

## **IMPLEMENTING RULES OF THE LAW ON PUBLIC ENTERPRISES**

Adopted with Decree of the Council of Ministers № 85/30.04.2020, promulgated, SG, No. 40/05.05.2020, effective 5.05.2020, ammended, SG, No. 89/26.10.2021, effective 26.10.2021

### **Chapter One**

#### **GENERAL PROVISIONS**

**Art. 1.** (1) These Rules shall regulate:

1. the content of the policy of state ownership in public enterprises and the procedure for its development, adoption and updating;
  2. the activities of the Agency for Public Enterprises and Control as a coordinating unit with respect to the public enterprises and its relations with the bodies exercising the rights of the State and with the public enterprises;
  3. the procedure for exercising the rights of the State in public enterprises;
  4. the specific rules for the conclusion of certain types of contracts by (state-owned) public enterprises;
  5. the main selection criteria, conditions and procedure for conducting the competitive nomination procedure for the members of the management and control bodies;
  6. the conferral of management and control in public enterprises and the procedure for determining the remuneration of the members of the management and control bodies;
  7. the planning of the activities of public enterprises and performance reporting;
  8. the public disclosure of financial and non-financial information about enterprises;
  9. the principles of exercising the rights of the municipalities in the municipal public enterprises.
- (2) Local government bodies and municipal public enterprises apply the provisions of Chapter Eight.

### **Chapter Two**

#### **STATE POLICY**

##### **Section I**

##### **Developing policy of state ownership in public enterprises**

**Art. 2.** The policy of state ownership in public enterprises shall be developed by the Agency for Public Enterprises and Control in cooperation with the bodies exercising the rights of the State in public enterprises and other state organizations involved in its implementation; and shall be approved by the Council of Ministers.

**Art. 3.** The Agency for Public Enterprises and Control shall propose periodically an update of the policy of state ownership in public enterprises to the Council of Ministers, at least once every

four years, and when it finds that there are changes in the economic environment or other circumstances necessitating a change in the approach of the State as an owner in public enterprises. The update shall be prepared on the basis of the annual reviews of current policy or on the proposal from the relevant sectoral minister.

**Art. 4.** In developing and updating the policy of state ownership in public enterprises, the Agency for Public Enterprises and Control holds public consultations.

## **Section II**

### **Content of the policy of state ownership in public enterprises**

**Art. 5.** (1) The policy of state ownership in public enterprises is a short framework document, which is aimed at determining the general goals and priorities set by the State as an owner in the public enterprises.

(2) The policy of state ownership in public enterprises shall provide:

1. the rationale of state ownership in public enterprises;
2. the goals which the State sets as an owner in public enterprises;
3. the role of the State in the governance of public enterprises;
4. indicators for the implementation of the Policy;
5. the role and responsibilities of ministers exercising the rights of the state in enterprises and other state organizations involved in the implementation.

**Art. 6.** (1) The rationale of the reasons why the State should participate in public enterprises shall include:

1. the information about the public enterprises in which the State participates, presented analytically, such as data on their number, the total value of their equity, distribution by economic activity, share in the gross domestic product;
2. the reasons why the State participates in public enterprises;
3. the information on the expected development of public enterprises, including their privatization, restructuring or dissolution, as well as the establishment of new public enterprises.

(2) Depending on the specific criteria chosen, public enterprises may be classified/grouped into separate categories.

**Art. 7.** The goals set by the State with its ownership in public enterprises can be long-term – common for the entire public sector or for a certain part of it, and medium-term (for one business cycle of 3 to 5 years) – for each enterprise.

**Art. 8.** (1) The Policy of state ownership in public enterprises shall define the general objectives of long-term nature in accordance with the rationale for state ownership, as well as the expected results.

(2) Long-term objectives may be financial as well as non-financial and may relate to the entire public sector or to a specific part of it, depending on the grouping of public enterprises into a category or sector.

(3) The expected results are initially foreseen policy benchmarks that allow for measuring the degree to which each of the objectives has been achieved.

**Art. 9.** For each of the objectives (long and medium term), key performance indicators are set that should be:

1. relevant to the set goals;
2. clear, specific and measurable – have a baseline value, a target value and a clearly defined data source that provides information on performance on an annual basis and as a final result;
3. reliable and comparable.

**Art. 10.** The Policy of state ownership in public enterprises shall include information on how the rights of the state in public enterprises are exercised – model (centralized, decentralized, mixed or other model of exercising the state ownership rights), the main functions, role and responsibilities of all state institutions involved in policy implementation.

**Art. 11.** The rights of the State in public enterprises shall be exercised in a professional and predictable manner, in accordance with the generally accepted principles of corporate governance and in strict separation of the functions of an owner from the other functions performed by the State in the formulation of policies and regulations.

**Art. 12.** The manner in which the State exercises ownership rights in public enterprises shall be based on the following principles:

1. all partners and shareholders shall be treated equally;
2. the exercise of state rights in public enterprises shall be carried out in a transparent and accountable manner;
3. the State acts as an informed and active owner;
4. the State shall allow public enterprises to have operational autonomy to achieve the set objectives and shall refrain from interfering with the operational management of the enterprises;
5. where public enterprises combine economic activities and activities in the pursuit of public policy objectives, high standards of transparency and disclosure of revenue and expenditure shall be maintained, relevant to the respective field of activity;
6. the access of public enterprises to debt and equity financing of their economic activities shall be carried out at market conditions;
7. the members of the management and control bodies in public enterprises shall be selected and appointed through a competitive procedure aimed at the formation of professional and independent management and control bodies.

### **Chapter Three**

#### **COORDINATION OF STATE OWNERSHIP IN PUBLIC ENTERPRISES**

**Art. 13.** The Agency for Public Enterprises and Control shall perform the functions set out in the Law on Public Enterprises of a coordinating unit for public enterprises.

**Art. 14.** (1) Within 30 days after the end of each quarter and by 25 April of the following year, public enterprises shall submit to the body exercising the rights of the State and to the Agency for Public Enterprises and Control, through the electronic information system under Art. 21, the quarterly and annual financial statements, analyzes and reports prepared in accordance with Chapter Seven.

(2) By 30 June of the year following the reporting period, the public enterprises shall submit to the body exercising the rights of the State and to the Agency for Public Enterprises and Control, through the electronic information system under Art. 21, the audited and approved annual financial statements, respectively individual and consolidated – where applicable, together with the business programmes as well as reports on the degree of fulfilment of the indicators set in the business programmes.

(3) The Agency for Public Enterprises and Control may request additional information from public enterprises in the required format.

(4) The Agency for Public Enterprises and Control may provide methodological guidance on the content of business programmes, including: selecting indicators, reporting on their implementation and setting deadlines for their delivery.

**Art. 15.** For the purpose of the budgetary procedure for the respective year, the developing of the common dividend policy and the cash management, the public enterprises shall provide the Ministry of Finance with forecast and reporting information, in a format and in a manner determined by the Minister of Finance.

**Art. 16.** (1) Prior to approving the business programs of the public enterprises, categorized as "large", the body exercising the rights of the State shall request an opinion from the Agency for Public Enterprises and Control on the compliance of the medium-term financial and non-financial objectives and expected results with the provisions of Article 9.

(2) Annually, the Agency for Public Enterprises and Control shall evaluate the implementation of the approved business programmes of the public enterprises categorized as “large” with a view to achieving financial and non-financial objectives

(3) The evaluation of the implementation of the approved business programs of a certain number of public enterprises, categorized as "micro", "small" and "medium" is carried out annually in accordance with the Plan for evaluating the implementation of approved business programmes of public enterprises approved by Decision of the Council of Ministers.

**Art. 17.** The fulfilment of the financial and non-financial objectives of the public enterprise is evaluated on the basis of the indicators set out in the business programs, the implementation of which is reported on a four-point scale, which includes the following levels: unsatisfactory performance, satisfactory performance, good performance and very good performance. The procedure, order and specific evaluation criteria shall be determined in a methodology adopted by the Agency for Public Enterprises and Control.

**Art. 18.** The Agency for Public Enterprises and Control shall submit its assessment of the performance of the enterprise to the General Meeting of the partners/shareholders within four months after receiving the information under Art. 14(2).

**Art. 19.** If the activities of the public enterprise are assessed as unsatisfactory during the reporting year, the Agency for Public Enterprises and Control shall include in its assessment a proposal to the body exercising the rights of the State to take measures to improve implementation.

**Art. 20.** The competent body shall review the assessments provided, decide on further action and transmit to the Agency for Public Enterprises and Control information on the decision taken.

**Art. 21.** (1) The Agency for Public Enterprises and Control shall maintain an electronic information system for public enterprises with the following data:

1. unique identification code (UIC);
2. name, legal form of the enterprise, seat and address of management;

3. field of operation of the enterprise and a four-digit code of principal economic activity under NACE.BG-2008;
4. capital, distribution of capital, amount of shareholding;
5. names of the members of the management and control bodies and of the persons representing the enterprise;
6. whether the enterprise is “large” within the meaning of the Accounting Act;
7. the accounting standards the enterprise applies;
8. the body exercising the rights of the State in the enterprise;
9. quarterly and annual financial statements, analyzes and reports on the activities of the public enterprises as well as other information under Art. 61;
10. summary information by enterprises on the application of the rules and the existence of a concentration under Article 28, paragraph 5;
11. the approved business programmes of public enterprises as well as reports on the degree of fulfilment of the indicators set in the business programmes.

(2) Public enterprises shall be obliged to provide information on updating the data under paragraph (1) within 5 business days after the change occurs.

(3) The Agency for Public Enterprises and Control shall provide public access to the data under paragraph (1) points 1 through 10, on its website.

**Art. 22.** (1) The Agency for Public Enterprises and Control shall prepare an annual aggregate analytical report on the public enterprises, which includes information at least on:

1. the government portfolio in public enterprises (total value and structure);
2. the implementation of the policy of state ownership in public enterprises during the reporting period;
3. the financial and operational situation of the enterprises at the end of the reporting period;
4. the presentation of public enterprises and the fulfilment of the strategic goals and planned results;
5. the assessment of the degree of compliance of the activities of public enterprises with the applicable standards for corporate governance and disclosure;
6. the composition of the management and control bodies, their remuneration and the changes made therein.

(2) The information on the fulfilment of the financial and non-financial objectives shall include separate data for each of the public enterprises categorized as “large” such as revenue, return, payments from/to the budget, public targets, employees, market share, members of the management and control bodies and their remuneration, satisfaction with the service, protection of environment and more. For the purposes of the analysis, a comparison can be made with private sector enterprises.

(3) The report should summarize and supplement the information on the size, development, results and value of public enterprises and the public sector as a whole.

(4) The annual aggregate analytical report shall be prepared with the assistance of public enterprises and the bodies exercising the rights of the State, which shall provide the Agency with the necessary information.

(5) The annual aggregate analytical report shall be submitted for approval to the Council of Ministers by 31 October of the following year and shall be submitted to the National Assembly within one month after its approval. The approved annual aggregate report shall be published in Bulgarian and in English on the Agency's website within three days and shall be published in paper form.

## **Chapter Four**

### **THE POWERS OF THE STATE IN PUBLIC ENTERPRISES – COMMERCIAL COMPANIES**

#### **Section I**

##### **Formation, transformation and dissolution**

**Art. 23.** (1) The Council of Ministers may establish single owner limited liability companies with state shareholding in the capital and single owner joint-stock companies with state shareholding in the capital in accordance with the Commerce Act and make decisions for the formation of joint-stock companies and limited liability companies jointly with other co-founders, and for the state shareholding in the capital of joint stock companies and limited liability companies through the acquisition of shares in their capital.

(2) The valuation of in-kind contribution of the State to the capital of commercial companies shall be carried out in accordance with Chapter VII of the Implementing Rules of the State Property Act, and for in-kind contributions of property other than real estate and properties, in accordance with the Commerce Act.

**Art. 24.** (1) The transformation or dissolution of single owner commercial companies with state shareholding in the capital shall be carried out by the Council of Ministers or by the ministers in accordance with their sectoral competence.

(2) The body exercising the rights of the State in a public enterprise which is a limited liability company, shall take action for transformation of the public enterprise into a joint stock company, in the cases under Art. 9(2) of the Law on Public Enterprises.

#### **Section II**

##### **Competence of the bodies of public enterprises which are commercial companies**

**Art. 25.** In addition to the matters included in its competence by the Commerce Act, the General Meeting of the partners in public enterprises which are limited liability companies shall take decisions for:

1. approval of the business programme;
2. selection and dismissal of the independent registered auditor;
3. acquisition or disposal of shares owned by the company in other companies;
4. obtaining loans or credits, providing loans, providing guarantees (except those given under the Public Procurement Act), commitments to warranties and targeted financing, providing collateral in favour of third parties, in cases where the value of each of the above exceeds the lower value of BGN 500 thousand or 5 per cent of the total book value of the fixed assets at 31 December of the previous year;

5. conclusion of a judicial or extrajudicial agreement, which recognizes obligations or cancels a debt;
6. disposals of fixed assets and real estate leasing transactions with a book value exceeding 5 percent of the total book value of the fixed assets as of 31 December of the previous year; concluding contracts for obtaining loans or credits;
7. taking out a mortgage and establishing a pledge on fixed assets of the company;
8. other issues, in relation to matters falling within its competence as determined by the legislation or the company's Articles of Association.

**Art. 26.** (1) In addition to the matters included by the Commerce Act in its competence, the General Meeting of the partners in public enterprises which are joint stock companies shall take decisions for:

1. approval of the business programme;
2. acquisition or disposal of shares owned by the company in other companies;
3. other issues referred to in its competence by the legislation or the statutes / constitutive act.

(2) The Board of Directors of public enterprises which are joint stock companies shall make the following decisions, which shall enter into force following the approval of the General Meeting of shareholders:

1. disposal transactions with fixed assets and establishment of rights in rem in immovable property, the value of which exceeds the lower value of BGN 500 thousand or 5 percent of the book value of the fixed assets as of 31 December of the previous year;
2. rental of immovable property with book value exceeding 5 percent of the book value of the fixed assets as of 31 December of the previous year;
3. obtaining loans or credits, providing loans, providing guarantees (except those given under the Public Procurement Act), commitments to warrantees and targeted financing, providing collateral in favour of third parties, in cases where the value of each of the above exceeds the lower value of BGN 500 thousand or 5 per cent of the total book value of the fixed assets as of 31 December of the previous year;
4. conclusion of a judicial or extrajudicial agreement which recognizes obligations or cancels a debt;
5. taking out a mortgage and establishing a pledge on fixed assets of the company.

(3) The allocation of the competence for the approval of the decisions under paragraph (2) between the Supervisory Board and the General Meeting of shareholders in public enterprises which are joint stock companies with a two-tier management system shall be regulated in the Articles of Association of the public enterprise.

**Art. 27.** The Board of Directors (in a one-tier system) or the Supervisory and Management Boards (in a two-tier system) and the manager(s) shall decide on all matters relating to the management of a public enterprise which are not allocated to the competence of the General Meeting, in accordance with their powers, regulated in the Statutes, the Articles of Association or the Constitutive Act of the public enterprise.

### **Section III**

#### **Specific rules for the conclusion of certain types of contracts**

**Art. 28.** (1) Public enterprises with a book value of cash exceeding BGN 3 million shall comply with the following concentration rules:

1. The net exposure of a public enterprise to a credit institution may not exceed 25 per cent of the public enterprise's total cash. The net exposure shall be calculated at the end of each month on the basis of the balances at the last date of the respective month.

2. In case of violation of the limit under point 1 as a result of current operational processes (spending of funds held in accounts, receiving payments, changes in the exchange rates, etc.), the public enterprise should, within one month, carry out the necessary actions for the fulfilment of the condition under point 1.

3. The net exposure to a credit institution shall be the difference between the lev equivalent of a public enterprise's cash in the accounts of a credit institution and the lev equivalent of the amount of outstanding loans extended to the enterprise and the open-end bank guarantees initiated by it, provided by the same credit institution.

4. The amount of cash of the public enterprise shall not include the cash in accounts on which a lien is imposed.

(2) The rules under paragraph (1) shall not be applied:

1. by public enterprises which are credit or financial institutions within the meaning of the Credit Institutions Act or the principal activity of which is the management of financial instruments under programmes co-financed by the European Structural and Investment Funds and other initiatives of the European Union.

2. to the funds, receipts and payments of the public enterprises for which the provisions of Art. 153(10) and/or Art. 156 of the Law on Public Finances apply, as well as to other funds of the enterprises, which are maintained by law in accounts serviced by the Bulgarian National Bank. To the remaining funds of these enterprises, paragraph (1), points 2 through 4 shall apply.

(3) Public enterprises shall conclude financial services contracts on the basis of the publicly announced conditions of the providers of the respective types of services and subject to the requirements of risk management, accessibility and cost-effectiveness.

(4) Public enterprises shall submit to the body exercising the rights of the State in the respective enterprise, information in an electronic form on the application of the rules under paragraph (1), on a quarterly basis (with data for each month included) by the 25th day of the month following the respective quarterly reporting period.

(5) The bodies under para. 4 shall publish in the electronic information system of art. 21, summary information by enterprises on the application of the concentration rules under para 1 on a quarterly basis, by the 30th day of the month following the respective quarterly reporting period. The information shall be submitted electronically in a form and model maintained on the website of the Agency for Public Enterprises and Control.

(6) Public enterprises with a book value of cash not exceeding BGN 3 million shall apply the reporting requirement under paragraphs (4) and (5).

**Art. 29.** (1) The sale of immovable properties, as well as movable properties and assets, functionally related to them, owned by public enterprises, shall be carried out through an electronic auction via the electronic platform for sale of immovable property in accordance with the Ordinance on the electronic platform for the sale of immovable property - private state ownership and immovable property – owned by commercial companies with more than 50 per cent state shareholding in the capital or by commercial companies whose shares are owned by a



company with more than 50 per cent state shareholding in the capital, except properties owned by enterprises in liquidation.

(2) The sale of tangible fixed assets – movable property and fixed intangible assets shall be carried out by auctioning without prejudice to the Rules for auctioning and competition and for concluding sales and lease contracts with workers and employees in accordance with Annex No. 1.

(3) The conclusion of contracts for the lease of fixed tangible assets, as well as for the insurance of the property of public enterprises, with the exception of those under Art. 5(4), points 1 and 2 of the Law on Public Procurement, which carry out one or more sectoral activities within the meaning of Art. 123 of the same law, shall be carried out after tendering or competition according to the Rules for tendering and competition and for concluding sales and lease contracts with workers and employees in accordance with Annex No. 1.

(4) The starting price for the auction and for the competition shall be determined by an independent valuer appointed by the enterprise.

(5) The auction or competition shall be opened after the special requirements of the Rules, the Statutes, the Articles of Association or the Constitutive Act have been fulfilled.

**Art. 30.** (1) With the permission of the body exercising the rights of the State in the public enterprises, respectively at the General Meeting of the partners/shareholders, the conclusion of contracts for the sale, exchange and lease of fixed assets, as well as the establishment of property rights, may be made by direct negotiation, the starting price being determined by an independent valuer in the following cases:

1. in case of co-ownership;

2. with subsidiaries within the meaning of Art. 2, para. 1, item 2 of the Law on Public Enterprises;

3. with a concessionaire, when the asset is necessary in view of the subject of the concession;

4. with the State, the municipalities and the budgetary enterprises within the meaning of the Accounting Act;

5. for the needs of diplomatic and consular missions of foreign countries and representations of intergovernmental organizations in the Republic of Bulgaria;

6. when the transaction is with a commercial company with more than 50 per cent state shareholding in the capital, providing the users with public services, which are subject to regulation by a state body;

7. when the conclusion of rental contracts is carried out by the “Diplomatic Estate Agency in the country” EOOD and the “National Palace of Culture – Sofia Convention Centre” EAD;

8. when the rental represents short time - up to one year - the use of commercial premises, parts of sites or infrastructure, where these are not separate sites or detached parts, and the conclusion of transactions is made under publicly disclosed Terms and Conditions.

9. following the permission of the Council of Ministers;

(2) With the permission of the body exercising the rights of the State in public enterprises, respectively at the General Meeting of the partners/shareholders, the conclusion of contracts for the leasing of fixed assets – sports sites and facilities, regardless of their book value, may be effected by direct negotiation with non-profit legal entities for performing socially useful activities whose principal activity is consistent with the purpose of the asset, with the starting price being determined by an independent valuer.

(3) The contracts under paragraph (2) shall be for a period of up to one year.

## **Chapter Five**

### **REQUIREMENTS FOR THE BODIES OF MANAGEMENT AND CONTROL OF PUBLIC ENTERPRISES AND NOMINATION OF CANDIDATES**

#### **Section I**

##### **Basic criteria for the selection of members of management and control bodies**

**Art. 31.** The selection criteria shall be determined by the body exercising the rights of the State, in accordance with Art. 21(2) and (3) of the Law on Public Enterprises and taking into account the requirements of the special laws. Selection criteria shall be submitted to the Nomination Committee before the opening of the competition.

**Art. 32.** The criteria for the assessment of candidates and their weight shall be determined by the body exercising the rights of the State. The assessment criteria shall be submitted to the Nomination Committee before the opening of the competition.

**Art. 33.** The selection criteria for the nomination of candidates for members of the management and control bodies of public enterprises are:

1. appropriate educational and qualification degree in the specified particular specialties, which presuppose the knowledge and competences necessary for professional fulfilment of the duties of the respective position in the enterprise (law, finance, accounting and control, marketing, business administration, medicine, technical specialties, etc.);
2. professional experience, providing the necessary skills for professional fulfilment of the duties of a member of a management and control body;
3. good reputation;
4. other relevant professional skills and competences according to the specific nature of the particular enterprise, for example in the field of strategic planning, financial, commercial or production management, risk management, foreign language use and others.

**Art. 34.** (1) Depending on the selection criteria defined, the body exercising the rights of the State shall also determine the appropriate indicators for their implementation.

(2) Only compliance or non-compliance with the requirements shall be established for the educational qualification degree in the specified particular specialties in view of the specificity of the enterprise and its needs.

(3) Minimum number of years of experience in a particular profession, senior management, internationally recognized research or consultancy experience, etc. may be used as an indicator for assessing professional experience.

(4) The following may be used as indicators for assessing other skills and competences:

1. in the field of strategic planning – the ability to set clear short and long-term goals of the enterprise, to know the trends in the industry and to use different sources of information, the ability to analyze the activities of the enterprise in the context of the industry in which it functions at national/international level (long-term vision), the ability to plan and manage change, etc;
2. in the field of operational management – the ability to lead a team, organize teamwork, motivate team members, form a wide network of professional contacts to be used for professional purposes, achieve results through different approaches, reach compromises by maintaining

continuity, make decisions in the short term and in situations where limited information is available, propose several solutions to a single problem by making an informed decision and anticipating the possible consequences, etc.

(5) A candidate for a member of a management and control body shall enjoy good reputation unless there is evidence to the contrary and there is no reasonable doubt as to the good reputation of the person. In assessing the reputation of a candidate for a member of a management or control body, account shall be taken of the information available to the body exercising the rights of the State and to the Nomination Committee, in order to carry out the assessment.

**Art. 35.** The assessment procedure shall consist of two parts – written and oral part (interview), and for both parts minimum scores shall be determined; the failure to meet them shall justify the elimination of candidates from further participation in the competitive procedure. The written part shall include the presentation of a concept for the development of the enterprise and the candidate's contribution to its management, and it may also include a test. The oral part shall consist of questions that each candidate must answer.

**Art. 36.** For the purposes of assessing the candidates, the body exercising the rights of the State shall develop an evaluation methodology that is submitted to the Nomination Committee before the competitive procedure is initiated.

**Art. 37.** (1) A competitive procedure for the election of members of the management and control bodies of public enterprises, which are not categorized as “large”, may be conducted in accordance with the procedure of section III of Chapter Five or by the relevant body exercising the rights of the State, in the order determined by that body.

(2) A competitive procedure for the election of state representatives in the bodies of management and control in public enterprises shall be conducted by the respective body exercising the rights of the State, in the order determined by that body.

(3) A competitive procedure for the election of members of the Management Board of joint-stock companies with two-tier structure shall be carried out by the Supervisory Board of the respective public enterprise, in the order determined by the Supervisory Board.

(4) In conducting the competitive procedures under paragraphs (1), (2) and (3), the principles of publicity, transparency, free and fair competition, equality and proportionality, as well as non-discrimination shall be observed, and the candidates shall meet the selection criteria set out in Art. 33.

(5) Information on the competitive procedures carried out under the paragraphs (1) – (4) shall be submitted to the Agency for Public Enterprises and Control within 5 working days from the conclusion of the management and control contracts.

## **Section II**

### **Nomination Committee**

**Art. 38.** (1) The Agency for Public Enterprises and Control shall appoint a Nomination Committee consisting of nine members, including a chair person, and not less than three reserve members. Three of the members shall be designated by the body exercising the rights of the State, three shall be employees of the Agency for Public Enterprises and Control and three shall be independent experts.

(2) The Nomination Committee shall be composed of permanent and replaceable members. The replaceable members shall be designated according to the sectoral competence of the body exercising the rights of the State in each individual selection.

**Art. 39.** An independent expert may be a person who is not bound by any material or non-material interests or relations with the public enterprise for which members of the management and control bodies are nominated, with members of the current management, and with a partner/shareholder or with the body exercising the rights of the State in the enterprise.

**Art. 40.** (1) The Nomination Committee shall include persons of good repute, who have a university degree, have not been convicted of an offence publicly prosecuted and committed intentionally, have not been put under incapacity mandates, and have at least 5 years of experience in at least one of the following areas:

1. personnel management, selection and assessment of competences;
2. management of commercial companies;
3. the field in which the enterprise for which members of the management or control bodies are elected operates;
4. law.

(2) The Nomination Committee shall be established for a term of three years. At the end of the term, the Committee shall continue its work until new members are appointed for the next term.

(3) The members of the Committee may be reappointed without restriction.

(4) The term of office of a member of the Committee shall be terminated early in the following cases:

1. on death;
2. upon termination of the service/employment relationship with the Agency for Public Enterprises and Control or with the body exercising the rights of the State which has designated him/her;
3. when it is objectively impossible to fulfil his/her duties for more than 3 months;
4. in case of a conviction for an offence publicly prosecuted and committed intentionally;
5. at his/her request or at the decision of the body exercising the rights of the State, by which he/she was designated;
6. in case of serious breach or systematic failure to perform his/her duties as members of the committee.

**Art. 41.** (1) The Public Enterprises and Control Agency shall develop Internal Rules for working of the Nomination Committee and conducting of competitive procedures, which shall be published on the Agency's website.

(2) The Nomination Committee shall meet at the premises of the Agency for Public Enterprises and Control, and the administrative services of the Committee shall be provided by the Agency.

### **Section III**

#### **Nomination procedure**

**Art. 42.** The body exercising the rights of the State shall ensure that the process of selecting and assessing candidates for members of management and control bodies is commenced in a timely manner by:

1. preparing a description of the necessary competences and requirements for professional experience for the respective position, as well as information on the current state of the enterprise, its strategy, goals and challenges;
2. providing, for the purpose of announcing on the website of the Agency for Public Enterprises and Control, the public invitation for recruitment of candidates, together with all relevant documents.

**Art. 43.** The Agency for Public Enterprises and Control shall publish on its website a public invitation containing information on the position and the enterprise, the requirements for the candidates, the selection criteria, the criteria and methodology for the assessment of the candidates, the documents required, the manner of communicating with the Committee and the deadline for presenting the documents.

**Art. 44.** The Nomination Committee shall conduct a competitive procedure consisting of the following stages:

1. admission of candidates on the basis of the submitted documents and the selection criteria;
2. sending invitations to the candidates admitted to the written part of the competitive procedure;
3. conducting the written part of the competitive procedure, evaluating the works of the candidates and admitting to the next part the candidates who have received a score above the minimum;
4. sending an invitation and conducting interviews with the admitted candidates;
5. preparing the final ranking of the candidates on the basis of the written and oral parts of the competitive procedure;
6. preparing and sending a proposal with the qualified candidates to the competent appointing authority.

**Art. 45.** Before commencing the assessment of the eligibility of candidates, the members of the Nomination Committee shall sign a declaration to prevent conflicts of interest and to protect the data of the natural persons who are candidates. If a member of the Committee finds that the requirements of the declaration cannot be fulfilled with respect to one of the candidates, they shall indicate this in their declaration, shall be excluded from the procedure and shall be replaced by a reserve member.

**Art. 46.** Within seven days after the expiry of the deadline for submission of documents by the candidates, the Nomination Committee shall check the documents and draw up a list of the admitted candidates for members of the management and control bodies.

**Art. 47.** (1) The check for compatibility with the requirements of Art. 20(1), points 1 - 8 and point 13 of the Law on Public Enterprises shall be carried out by the Nomination Committee while examining the eligibility of the candidate.

(2) The check for compatibility with the requirements of Art. 20(1), points 9 - 12 and Art. 20(3) of the Law on Public Enterprises shall be carried out before the appointment of the selected candidate by the competent appointing authority.

**Art. 48.** (1) The Nomination Committee shall send invitations to the admitted candidates for participation in the written part at a specified day and time.

(2) The written materials shall be assessed by the Nomination Committee within ten days and the candidates who have received a score for the written part higher than the one specified in the methodology shall be invited to participate in an interview at a specified day and time.

(3) Within ten days after the interviews with each of the candidates, the Nomination Committee shall make a final ranking of the candidates and, according to the ranking, shall nominate up to five candidates for each of the positions of a member of the management and control body for which they are applying.

(4) The results of the competition and the nominated candidates shall be submitted to the competent body of the public enterprise to make a decision. The decision not to select the first-ranked candidate should be justified.

**Art. 49.** (1) If according to the selection made or at the final ranking of the candidates the Nomination Committee considers that no candidate meets the requirements laid down for the position, it shall decide on the termination of the procedure for assessment of the candidates and shall inform the competent body.

(2) In the cases under paragraph (1), the body exercising the rights of the State shall initiate a new nomination procedure.

**Art. 50.** The competent body shall have the right to reject all candidates nominated by the Nomination Committee, stating the relevant reasons for doing so and initiating a new nomination procedure.

**Art. 51.** In case the selected candidate fails to eliminate the non-compliance with the requirements of Art. 20(1), points 9 through 12 and Art. 20(3) of the Law on Public Enterprises before the appointment, another of the ranked candidates shall be appointed in his/her place. A new nomination procedure shall be initiated in the event that no other ranked candidate complies with the requirements of Art. 20(1), points 9 through 12 and Art. 20(3) of the Law on Public Enterprises.

## **Section IV**

### **Conferral of management and control of public enterprises**

**Art. 52.** (1) The management and control of public enterprises shall be conferred by management and control contracts concluded in accordance with the provisions of the Commerce Act or the special law by which the enterprise was created.

(2) Prior to the conclusion of the management and control contracts with persons working in the public administration, outside the administration of the body exercising the rights of the State in the respective public enterprises, the consent of the employer under the basic employment contract or of the appointing authority under the service agreement shall be required.

**Art. 53.** Management and control contracts in public enterprises shall be concluded for a period of 3 to 5 years.

**Art. 54.** (1) The management or control contract shall specify:

1. the rights and obligations of the parties;
2. the amount of the remuneration and the method of payment thereof;
3. the liability of the parties in case of non-performance of the contract;
4. the grounds for termination of the contract;
5. the amount of the cash guarantee they give for their management but not less than their 3-month gross remuneration.

6. the relations between the parties in the period from the termination of the contract to the deletion of the name of the dismissed member of a management or control body in the Commercial Register.

(2) The members of the board of directors, the supervisory board, the management board, as well as the managers of public enterprises shall give cash guarantee for their management only in this capacity.

(3) The guarantee provided shall be returned after the termination of the management or control contract and after the discharge decision of the General Meeting of the partners/shareholders. The interest accrued on the amount paid shall also be refundable.

**Art. 55.** (1) Upon dissolution of a public enterprise through liquidation, the body, which has made the decision for dissolution, shall appoint liquidators and conclude a contract with them.

(2) Liquidators may not be persons who:

1. carry out commercial transactions in their own name or on behalf of other persons;
2. are partners in general partnership and in limited partnership companies;
3. have been deprived by a sentence or administrative punishment of the right to occupy a financial reporting position;
4. hold a senior public position under Art. 6(1), points 1 through 38 and 41 through 45 of the Anti-Corruption and Forfeiture of Illegally Acquired Assets Act.
5. are civil servants or work under an employment contract in the state administration.

(3) The prohibitions under paragraph (2), points 1 and 2 shall apply when an activity similar to the activity of the company is carried out.

(4) The contract with the liquidators shall specify:

1. the rights and obligations of the parties;
2. the amount of the remuneration and the method of payment thereof;
3. the liability of the parties in case of non-performance of the contract;
4. the deadline for completion of work.

## **Section V**

### **Determining the remuneration of the members of the executive and control bodies of public enterprises**

**Art. 56.** (1) The remuneration of the members of the executive and control bodies of public enterprises shall be determined depending on the value of the assets, the number of the staff, the profitability, the financial result, the change of the added value per employee, the servicing of the obligations, as well as depending on the specific commitments undertaken in the contracts concluded.

(2) The monthly remuneration of the members of the management and control bodies of public enterprises shall be determined by a total score formed on the basis of the results for the reporting quarter using the indicators and criteria of the table in Annex No. 2 and the established value of a score unit.

(3) The members of the Boards of Directors, Supervisory and Management Boards of public enterprises which are joint stock companies shall receive remuneration determined at a value of

a score unit of 50 percent of the minimum monthly salary established for the country for the respective month.

(4) The executive members and the members of the Management Boards, authorized to represent the enterprise, in addition to the remuneration under paragraph (3) shall also receive remuneration determined at a value of a score unit equal to the minimum monthly salary established for the country for the respective month.

(5) The managers of public enterprises which are limited liability companies shall receive remuneration determined at a value of a score unit, equal to the minimum monthly salary established for the country for the respective month, and the controllers of those enterprises – at a value of a score unit equal to 40 percent of the minimum monthly salary established for the country for the respective month.

(6) After the end of each quarter, depending on the values of the indicators and criteria in the Annex under paragraph (2), the total score shall be calculated and the monthly remunerations for the reporting quarter shall be recalculated. The recalculated remuneration shall be calculated and paid with the remuneration for the last month of the reporting quarter. During the first two months of the quarter, members of executive and control bodies shall receive an advance monthly remuneration based on the total score for the previous quarter.

(7) The calculation of the total score and the remuneration of the members of the executive and control bodies shall be carried out in the enterprise on the basis of the statutory accounting. The remuneration shall be borne by the enterprise. Information on the remunerations shall be provided quarterly to the body exercising the rights of the State.

(8) The members of the executive and control bodies of the enterprises shall receive bonuses beyond the amount of the remuneration determined in accordance with the procedure of paragraph (7), in case of increase of the accounting profit during the reporting year compared to the previous year and provided that the company has no uncovered loss from previous years and overdue liabilities. The bonuses shall be at the expense of the profit after taxation and the allocation of statutory parts of the profit for a reserve of the company, deductions from the profit or dividend in favour of the owner of the capital in the amount determined by the General Meeting of the partners/shareholders from one to three average monthly remunerations, received during the current year by members of the members of the executive and control bodies.

(9) The amount of the remuneration of the members of the Boards of Directors, the Supervisory and Management Boards of the joint stock companies, determined in accordance with the procedure of paragraph (3), after the recalculation under paragraph (6), may not exceed six times the minimum monthly salary established for the country for the respective month.

(10) The amount of the remuneration of the executive members and the members of the Management Boards, authorized to represent the company, determined in accordance with the procedure of paragraphs (3) and (4), after the recalculation under paragraph (6), may not exceed eighteen times the minimum monthly salary established for the country for the respective month.

(11) The amount of the remuneration of the managers of limited liability companies under paragraph (5) after the recalculation under paragraph (6) may not exceed sixteen times the minimum salary established for the country for the respective month; for the controllers of the limited liability companies under paragraph (5) after the recalculation under paragraph (6) it shall not exceed five times the minimum wage established for the country for the respective month.

(12) In state enterprises established by special laws pursuant to Art. 62(3) of the Commerce Act, the body exercising the rights of the State shall adopt a remuneration policy for the members of the Managing Boards and Executive/General Directors, which guarantees the effective



management of the enterprise and takes into account its specifics. The remuneration determined in this order shall comply with the requirements of paragraphs (9) and (10).

(13) Upon decision of the body exercising the rights of the State, respectively the General Meeting, lower remuneration may be determined in the management and control contracts by reducing the stipulated in para. 3 - 5 values of a score unit, including in the cases under par. 6.

(14) If the enterprise has achieved or exceeded all planned financial and non-financial goals and has no overdue obligations, but the other conditions for receiving bonuses under paragraph (8) are not fulfilled, the General Meeting of the partners/shareholders may decide on payment of additional remuneration, once per year, of the members of the management and control bodies for the results achieved. The amount of the additional remuneration may not exceed three average monthly remunerations received in the current year by the members of the executive and control bodies, and the cost for its payment shall be borne by the company.

## **Chapter Six**

### **MEDIUM-TERM GOALS AND PLANNED RESULTS OF PUBLIC ENTERPRISES**

**Art. 57.** (1) In accordance with the Policy for the ownership of the State in the public enterprises approved by the Council of Ministers, the bodies exercising the rights of the State, respectively the General Assembly, shall approve the medium-term goals and planned results for each individual enterprise as part of its business programme.

(2) The planned results represent pre-set annual values that allow measurement of the achieved results. They can have a numerical value or can be formulated as tasks whose implementation is determined by yes/no answer.

(3) Setting planned results and their corresponding key performance indicators for each state-owned public enterprise shall be part of the process of drawing up the medium-term strategy/business programme of the enterprise and shall be carried out in a dialogue between the body exercising the right of the State and the bodies of management and control of the enterprise.

(4) Medium-term financial goals and planned results shall be related to the financial activity of the enterprise and include profitability, capital structure, turnover, profit and dividends, etc., in view of the specific nature of the activity of the particular public enterprise or the industry/category in which it falls.

(5) Medium-term non-financial goals and planned results shall be those related to the public service obligations or public policy objectives assigned to the enterprise, as well as those related to the enterprise's specific business model in terms of number of users, customer satisfaction, number of incidents, technological development, human rights, environment, etc.

(6) The business programme shall be developed by the public enterprise and adopted by its management body. The approval of the adopted Business Programmes shall be carried out by the body exercising the rights of the State in the enterprise, respectively by the General Assembly and in accordance with the specific requirements of the special legislation. The approved Business Programme shall be submitted to the Agency for Public Enterprises and Control in electronic format and shall not be published on the Agency's website in accordance with art.21.

(7) The body exercising the rights of the State, respectively the General Assembly, shall adopt internal rules or policies for approval, for updating and for reporting, in which the time limits for the adoption of the Business Programmes of public enterprises by their management and control

bodies are determined as well, and shall notify those time limits to the Agency for Public Enterprises and Control.

**Art. 58.** (1) The purpose of the Business Programme is to ensure the flexibility of the enterprise strategy by updating it annually to adapt the planned results to changes in the market. The Business Programme shall be developed for a period of 3 or 5 years at the discretion of the body exercising the rights of the State.

(2) The Business Programme shall contain at least:

1. Descriptive part

(a) general information about the enterprise, including fields of activity, mission, vision, common strategic goals, etc.;

(b) the enterprise's financial position, including economic position, organizational structure and others;

2. Analytical part:

(a) market analysis, market positions, competitive environment;

(b) assumptions about the development of the economic environment and the prospects of the enterprise;

(c) analysis of the main risks;

3. Projected part:

(a) projected financial statements for three or five years, prepared in variants according to the assumptions made;

(b) specific values of the key performance indicators for the financial and non-financial targets for the projected period by years;

(c) investment plan or programme, where investments are envisaged, the principal investment projects affecting the projected financial and economic indicators;

(d) repair programme for public enterprises the tangible fixed assets of which require repair activities that have a material effect on the financial position of the enterprise.

**Art. 59.** (1) The planned horizon of the Business Programme shall be three or five years, with the base year being the year preceding the first year of the forecast period. The Business Programme shall be updated annually.

(2) In case of objective difficulties or significant changes in the activities of public enterprises, for the purposes of the state policy or the economic environment, an update of the approved Business Programme for the current year shall be allowed after the end of the six-month reporting period thereof.

(3) The procedure for updating the Business Programme under par.2 may be initiated by a decision of the bodies of management and control of public enterprise or may be assigned by the body exercising the rights of the State.

**Art. 60.** (1) The body exercising the rights of the State in the enterprise, respectively the General Meeting, shall approve the projected indicators and values to be achieved for each year of the period.

(2) The implementation of the Business Programme shall be reported annually, at the closure of the financial year, to the body exercising the rights of the State and the Agency for Public Enterprises and Control.

(3) The report on the implementation of the Business Programme must contain a comparative analysis of what has been achieved with the help of the indicators set in the Business Programme for the respective period.

(4) At the same time as the implementation of the Business Programme is reported, the management and control bodies of public enterprises shall prepare annual self-assessments of their activities and effectiveness under Art. 21(5) of the Law on Public Enterprises in a format defined by the Agency for Public Enterprises and Control. Self-assessments shall be submitted to the body exercising the rights of the State and to the Agency for Public Enterprises and Control.

(5) The Business Programme for the next period may be submitted to the body exercising the rights of the State and to the Agency for Public Enterprises and Control together with the annual financial statement and the report on the Business Programme or independently.

(6) The management and control bodies of public enterprises shall, within 30 days after the end of each quarter and by 25 April of the following year, submit to the body exercising the rights of the state a written report on their work - on the financial and economic condition of the enterprise, for existing problems and measures to address them.

## **Chapter seven**

### **PUBLIC DISCLOSURE**

**Art. 61.** (1) The management and control bodies of public enterprises shall disclose quarterly and annual financial statements, analyzes and reports under Article 29 of the Law on Public Enterprises on the activities of the enterprises, in accordance with the Accountancy Act and the applicable accounting standards.

(2) Quarterly reporting shall include disclosure of:

1. interim financial statements, prepared in accordance with the applicable accounting standards;
2. an interim analysis of the activities, including an analysis of the implementation of the financial and non-financial objectives.

(3) Annual reporting shall include disclosure of:

1. annual financial statements, prepared in accordance with the applicable accounting standards.
2. an annual activity report prepared in accordance with the Accounting Act and the Commerce Act, including an analysis of the implementation of financial and non-financial objectives.
3. a report of the registered auditor.
4. a non-financial declaration under Art. 48 of the Accounting Act, as well as risk assessment, human resources and employment evaluation reports, reports on sustainability, environmental impact, related party transactions and a report on the members of the management and control bodies, including a remuneration report, a public service obligations performance report and a public policy objectives performance report.
5. a corporate governance statement in accordance with Article 100n(7), point 1 of the Law on Public Offering of Securities – for the enterprises categorized as “large” and the enterprises, which are entrusted with obligations to perform public services and/or public policy objectives.
6. analytical reporting of the income and expenses of the enterprise for the fulfilment of its public service obligations or for the fulfilment of public policy objectives.

7. a report and a self-assessment questionnaire for of the situation of the financial management and control systems, prepared in accordance with the Law on the financial management and control in the public sector.

8. other required information.

(4) Public enterprises preparing consolidated financial statements under Art. 31 of the Accounting Act shall also submit the relevant consolidated financial statements and reports.

(5) The disclosure of the information shall be made on the website of the Agency for Public Enterprises and Control.

**Art. 62.** (1) The body exercising the rights of the State, respectively the General Meeting of the partners/shareholders shall adopt rules for the election of a registered auditor for the certification of the annual financial statements of public enterprise.

**(2)** (Repealed, SG No. 89/2021, effective 26.10.2021).

**Art. 63.** (1) Public enterprises should develop their own information disclosure policy, which includes:

1. a list of the information subject to public disclosure;
2. a list of non-disclosable information, such as information containing business secrets, sensitive personal data (under the Personal Data Protection Act), etc.;
3. deadlines for publication of the information;
4. procedures for ensuring the quality of information;
5. procedures for assessing the compliance of the information to be disclosed with the requirements of the regulatory acts;
6. procedure and frequency of checking and updating the disclosed information;
7. persons responsible for publishing information in the capital company;

(2) A single disclosure policy may be developed for the companies that are part of a group (holding).

(3) The management and control body is responsible for the fulfilment of the obligation to disclose information about the enterprise, but the specific obligations for disclosure of information may be delegated to the structural units and officials of the company.

**Art. 64.** (1) Public enterprises categorized as “large” shall maintain their own website, which shall publish at least the following information:

1. statutes, articles of association or the constitutive Act;
2. information on the boards of the enterprise, if any;
3. financial and operating results of the enterprise, including, where appropriate, the costs and financing arrangements related to the public policy objectives;
4. any financial assistance, including guarantees received from the State;
5. all transactions with the State and other related parties;
6. qualification of the members of the management and control bodies, the order in which they are appointed, as well as their remuneration;

(2) Depending on the information disclosure policy chosen, public enterprises may publish on their website:

1. information on environmental issues, such as the use of the natural resources by the enterprise, energy consumption, amount of emissions generated, risk of accidents;
2. information on social issues, such as the involvement of the enterprise in solving social problems, corporate social responsibility;
3. issues raised by the public consultation enterprise, such as construction projects, etc.;
4. consumer information and consumer rights;
5. information related to employees, such as number, rights, working environment, motivation system;
6. information on the respect for human rights, such as measures taken by the enterprise in the field of equality and non-discrimination;
7. information on issues related to the fight against corruption, such as the alerting regime of the enterprise and the ability of its employees to contact directly the audit or control bodies;
8. information on non-profit legal entities, as well as on international organizations of which the enterprise is a founder or a member;
9. contact information with the employee of the enterprise responsible for publishing the information on the official website;
10. other relevant information.

## **Chapter Eight**

### **MUNICIPAL PUBLIC ENTERPRISES**

**Art. 65.** (1) The ownership rights of the municipalities in the municipal public enterprises shall be exercised by the respective municipal council in compliance with the principles of local self-government.

(2) The municipality shall exercise its ownership rights in the municipal public enterprises in compliance with the principles of Art. 12.

**Art. 66.** (1) The policy for the ownership of the municipality in municipal public enterprises shall be developed and adopted by the respective municipal council and shall be made public on the website of the municipality. The Municipal Council shall determine the content of the municipal policy in accordance with Art. 5(2), so that through it to inform the public about the goals set for the municipal public enterprises and their implementation.

(2) Each municipality shall independently prepare an annual aggregate report on the results of the activities of the municipal public enterprises, containing the information under Art. 22 and shall publish it on its website by 31 October of the following year.

**Art. 67.** The bodies of local self-government shall ensure the establishment of professional and independent management bodies of municipal public enterprises with clear powers based on a transparent and fair procedure for nomination of candidates based on their merits.

**Art. 68.** The bodies of local self-government shall determine the conditions and procedure for nominating candidates for members of the management and control bodies of municipal public enterprises.

**Art. 69.** (1) The bodies of local self-government shall determine the number and composition of the Boards of Directors and Supervisory Boards in municipal public enterprises, as well as the

number of independent members in them, in compliance with the requirements of the Law on Public Enterprises.

(2) The competitive procedures shall be held according to publicly-disclosed rules determined by the Municipal Council, in compliance with Art. 21(2) of the Law on Public Enterprises.

**Art. 70.** The management and control of municipal public enterprises shall be conferred with contracts concluded between each member of the management and control body of the enterprise and the body exercising the rights of the municipality, in accordance with the provisions of the Commerce Act.

(2) In the event of early termination of a contract for the conferral of the management and control of a municipal public enterprise with a member of its sole or collective body of management and control, the municipal councils may temporarily, until a competition is held, but for a period not exceeding 6 months, elect a new member of that body without a competitive procedure prior to the selection, temporarily, pending competition.

(3) The contracts for the conferral of the management and control of municipal public enterprises shall be terminated prematurely on the grounds specified in the Law on Public Enterprises, as well as in the presence of the grounds determined by the Municipal Council according to Art. 51a(4) of the Municipal Property Act.

**Art. 71.** Municipal public enterprises shall disclose the information under Chapter Seven on the website of the respective municipality, in the indicated format, content and time limits. The provisions of Article 64 shall be applied accordingly.

### **ADDITIONAL PROVISION**

**§ 1.** For the purposes of these Rules “bonus” means part of the profit of the enterprise, which a member of a management or control body has the right to receive once per year by decision of the General Meeting of the partners/shareholders.

### **TRANSITIONAL AND FINAL PROVISIONS**

**§ 2.** The body exercising the rights of the State in public enterprises shall determine the amount of compensation to the owners of nationalized properties, which they receive in the cases under Art. 18 of the repealed Law on Transformation and Privatization of State and Municipal Enterprises and under the Law on Compensation of Owners of Nationalised Property;

**§ 3.** (1) Within two months from the entry into force of these Rules, the Ministers exercising the rights of the State in the capital of commercial companies shall send to the Agency for Public Enterprises and Control the information under Art. 21 on all public enterprises within their remit, incl. state enterprises established by special laws pursuant to Art. 62(3) of the Commerce Act.

(2) For the purposes of preparation and submission to the Council of Ministers of the analysis under §2(2) of the transitional and final provisions of the Law on Public Enterprises, two months from the entry into force of the Rules, the ministers exercising the rights of the State in public enterprises established by special laws on the basis of Art. 62(3) of the Commerce Act shall send to the Agency for Public Enterprises and Control an analysis of the nature of the activities carried out by the enterprises – predominantly commercial or predominantly public functions and policies, as well as a proposal for their restructuring, accompanied with a justification.

**§ 4.** The first State Ownership Policy in Public Enterprises shall be adopted by 31 December 2020.

**§ 5.** The Ministry of Finance shall compile and publish the quarterly and annual financial statements of the public enterprises by 30 August 2020 and shall transfer to the Agency for Public Enterprises and Control the data sets for the financial statements no later than 31 December 2020.

**§ 6.** The first annual aggregate report on public enterprises shall be drawn up by 31 October 2020.

**§ 7.** Until the introduction of an electronic information system, the reporting information under Art. 61 shall be submitted by e-mail to the Agency for Public Enterprises and Control for publication on its website.

**§ 8.** By 31 December 2020, the Agency for Public Enterprises and Control shall prepare a plan for performance appraisal of the enterprises in 2021. The plan for the performance appraisal of the enterprises for each subsequent year shall be approved by the Council of Ministers by the end of the previous year.

**§ 9.** The Agency for Public Enterprises and Control shall, within 9 months of the entry into force of these Rules, adopt the methodology under Art. 17.

**§ 10.** The management and control contracts concluded before the entry into force of these Rules, as well as the approved business programs / plans of the public enterprises, shall remain in force until the procedures laid down in the Act and the Rules have been carried out. The tendering and competition procedures announced before the entry into force of these Rules, as well as the procedures for the leasing and sale of real estate to employees of the enterprise, shall be completed under the rules in place before these Rules.

**§ 11.** The first business programs under these Rules shall be prepared and adopted by the end of 2021, as the three year programs shall refer to the period 2021-2023 and the five year programs shall refer to the period 2021-2025.

**§12.** In the Regulations for the Implementation of the State Property Act, adopted by Decree No. 254 of the Council of Ministers of 2006 (promulgated, SG No. 78/2006; amended and supplemented, Nos. 26 and 51 of 2007) , Issues 64, 80 and 91 of 2008, Issues 7, 25, 62 and 93 of 2009, Issues 31, 52, 58 and 69 of 2010, Issues 61, 80 and 105 of 2011, issue 24 and 47 of 2012, issue 62, 80 and 87 of 2013, issue 13, 15 and 102 of 2014, issue 58 and 96 of 2016, issue 70 of 2018, issue 77 and 102 of 2019), in art. 4, para. 1 the words “Regulations on the procedures for exercising the rights of the state in companies with state participation in the capital, adopted by Decree No. 112 of the Council of Ministers of 2003 (promulgated, SG No. 51/2003; amend and supplement, issue 59 of 2003; decision No. 8260 of the Supreme Administrative Court of 2005 - issue 79 of 2005) shall be replaced by the "Implementing Rules of the Law on Public Enterprises".

**§13.** The Rules shall be adopted on the grounds of §3(1) of the transitional and final provisions of the Law on Public Enterprises.

## **Annex No. 1 to Art. 29, par. (2)**

### **Rules for auctioning and competition and for concluding sales and lease contracts with workers and employees**

1. The auction shall be launched by decision of the merchant, which shall include:
  - 1.1. description of the item;
  - 1.2. starting price and bid increment, which may not be smaller than 1 % and higher than 10 % of the starting price;
  - 1.3. type of auction – secret or open bidding, and for the secret auction – the type of session – open or closed;
  - 1.4. method of payment;
  - 1.5. date, place and time of auctioning;
  - 1.6. order of receiving or purchasing auction documentation, amount and method of payment of its price and the place of its receipt, as well as the size of the deposit, if it is foreseen, whereas its maximum size may not exceed 50 % of the starting price;
  - 1.7. terms for viewing the item;
  - 1.8. deadline for submitting applications for participation;
  - 1.9. special requirements for participants, when conditioned by the type of item, and other auction specifications;
  - 1.10. date, place and time of second auctioning;
  - 1.11. decision for approving auction documentation.
2. The terms of the auction under items 1.1-1.10 shall be made public by announcement on the websites of the enterprise and the Agency for public enterprises and control, not later than 14 days prior to the date of auctioning.
3. The auction committee shall be determined by the enterprise and shall consist of 3 to 7 members, one of whom must be a legal professional. The order for the appointment of the committee shall also designate two reserve members, as well as the remuneration of the committee members, if such is envisaged.
4. The work of the auction committee and all auction circumstances shall be recorded in a protocol, which shall be signed by all of its members.
5. The registration of the auction participants shall be carried out by the auction committee on the announced day and time of opening the auction. In the event of cancellation of the auction participation, the paid deposit shall not be reimbursed to the respective participant.



6. After registration the committee shall examine the applications in the order of their arrival and shall verify that the submitted documents are in order. In the event that the submitted documents are incomplete or the requirements, laid down in the auction documentation have not been complied with, the committee shall exclude from participation the non-conforming candidate.

7. The auction can be held even when only one application has been submitted if this is envisaged in the tender documentation. In the event that only one candidate from all applicants appears at the auction, the auction shall be postponed by two hours and if, no other candidates appear after the elapse of that time, the only candidate shall be proclaimed winner of the auction based on his proposed bid, which may not be lower than the starting auction bid. In the event that no candidate appears at the auction, it shall be announced that the auction has not taken place and it shall be held for a second time within a one month period in compliance with item 1.10. In the event that only one candidate appears at the auction, which is being held for the second time, this candidate shall be proclaimed winner of the auction based on his proposed bid, which may not be lower than the starting auction bid.

8. In the event that circumstances arise, which make the opening or closing of the auction impossible, the committee shall draw up a protocol, on the basis of which the enterprise shall determine new auctioning.

9. An open bidding auction shall be held upon the submission of a prior written notice by the participant or his authorized representative within the period, referred to in item 1.8, which shall be entered into a special register, noting down the reference number, date and time of receipt.

9.1. At an open bidding auction the chairperson shall announce the item of the auction, the starting price, from which the bidding shall begin and the bid increment.

9.2. Bidding shall be carried out with the bidders announcing aloud subsequent bids higher than the starting price, marked by the committee chairperson by means of a sound signal. Each new bid shall correspond to the bid increment.

9.3. Participants shall clearly and loudly announce their bids. The bid announced by the participant is binding him to the committee and to the other auction participants without any right to refer to mistakes.

9.4. Prior to the third announcement of the last bid a warning shall be called out that it shall be final and if no other bids are offered, bidding shall be concluded by means of a sound signal by the chairperson, who shall announce the auction winner and the hammer price and shall close the auction.

9.5. In the event that auction participants confirm the starting price, but none of them announces the next highest bid, with an increase of one bid increment as compared to the initial price, the auction shall be closed and the deposits paid for participation in the auction shall not be reimbursed. The deposit shall likewise not be reimbursed to any participant, who has won the auction, but has refused to pay the price he offered.

9.6. The winner of the auction shall be the participant with the highest bid. He is obliged to pay the price he offered pursuant to the deadlines and the terms of the auction. In the event of non-performance, the participant, who offered the next highest bid shall be announced the winner of the auction, provided that he has not withdrawn his deposit.

10. A secret bidding auction shall be held upon submission of prior written application by each participant in a sealed non-transparent envelope pursuant to the deadline referred to in item 1.8. On the envelope shall be noted the name of the participant or the name of the authorized person and the whole name of the auction item. Apart from the documents for participation in the auction the envelope shall also contain a bid, enclosed in a small sealed and non-transparent envelope.

10.1. On the day of auctioning the committee shall unseal the submitted envelopes, check whether the terms for participation in the auction have been complied with and announce that the submitted documents are in order.

10.2. The bids shall be signed by each member of the auction committee. The regularly submitted applications shall be classified according to the size of the bid.

10.3. In the event that the same highest bid is placed by several participants, the auction shall continue between them with open bidding, whereas the bidding shall start from the price offered and at a bidding increment, determined in accordance with item 1.2.

10.4. The auction shall be considered won by the participant, who offered the highest price, respectively, the lowest, when applicable in view of the decision of the enterprise under item 1, which shall be announced to all participants and the auction shall be closed.

11. The decision of the enterprise to hold a competition contains:

11.1. description of the item of the competition;

11.2. starting price;

11.3. general and special terms of the competition and requirements for participants;

11.4. in the event that a fee is foreseen for receiving the competition documentation, the decision shall indicate its amount, the place and deadline for receiving or purchasing the competition documentation and for submitting proposals by the participants in the competition, as well as a possible amount of a participation deposit;

11.5. time and way of viewing of the item;

11.6. an exhaustive list of documents, which have to be submitted by candidates;

11.7. other terms of the enterprise in line with the purposes of the competition;

11.8. composition of the competition committee and decision for approving the competition documentation.

12. The competition commission shall be appointed by the enterprise and shall consist of 3 to 7 members, including a lawyer. The commission's appointment order also specifies two reserve members, as well as the commission members' remuneration, if any.

13. The decision under items 11.1-11.7 shall be published on the websites of the enterprise and the Agency for public enterprises and control not later than 14 days prior to the date of the competition..

14. Participants in the competition shall submit their proposals in a sealed envelope, which shall contain information about the candidate, specific proposals under the terms of the competition, price, method and terms of payment.

15. The competition committee shall rank participants in the order of the extent to which they satisfy the terms of the competition and shall propose to the enterprise to determine the competition winner. At his own discretion the enterprise may require from the participants to submit supplements and/or amendments to their proposals for the purposes of the competition, as well as to conduct negotiations with candidates, ranked not lower than third. The ranking and the choice in this case shall be made on the basis of the supplemented and/or amended proposals.

16. The winner of the competition shall be the candidate, whose proposal satisfies best the terms of the competition. Candidates shall be notified of the ranking and of the competition results and the deposits paid by the participants shall be reimbursed, with the exception of the deposit paid by the winner, which is retained and deducted from the price. The notice to the winner of the competition shall also indicate the deadline for concluding the contract. In the event that the contract is not concluded within the set term due to the fault of the competition winner, the deposit of that participant shall be retained and the next ranked candidate, who has satisfied the terms of the competition shall be determined as winner of the competition, if he has not withdrawn his deposit.

17. Concluding contracts with workers and employees of public enterprises for lease of homes, studios and offices for individual creative work, garages and parking spaces for personal motor vehicles – fixed assets of the enterprise shall be carried out on the basis of order for accommodation, issued by the managers, executive directors or chairpersons of the management boards of the respective enterprises based on the criteria, laid down in the collective agreement.

18. In the event that no collective agreement is concluded in the enterprise, the accommodation in the sites under item 17 and the termination of the lease relations for them shall be carried out pursuant to the order laid down in item 17 under the conditions, stipulated by the State Property Act and the Rules for the Implementation of the Act.

19. The sale of homes, studios, offices and garages to workers and employees in the enterprise, as well as to former workers and employees who have at least 10-years length of service and have changed their employer in compliance with the provisions of Art. 123, subpar. 1 of the Labour Code or whose labour relations have been terminated as a result of acquiring a right to pension, shall be carried out by permission of the General meeting pursuant to the terms and

order of the Law on Obligations and Contracts, whereas the prices of those sites shall be determined pursuant to the order of Art. 29, par. 4.

20. The permission of the authority, exercising the state's rights under item 19 is valid for 6 months from the date of its issue.

## Annex No. 2 to Art. 56, Para. 2

### Indicators and criteria for establishing the total score in public enterprises

Item No.	Indicators	Criteria	Score unit
1	2	3	4
1.	Value of the assets	1.1. up to BGN 500 thousand	2,0
		1.2. over BGN 500 thousand and up to BGN 1500 thousand	2,5
		1.3. over BGN 1500 thousand and up to BGN 5000 thousand	3,0
		1.4. over BGN 5000 thousand and up to BGN 15000 thousand	3,5
		1.5. over BGN 15000	4,0
2.	The average number of staff employed	2.1. up to 50 persons	2,0
		2.2. between 51 and 100 persons	2,5
		2.3. between 101 and 500 persons	3,0
		2.4. between 501 and 1500 persons	3,5
		2.5. over 1500 persons	4,0
3.	Variation in the operating revenue profitability	3.1. decline in profitability	-
		3.2. profitability is maintained	1,0
		3.3. increase in profitability	2,0
4.	Variation in the financial result	4.1. maintaining or increasing loss or reduction in profit	-
		4.2. profit is maintained	1,0
		4.3. reduction of loss	1,5
		4.4. increase in profit	2,0
5.	Variation in the added value per employee	5.1. reduction	-
		5.2. maintain or increase	2,0
6.	Liabilities of the enterprise	6.1. non-respected deadlines on current payables and/or irregularly served overdue payables under concluded contracts for their repayment	-
		6.2. respected deadlines on current payables and regularly served overdue payables under contracts for their repayment	2,0

Notes:

1. The indicator "Value of the assets" shall be established based on the balance sheet value of fixed and current assets at the end of the reporting quarter in the balance sheet of the enterprise.

2. The indicator “Average number of staff employed” includes the average number of the staff for the reporting quarter, excluding the employees using leave under Art. 163, para. 1 and Art. 164, para. 1 of the Labor Code. The average number of the staff employed also includes the number of employees abroad.

3. The "Variation in the operating revenue profitability" indicator is established by comparing the profitability indicators for the reporting and the preceding quarter. The operating revenue profitability is established at a percentage as ratio between the accounting profit and net operating revenue under the profit and loss statement/income statement of the enterprise. The data about the accounting profit and the net operating revenue for the reporting quarter are established as the difference between their value for the period commencing at the beginning of the year and the period, preceding the reporting quarter. When the enterprise has incurred an accounting loss for the reporting quarter, it has no profitability.

4. The indicator “Variation in the financial result” is established on the basis of the profit and loss statement/income statement by comparing the financial result - accounting profit (loss) for the reporting and the preceding quarter. The size of the accounting profit (loss) for the reporting and preceding quarter is calculated as a difference between its values for the period commencing at the beginning of the year and the period, preceding the respective quarter. When for the reporting period an accounting profit is generated, given a reported accounting loss for the preceding quarter, the criterion “Reduction of loss” shall be applied. In the event that an accounting loss is incurred for the reporting quarter, given an accounting profit realized for the preceding quarter, the criterion “Reduction in profit” shall be used.

5. The indicator “Variation in the added value per employee” for the reporting against the reference period shall be determined according to the Methodology of the National Statistical Institute for calculating the ratio of variation in the added value per employee.

6. The compliance or non-compliance with the deadlines under indicator “Liabilities of the enterprise” shall be determined on the basis of existing liabilities for the reporting period, incl. principals and interests on bank credits; principals and interests on loans/credits between public enterprises (incl. those participating in a “group of enterprises” pursuant to Para. 1, item 2 of the Additional Provisions of the Accountancy Act); liabilities to the state or municipal budget (incl. contributions for mandatory social security and public health insurance, VAT, excise duty, tax on profit, municipal tax, tax on income from employment relationships or management and control contracts and others); payables to suppliers, payables to personnel, obligations under other contracts concluded in the appropriate order, etc. It is verified whether the enterprise has overdue liabilities or late payments. If it has such overdue payables for prior periods - are they regularly served in compliance with the concluded repayment contracts.

'Payables to suppliers' means trade payables (including services and intra-Community acquisitions or imports) related to the production and business of the enterprise, other than supplies for the enterprise's administrative needs. When the supplier has fulfilled its obligations and the debtor is in arrears, the enterprise does not service its obligations regularly.

In cases, when the liabilities are repaid in compliance with the agreed deadlines for current and prior periods, the enterprise shall be deemed to have no overdue liabilities. Overdue, even of only one element in this group, is classified as "non-restricted deadlines".

7. Public enterprises involved in production and operations of seasonal nature shall use a base for establishing indicators No. 3, 4 and 5 the information for the respective quarter of the preceding year.

8. In case of specific business conditions such as fixed by the state or municipal authorities prices of products or services or of used raw materials, materials and sources of energy, granting of subsidies from the state or municipal budgets, appropriate and economic use of natural resources or assigned tasks for investments or revamp of production, as well as if public service obligations are assigned or if implementing public policy objectives, the General meeting may establish other appropriate indicators and criteria to replace indicators No. 4 and 5, while at the same time maintain the same size for score units of the criteria.

9. In the event of failure to comply with the deadlines for paying social security contributions for the mandatory public health insurance, the estimated total score and the remuneration under Art. 56, Para. 6 shall be reduced by 25 %.

10. All indicators are calculated on the basis of information from the financial statements of the public enterprise, and for the parent companies on their individual financial statements, prepared in accordance with the applicable accounting standards.

11. Maintaining of an indicator is present at deviations (in both directions) up to 5 percent of the value of the indicator for the preceding quarter.