 June 1949 (ratified by decree, State Gazette No. 19 of 1959) ([Convention promulgated in] State Gazette No. 35 of 1997).
3. Convention [No. 29] concerning Forced or Compulsory Labour, adopted at Geneva on 28 June 1930 (ratified by decree and promulgated, State Gazette No. 91 of 1932).
4. Convention No. 105 concerning the Abolition of Forced Labour, adopted at Geneva on 25 June 1957 (ratified by law, State Gazette No. 79 of 1998) ([Convention promulgated in] State Gazette No. 37 of 2000).
5. Convention No. 138 concerning Minimum Age for Admission to Employment, adopted at Geneva on 26 June 1973 (ratified by decree, State Gazette No. 13 of 1980) ([Convention promulgated in] State Gazette No. 38 of 1997).
6. Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, adopted at Geneva on 25 June 1958 (ratified by decree, Transactions of the Presidium of the National Assembly No. 46 of 1960) ([Convention promulgated in] State Gazette No. 35 of 1997).
7. Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted at Geneva on 29 June 1951 (ratified by decree, Transactions of the Presidium of the National Assembly No. 54 of 1955) ([Convention promulgated in] State Gazette No. 35 of 1997).
8. Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted at Geneva on 17 June 1999 (ratified by law, State Gazette No. 54 of 2000) ([Convention promulgated in] State Gazette No. 68 of 2001).
9. Vienna Convention for the Protection of the Ozone Layer, signed at Vienna on 22 March 1985 (ratified by decree, State Gazette No. 82 of 1989) ([Convention promulgated in] State Gazette No. 71 of 1999), and Montreal Protocol on Substances that Deplete the Ozone Layer, signed at Montreal on 16 September 1987 (ratified by decree, State Gazette No. 82 of 1989) ([Protocol promulgated in] State Gazette No. 71 of 1999).
10. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, signed at Basel on 22 March 1989 (ratified by law, State Gazette No. 8 of 1996) ([Convention promulgated in] State Gazette No. 1 of 1997).
11. Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on 22 May 2001 (ratified by law, State Gazette No. 89 of 2004) ([Convention promulgated in] State Gazette No. 34 of 2005).
12. Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998, and its three regional Protocols (ratified by law, State Gazette No. 7 of 2000) ([Convention promulgated in] State Gazette No. 33 of 2004; amended in No. 88 of 2005 and No. 21 of 2009).

Annex 6

to Article 73 (1)

MINIMUM CONTENTS OF A CONCESSION NOTICE

1. Name, address, including NUTS code, telephone number and fax number, e-mail address and Internet address of the grantor and, where different, also of the service from which additional information may be obtained, as well as the means of communication chosen by the grantor.
2. Type of grantor and main activity.
3. E-mail address or Internet address at which the concession documents will be available for unrestricted and full direct access, free of charge, and in the cases referred to in Article 78 (6), the procedure and terms according to which economic operators can gain access to the deleted information.
4. Name of the concession.
5. Subject-matter of the concession, including for each lot, where applicable:
 - (a) type (nature) and extent of works and/or services;
 - (b) estimated value of the concession;
 - (c) maximum duration of the concession;
 - (d) description of the options of the tender, where applicable.
6. CPV codes, including for each lot, where applicable.
7. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance of the services, including for each lot, where applicable.
8. Conditions for participation, including regarding the subcontractors named in the application.

9. Conditions for the implementation of the concession.
10. Type of the concessionaire designation procedure.
11. Time limit for the receipt of an application in a competitive procedure with negotiation, of an application and an indicative tender in a competitive dialogue, as well as of an application and tenders in an open procedure.
12. Listing of the award criteria in descending order or reference to the concession documents.
13. Date of dispatch of the notice.
14. Name and address of the body responsible for appeal and information concerning the deadline for lodging appeals, as well as the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
15. Address where applications or tenders shall be received.
16. Requirements and conditions related to the use of electronic means of communication.
17. Information as to whether the concession is related to a project and/or programme financed by European Union funds.
18. For works concessions, indication as to whether the concession is covered by the World Trade Organisation Agreement on Government Procurement (GPA).
19. Number and date of the decision whereby the notice was approved.
20. Other information relevant to the concession.

Annex 7

to Article 75 (1)

MINIMUM CONTENTS OF A PRIOR INFORMATION NOTICE

1. Name, address, including NUTS code, telephone number and fax number, e-mail address and Internet address of the grantor and, where different, also of the service from which additional information may be obtained, as well as the means of communication chosen by the grantor.
2. E-mail or Internet address at which the specifications and any supporting documents will be available, if different from these referred to in item 1.
3. Type of grantor and main activity.
4. Name of the concession.
5. CPV codes, including for each lot, where applicable.
6. NUTS code for the main place of performance of the services, including for each lot, where applicable.
7. Description of the services.
8. Estimated value.
9. Conditions for participation, where applicable.
10. Time limit(s) for contacting the grantor in view of participation.
11. Brief description of the main stages and the terms and procedure for the conduct of the concessionaire designation procedure to be applied.
12. Number and date of the decision whereby the notice was approved.
13. Other information relevant to the concession.

Annex 8

to Article 75 (2)

MINIMUM CONTENTS OF A NATIONAL NOTICE

1. Name, address, including NUTS code, telephone number and fax number, e-mail address and Internet address of the grantor and, where different, also of the service from which additional information may be obtained, as well as the means of communication chosen by the grantor.
2. E-mail address or Internet address at which the concession documents will be available for unrestricted and full direct access, free of charge; in the cases where any information is deleted, an indication of how access to the deleted part of the concession documents can be gained.
3. Name of the concession.
4. Subject-matter and object of the concession.
5. Estimated value of the concession: for a works concession or a services concession.
6. Maximum duration of the concession.
7. Starting date of the concession.
8. Concession performance conditions established depending on the subject-matter and the specificities of the concession.
9. Factual or legal circumstances whereof the occurrence or change may lead to a disturbance of the economic balance, where such circumstances are envisaged.
10. Principal rights and obligations under the concession contracts, including the applicable obligations:
 - (a) stemming from environmental, social and labour law, established by national legislation, European Union law, collective agreements or by the international social and environmental

conventions listed in Annex 5 hereto;

(b) related to national security and defence, to the life and health of citizens, to the environment, to protected areas, zones and sites and to public order, where applicable;

(c) to insure the object of the concession;

11. Conditions regarding subcontracting by the concessionaire.

12. Conditions and/or prohibitions for renting the object of the concession.

13. Type and amount of the performance guarantees for the obligations under the concession contract and/or other types of security.

14. Amount, format and conditions for the provision of the concession remuneration, where such remuneration is envisaged, including:

(a) amount of the lump-sum concession remuneration due by the effective date of the concession contract;

(b) amount of the minimum annual concession remuneration for the duration of the concession;

(c) maximum grace period during which the concessionaire shall be exempted from payment of the concession remuneration, where such grace period is envisaged;

(c) procedure for the provision of the concession remuneration.

15. Amount and manner of furnishing the performance guarantees for the concession contract.

16. Other requirements relating to the subject-matter or the object of the concession, which are not set by statutory instrument.

17. Time limit for receipt of the tenders.

18. Conditions for participation in the procedure, where such conditions are envisaged.

19. Award criteria and the relative weighting given thereto.

20. Name and address of the body responsible for appeal and information concerning the deadline for lodging appeals, as well as the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained, and the means of communication chosen by the grantor.

21. Address where tenders shall be received.

22. Requirements and conditions related to the use of electronic means of communication.

23. Information as to whether the concession is related to a project and/or programme financed by European Union funds.

24. Number and date of the decision whereby the notice was approved.

25. Other information relevant to the concession.

Annex 9

to Article 141 (3)

MINIMUM CONTENTS OF A CONCESSION CONTRACT MODIFICATION NOTICE

1. Name, address, including NUTS code, telephone number and fax number, e-mail address and Internet address of the grantor and, where different, also of the service from which additional information may be obtained, as well as the means of communication chosen by the grantor.

2. Type of grantor and main activity.

3. Name of the concession.

4. Date of concession award decision.

5. CPV codes, including for each lot, where applicable.

6. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance of the services, including for each lot, where applicable.

7. Description of the circumstances which have rendered necessary the modification.

8. Subject-matter of the concession, type (nature) and extent of the works and/or services before and after the modification, including for each lot.

9. Modification of value of the concession, including increase in prices or fees caused by the modification, where applicable.

10. Name, address, including NUTS code, telephone number and fax number, e-mail address and Internet address of the new economic operator or operators, where applicable.

11. Information as to whether the concession is related to a project and/or programme financed by European Union funds.

12. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

13. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) concerned by this notice.

14. Date of dispatch of the notice.

15. Any other relevant information.