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If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*<sup>1</sup> has adopted and  
the President has proclaimed the following law:

# Law on Public-Private Partnership

## Division A General Provisions

### Chapter I General Provisions

#### Section 1. Terms Used in this Law

The following concepts and terms are used in this Law:

1) **public-private partnership** - co-operation between the public and private sector simultaneously characterized by the following features:

- a) the co-operation takes place between one or several public partners and one or several private partners involved in the public-private partnership procedure;
- b) the co-operation takes place in order to meet public needs in executing construction work or providing services;
- c) it is a long-term co-operation lasting up to 30 years, but in the cases laid down in this Law - even longer;
- d) the public and private partner pool and use the resources available thereto (e.g. property, financial resources, knowledge and experience);
- e) the public and private partner share the responsibility and risks;

2) **contractual public-private partnership** (hereinafter - the contractual partnership) - the type of public-private partnership where the co-operation between the public and private sector takes place by the public and private partner concluding and executing a partnership procurement contract or a concession contract;

3) **institutional public-private partnership** (hereinafter - the institutional partnership) - the type of public-private partnership where the co-operation between the public and private sector takes place by jointly establishing a joint venture in accordance with the procedures laid down in this Law with which the public partner concludes a partnership procurement contract or a concession contract as with a private partner;

4) **partnership procurement contract** - a public works contract (if it also provides for the management of the constructed structure) or a public service contract (if it also provides for construction work that is an insignificant part of the subject-matter of this contract) for pecuniary interest concluded in writing between a public partner and a private partner for a time period exceeding five years;

5) **concession contract** - a works concession contract or a service concession contract concluded between a public partner and a private partner;

6) **works concession contract** - a contract for pecuniary interest concluded in writing according to which the private partner executes the construction work referred to in Annex 1 to this Law, or constructs or designs a structure and executes the construction work referred to in Annex 1 to this Law or constructs a structure, or constructs a structure, using any means in line with requirements of the public partner, and obtains the right to use this building as consideration (Clause 8 of this Section) or the abovementioned right together with consideration. Concurrently, the exploitation risks of this structure are also transferred to the private partner according to the contract (Clause 9 of this Section);

7) **services concession contract** - a contract for pecuniary interest concluded in writing according to which the private partner supplies and manages the services not referred to in Annex 1 to this Law, and obtains the right to use these services as consideration (Clause 8 of this Section) or the abovementioned right together with consideration. Concurrently, the exploitation risks of these services are also transferred to the private partner according to the contract (Clause 9 of this Section);

8) **the right to exploit the structure or services** - the right to receive a payment from end-users of the structure or service or the right to receive consideration from the public partner the amount of which depends on the demand of end-users for the structure or service, or to receive both the payment from end-users of the structure or service and the aforementioned consideration from the public partner;

8<sup>1</sup>) **structure** - the common result of the construction work referred to in Annex 1 to this Law which is sufficient in order for the structure to ensure some economic or technical function;

9) **structure or service exploitation risks** - economic risks when the income of a private partner depends on the demand of the end-user of a structure or service for this structure or service (demand risk) or on whether this structure or service is being offered to an end-user in accordance with the requirements laid down in the concluded concession contract (accessibility risk), or on both the demand risk and accessibility risk;

10) **end-user** - a person, except for the public partner and private partner, that in the case of the conclusion of concession contract uses the structure or service exploited by the private partner;

11) **public-private partnership contract** - a partnership procurement contract or a concession contract;

12) **partnership procurement procedures** - the procedures for the award of a partnership procurement contract;

13) **concession procedures** - the procedures for the award of a concession contract;

14) **public-private partnership procedures** - the partnership procurement procedures and concession procedures;

14<sup>1</sup>) **concession procedure document** - any document drawn up or referred to by the concession procedure commission in order to describe or determine the elements and requirements of the concession or concession procedure;

15) **public partner** - one or several of the following subjects may act as a public partner:

a) the State as the initial legal person governed by public law;

b) a derived legal person governed by public law;

c) the legal person referred to in Clause 16 of this Section;

d) an association in which all members are the persons referred to in Sub-clause "a", "b", or "c" of this Clause, or a foundation in which all founders are the persons referred to in Sub-clause "a", "b", or "c";

e) a public service provider within the meaning of the Law on the Procurement of Public Service Providers;

16) **legal person acting as a public partner** - a legal person governed by private law which concurrently conforms to Sub-clause "a" and Sub-clause "b" or "c" of this Clause:

a) it has been established or is operating to ensure the needs of the public not having a commercial or industrial character;

b) it is subordinate to the State or a derived public entity or it is the State or a derived public entity, or another legal

person governed by private law satisfying the criteria referred to in this Clause supervises the management of such legal person governed by private law, including exercises a decisive influence in respect of such legal person governed by private law within the meaning of the Group of Companies Law;

c) the activity thereof is financed, by more than 50 per cent, by the State, a derived public entity, or such legal person governed by private law which satisfies the criteria referred to in this Clause;

17) **public needs not having a commercial or industrial character** - needs that are not related to direct availability of goods and services on the market and that are important for meeting the public interests;

18) **representative of the public partner:**

a) an institution of direct administration, the body of a public entity, or a natural person to whom the relevant State administration task is delegated in accordance with the procedures laid down in the State Administration Structure Law and that is specified in the decision of the Cabinet referred to in Section 16, Paragraph six of this Law if the public partner is the State as the initial legal person governed by public law;

b) an institution of indirect administration, the body of a public entity, or a natural person to whom the relevant State administration task is delegated in accordance with the procedures laid down in the State Administration Structure Law and that is specified in the decision of the derived public person referred to in Section 16, Paragraph six of this Law if the public partner is a derived public entity;

c) the board of a capital company if the public partner is a State or local government capital company;

d) an institution of a legal person governed by private law that in accordance with the laws and regulations regulating its operation is entitled to represent this legal person if the public partner is another legal person governed by private law that is not a State or local government capital company;

19) **tenderer** - a natural or legal person or the subjects referred to in Clause 15 of this Section, or an association of such persons in any combination thereof which offers on the market to execute construction work, supply goods or provide services accordingly, and participates in the partnership procurement procedure or the concession procedure;

20) **lender's proposed tenderer** - a person proposed by the lender in accordance with the procedures laid down in this Law in order for the public partner representative to conclude a new public-private partnership contract therewith upon early termination of the initial contract;

21) **private partner** - a tenderer or a special purpose entity established thereby (in case of contractual partnership) or a joint venture (in case of institutional partnership) with whom the public partner has concluded a public-private partnership contract;

22) **joint venture** - a capital company established by the public partner and the tenderer (the private shareholder) determined as a result of the public-private partnership procedure;

23) **shareholder contract** - a contract that, in the case of institutional partnership, is concluded by shareholders or stockholders (hereinafter - the shareholder) of a joint venture and that regulates the exercising of the rights of the public partner and private partner as the shareholders of the joint venture in order to facilitate performance of the public-private partnership contract;

24) **lender** - a person which grants financing to the private partner in order to ensure fulfilment of the obligations of the public-private partnership contract;

25) **information exchange agreement** - an agreement entered into by the public partner and the lender in accordance with the procedures laid down in this Law and that governs the information exchange procedure between the public partner and the lender ensuring the execution of the public-private partnership contract and exercising of the lender's intervention right;

26) **special purpose entity** - a commercial company established by the tenderer determined as a result of the public-private partnership procedure in the cases laid down in this Law in order for the public partner to conclude a public-private partnership contract with this commercial company;

27) **monitoring authority** - the authority specified by the Cabinet that fulfils the functions referred to in Section 9 of this Law;

28) **concession procedure commission** - the commission established by a representative of the public partner or representatives of several public partners for the performance of the concession procedure;

29) **complaint examination commission** - the commission established by the Procurement Monitoring Bureau to examine complaints regarding infringements of the concession procedure;

30) **public partner resources** - a tangible property or aggregation of property owned by the public partner that without separate payment is transferred to the private partner for use or is invested in the equity capital of the joint

venture in accordance with the public-private partnership contract;

31) **the most economically advantageous tender** - the tender selection criterion where such factors as delivery or contract performance deadlines, exploitation and other expenses, their efficiency, quality of construction works or services, aesthetic and functional description, conformity with the environmental protection requirements, technical advantages, availability of spare parts, delivery safety, price and other factors related to the subject of the concession contract that are to be particularly determined and objectively comparable or evaluated are taken into consideration;

32) **contract price** - the total payment for the performance of a public-private partnership contract (not taking into consideration the value added tax). It also applies to the total amount of the financial resources (not taking into consideration the value added tax) the private partner would obtain by exercising the rights and obligations ensuing from a public-private partnership contract and that may also include payments of an end-user;

33) **subcontractor** - a person contracted by the tenderer or a person contracted by him or her in turn who performs construction work or provides services for the performance of a public-private partnership contract;

34) **life cycle** - all consecutive and interlinked stages including inter alia research and development, production, trading and its conditions, transport, use, maintenance throughout the entire period of existence of the structure or provision of service, from recovery of raw materials or production of resources to waste disposal, demolition of the structure, and termination or use of the service;

35) **electronic means** - means suitable for processing of the data received or sent via the electronic communications network (also for digital compression) and storage thereof, and also for transmission of data via the electronic communications networks;

36) **common procurement vocabulary (CPV)** - a vocabulary approved by the European Union which is applied to public-private partnership procedures;

37) **publication management system** - the State information system under supervision of the Procurement Monitoring Bureau and available on its website which ensures that the information to be prepared, submitted, and published in accordance with laws and regulations is prepared and submitted to the Procurement Monitoring Bureau, published on its website, or sent to the Publications Office of the European Union for publication in the Official Journal of the European Union. This system shall contain information on persons on whom the administrative penalty - a prohibition to exercise the rights - the prohibition to hold offices the duties of which include taking decisions in the field of public procurements and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts, has been imposed for offences in the field of public procurement and public-private partnership;

38) **buyer profile** - the site of the public partner in the State electronic information system publicly available on the internet for the acceptance of tenders and requests to participate, where the public partner posts information on subsequent invitations to tender, regarding planned procurements, concluded contracts, suspended procedures, and also other information related to procurements as defined in the laws and regulations;

39) **electronic invoice** - an invoice issued, sent, and received in a structured electronic form allowing to process it automatically and electronically;

40) **Contract Register** - information reflected in the publication management system on a concession contract concluded between a public partner and a representative of the public partner or on amendments thereto which is published on the website of the Procurement Monitoring Bureau. The Contract Register shall contain data carrying information on the public partner or the representative of the public partner, the private partner, the date of conclusion of the contract, the subject-matter of the contract, the contract price, the performance deadline of the contract, amendments to the contract, and also information on the actual performance of the contract (contract price, performance deadline, contractor, and the cause for termination of the contract, if applicable) and other information as appropriate.

[25 August 2010; 5 September 2013; 20 April 2017; 21 February 2019; 5 December 2019; 24 March 2022; 5 May 2022; 5 October 2023]

## **Section 2. Purpose of this Law**

(1) The purpose of this Law is to facilitate co-operation between the public and private sector by efficiently using resources of the public partner and the private partner for meeting public needs, to ensure openness of the concession procedure, free competition of private partners, and also equal and fair attitude towards them.

(2) The purpose of this Law is to ensure transparency of the performance of the concluded public-private partnership and to promote the fulfilment of its obligations until expiry of the validity of the relevant contract, promoting continuity of the construction work and services provided for in this contract.

[20 April 2017]

### Section 3. Exceptions to the Application of this Law

(1) This Law shall not be applicable if the public partner concludes a service concession contract for the following:

- 1) the purchase or lease of land, existing structure or other immovable property or the acquisition of other rights to such immovable property with any financial resources;
- 2) the purchase, development, production, or co-production of such broadcast material intended for audio and audio-visual electronic mass media services, if the contract is awarded by electronic mass media, or the contracts for the provision of transmission time or broadcasts that are awarded to electronic mass media;
- 3) the arbitration and conciliation services;
- 4) the document certification services provided by notaries;
- 5) the legal services the providers of which are designated by a court or which are assigned by external laws and regulations to carry out specific tasks under supervision of a court;
- 6) the legal services related to the exercise of official authority;
- 7) the financial services related to the issue, purchase, sale, or transfer of securities or other financial instruments, services and activities of Latvijas Banka which are performed through the European Financial Stability Facility and the European Stability Mechanism;
- 8) the loans which are related or not related to the issue, sale, purchase, or transfer of securities or other financial instruments;
- 9) the services in the field of civil protection, civil defence, and disaster prevention which are provided by associations, foundations or unions and to which one of the following CPV codes refers: 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75252000-7, 75222000-8, 98113100-9, and 85143000-3, except for the emergency medical services related to the transport of patients;
- 10) the services which are provided by another public partner or an association of public partners which, in accordance with the external laws and regulations, have an exclusive right to provide the relevant service;
- 11) the services to ensure the activities referred to in Section 3, 4, 5, 6, or 7 of the Law on the Procurement of Public Service Providers with the private partner which, in accordance with the external laws and regulations, has an exclusive right to provide the relevant service. The public partner shall notify the European Commission of the awarding of such exclusive right. The provisions of this Law shall be applicable to the concession award notice if the laws and regulations of the relevant sector do not provide for such obligation to notify;
- 12) the air transport services based on the issue of a licence for operation within the meaning of the law On Aviation;
- 13) the lottery services to which the CPV code 92351100-7 refers with the private partner which, in accordance with external laws and regulations, has an exclusive right to provide the relevant service. Information on such awarding of concession shall be published in the Official Journal of the European Union.

(2) This Law shall not be applied when the concession contract is concluded in accordance with the provisions of other procedures and is awarded in accordance with:

- 1) an international agreement which, with the legal framework of the European Union, has been entered into by a European Union Member State with one or several countries, other than the European Union Member States, or administrative units of such countries regarding construction work, supplies or services in connection with the participation of the states having signed the agreement in implementation of a joint measure or the use of its results. Public partner shall notify the European Commission of all such agreements;
- 2) a specific procedure of an international organisation;
- 3) a specific procedure of an international organisation or international financial institution if the concession contract is fully financed by the relevant organisation or institution. If the international organisation or international financial institution finances the concession in the amount of at least 50 per cent, the parties shall agree on the applicable concession procedures.

(3) This Law shall not be applicable if the public partner concludes a concession contract which conforms to Section 3 of the Law on the Procurement in the Field of Defence and Security, and the concession contract is awarded in accordance with:

- 1) specific procedural provisions under international agreements which have been entered into by one or several European Union Member States and one or several countries, other than the European Union Member States;

2) specific procedural provisions under international agreements relating to the stationing of troops which refer to the private partners of a European Union Member State or the private partners of a country, other than a European Union Member State;

3) a specific procedure of an international organisation, irrespective of whether the public partner of a Member State of the international organisation concludes a contract with the private partner specified by the international organisation whom a contract has been awarded by the relevant international organisation according to the abovementioned procedure, or its public partner awards a contract according to the abovementioned procedure.

(4) This Law shall not be applicable to the awarding of a concession contract which conforms to Section 3 of the Law on the Procurement in the Field of Defence and Security if:

1) the Cabinet, in accordance with external laws and regulations, has recognised the information on a concession contract or its implementation as an official secret;

2) its application could possibly harm the protection of essential State security interests. The Cabinet shall decide on the protection of essential State security interests on a case-by-case basis. The basis for the application of this exception shall not be the protected information in itself, if its protection can be ensured in a concession procedure in accordance with this Law or the Law on Procurement in the Field of Protection and Security;

3) the concession contract is awarded in accordance with a co-operation programme implemented by two or more countries which is targeted at research and development to create a new product or which is necessary for further life cycle of this product or part thereof. If the agreement on the implementation of such co-operation programme has only been entered into by European Union Member States, they shall notify to the European Commission information on the part of research and development expenditure against the total expenditure of the co-operation programme, on the allocation of costs between Member States, and also the lot of procurement to be implemented by each Member State;

4) the concession contract is concluded with a public partner of another country which operates on behalf of the relevant foreign country or its derived public entity (an entity equivalent to derived public entities) in relation to construction work or services which are directly related to military equipment or information on which is protected information, or which are directly intended for military purposes or for such structures or provision of such services, information on which is protected information;

5) the concession contract is concluded in a country, other than a European Union Member State, in the situation when the troops are stationed outside the territory of the European Union, and the concession contract necessary for the provision of international operations or international training is to be concluded with the private partners that operate in the area of such operations or training;

6) another exception specified in this Law is applicable.

(5) This Law shall not be applicable if the concession contract is concluded for the following public water management services:

1) the extraction and storage of drinking water, preparation of drinking water for use, and supply thereof to the central water pipe network until a service user;

2) the hydraulic engineering projects, irrigation, or land drainage - provided that the volume of water intended for the supply of drinking water is more than 20 per cent of the total volume of water which is ensured by the abovementioned projects or irrigation or drainage equipment if it is related to the activities referred to in Clause 1 of this Paragraph;

3) the wastewater collection from a service user in the central sewerage systems and discharge thereof to the waste water treatment plants, waste water treatment and discharge in the environment if it is related to the activities referred to in Clause 1 of this Paragraph.

(6) This Law shall not be applicable when concluding a concession contract the main purpose of which is to ensure or use public electronic communications networks maintained by a public partner corresponding to Section 1, Clause 15, Sub-clause "a", "b", "c", or "d" of this Law, or one or several publicly available electronic communications services provided.

(7) This Law shall not be applicable if a public partner corresponding to Section 1, Clause 15, Sub-clause "e" of this Law concludes a concession contract for the performance of its activities in a country, other than a European Union Member State, and neither infrastructure of the European Union, nor a territory belonging to the European Union is used.

(8) This Law shall not be applicable if a public partner corresponding to Section 1, Clause 15, Sub-clause "e" of this Law concludes a concession contract for the activities referred to in Section 3, 4, 5, 6, or 7 of the Law on the Procurement of Public Service Providers if they have been recognised as performed in a freely competitive environment in the relevant European Union Member State where they are to be performed.

(9) This Law shall only be applicable to the service concession contracts for the research and development services, the CPV codes of which range from 73000000-2 to 73120000-9, 73300000-5, 73420000-2, and 73430000-5, if the following conditions are met concurrently:

1) only the public partner will benefit from the results of the service provided, using these results only for its own needs;

2) the public partner will fully pay for the service provided.

[20 April 2017]

### **Section 3.1 Mutual Concession Contracts between Public Partners**

(1) Within the meaning of this Section, such partner shall be considered to be a public partner which conforms to Section 1, Clause 15, Sub-clause "a", "b", "c", or "d" of this Law or which conforms to Section 1, Clause 15, Sub-clause "a", "b", "c", or "d" of this Law and performs the activities referred to in Section 3, 4, 5, 6, or 7 of the Law on the Procurement of Public Service Providers.

(2) This Law shall not be applicable if the public partner concludes a concession contract with a person who conforms to the following features concurrently:

1) it is under such control of the public partner which manifests itself as the right to influence strategic objectives and decisions of the activities of the controlled person, or under the control of such person which is controlled by the public partner in the abovementioned manner;

2) more than 80 per cent of its activities are comprised of carrying out of specific tasks in the interests of the controlling public partner or other persons controlled by the abovementioned public partner;

3) there is no direct private capital participation in it, with the exception of such form of private capital participation, which in accordance with the laws and regulations governing commercial law and the Treaty on the Functioning of the European Union does not entail the rights to influence and control its decisions and does not exert a decisive influence on it.

(3) This Law shall not be applied if the controlled person corresponding to the features of Paragraph one of this Section which is also concurrently the public partner, concludes a concession contract with the controlling public partner or another person controlled by the controlling public partner within the meaning of Paragraph one, Clause 1 of this Section, if a person with which the concession contract is concluded does not have direct private capital participation, with the exception of such form of private capital participation, which in accordance with the laws and regulations governing commercial law and the Treaty on the Functioning of the European Union does not entail the rights to influence and control the decisions of such person and does not exert a decisive influence on it.

(4) This Law shall not be applied if the public partner concludes a concession contract with a person who conforms to the following features concurrently:

1) it is under the joint control of several public partners which manifests itself as the right to influence the strategic objectives and decisions of the activities of the controlled person;

2) more than 80 per cent of its activities are comprised of carrying out specific tasks in the interests of the jointly controlling public partners or other persons controlled by the abovementioned public partners;

3) there is no direct private capital participation in it, with the exception of such form of private capital participation, which in accordance with the laws and regulations governing commercial law and the Treaty on the Functioning of the European Union does not entail the rights to influence and control its decisions and does not exert a decisive influence on it.

(5) Within the meaning of Paragraph four of this Section, the public partners shall exercise joint control over a person if:

1) the administrative authorities of the controlled person are composed of representatives of all public partners (individual representatives may represent several or all involved public partners);

2) all public partners have the right to jointly influence the strategic objectives and decisions of the activities of the controlled person;

3) the controlled person operates within the interests of the public partners.

(6) This Law shall not be applied to the concession contracts which, according to the exclusive right specified in the external laws and regulations, have been concluded between two or more public partners, if the following conditions are met concurrently:

1) the concession contract establishes or implements cooperation between the public partners with the aim of

ensuring public services under the competence thereof;

2) the cooperation is implemented in the interests of public;

3) the share of the public services provided by the involved public partners in an open market for the ensuring of which the cooperation is implemented is less than 20 per cent.

(7) In order to determine a percentage of the activities referred to in Paragraph two, Clause 2, Paragraph four, Clause 2, and Paragraph six, Clause 3 of this Section, the average financial turnover or another activity-based measure (for example, costs of services, supplies or construction work of the controlled person or the public partner) for the last three years until awarding of the concession contract shall be taken into account. If the controlled person or the public partner has been established or has commenced activities after the set deadline or if data on its financial turnover or activity-based measures are not available due to its reorganisation or no longer apply, the percentage of the activities may be proved by using business projections.

[20 April 2017]

### **Section 3.<sup>2</sup> Contracts Concluded with a Related Company, Joint Venture, or Public Partner which is Part of the Joint Venture**

(1) Within the meaning of this Section, the related company shall be considered the following:

1) a commercial company, cooperative society registered in Latvia, European economic interest group, European cooperative society, or European commercial company registered in Latvia which consolidates its annual statements with annual statements of the public partner corresponding to Section 1, Clause 15, Sub-clause "e" of this Law (hereinafter in this Section - the public partner) in accordance with the Law on the Annual Financial Statements and Consolidated Financial Statements;

2) any company in which the public partner, in accordance with the Group of Companies Law, has a decisive influence, or which has a decisive influence in the public partner, or in which another company has a decisive influence while concurrently having a decisive influence in the public partner.

(2) In accordance with Paragraphs three and four of this Section, this Law shall not apply to the concession contracts which the public partner concludes with the related company, or which the joint venture, established solely by the public partners to perform any of the activities referred to in Section 3, 4, 5, 6, or 7 of the Law on the Procurement of Public Service Providers, concludes with a company which is related to any of such public partners.

(3) Paragraph two of this Section shall not be applicable to the following:

1) the works concession contracts if at least 80 per cent of the average total turnover of the related company for the construction works executed over the last three years constitute construction work executed for the public partner or other companies related to this company;

2) the service concession contracts if at least 80 per cent of the average total turnover of the related company for the services provided over the last three years constitute services provided to the public partner or other companies related to this company.

(4) If the related company has been established or commenced activities later and the relevant data on its average turnover over the last three years are not available, the percentage of the activities referred to in Paragraph three of this Section shall be proved by using business projections.

(5) If more than one company related to the public partner executes equal or similar construction work or provides equal or similar services, the percentage referred to in Paragraph three of this Section shall be calculated by taking into account the total turnover which consists of the construction work executed or services provided by such related companies.

(6) If the joint venture has been established for the purpose of performing the relevant activity for at least three years and each public partner is a part of the joint venture for at least this period, this Law shall not be applicable to the concession contracts which:

1) are concluded between the joint venture which is established solely by the public partners to perform any of the activities referred to in Section 3, 4, 5, 6, or 7 of the Law on the Procurement of Public Service Providers, and any of such public partners;

2) are concluded the public partner and the joint venture of which the public partner is a part.

(7) Upon a request of the European Commission, the public partner shall inform it of the related companies and joint companies which conclude contracts by applying the exceptions referred to in this Section, of the type and contract price of the concession contract, and also submit the necessary proof to the European Commission that the relationship between the public partner and the related company or the joint venture conforms to provisions of this

Section.

[20 April 2017]

#### **Section 4. Legal Arrangements**

(1) The Public Procurement Law shall be applied to partnership procurement contracts unless this Law lays down otherwise.

(2) Public service providers shall apply provisions of the Law on the Procurement of Public Service Providers to partnership procurement contracts, unless this Law lays down otherwise.

(3) The provisions of this Law shall be applied to the concession contracts and institutional partnership.

(4) A concession contract the subject-matter of which is both construction work and services shall be awarded according to the legal arrangements applicable to the type of procurement which characterises the main subject-matter of the relevant concession contract. The main subject matter and the applicable concession procedure shall be determined for a concession contract the subject-matter of which partly includes the services referred to in Annex 2 to this Law and other services, according to the highest estimated contract price of services.

(5) If the subject-matter of a contract includes concessions to which this Law applies, and also other elements to which this Law does not apply, and different parts of the contract may be separated objectively, the public partner is entitled to apply appropriate legal arrangements to each lot of the contract or enter into a full contract and apply this Law. If parts of the contract may not be separated objectively, the applicable legal arrangements shall be determined by the main subject-matter of the contract, except for the case referred to in Paragraph nine of this Section.

(6) If the subject-matter of a contract includes both concessions to which this Law applies and elements of a procurement contract to which the Public Procurement Law or the Law on the Procurement of Public Service Providers applies, the contracting right shall be awarded in accordance with the Public Procurement Law or the Law on the Procurement of Public Service Providers respectively if the contract price of the lot of the procurement to which the specific law is applied is equal to or exceeds the thresholds of contract prices specified therein.

(7) If a contract is intended to ensure activities in several areas referred to in the Law on the Procurement of Public Service Providers, the public partner may choose to conclude individual contracts for each area of activity or conclude a full contract. If the public partner chooses to conclude individual contracts for each area of operation, the contract shall be awarded according to the legal arrangements which characterise individual characteristics of the relevant activity. If the public partner chooses to conclude a full contract, the contract shall be awarded according to the legal arrangements which are applicable to the activity intended as the main activity of the contract, except for the case referred to in Paragraph nine of this Section.

(8) If, in accordance with Paragraph seven of this Section, it is impossible to determine objectively which activity is intended as the main activity of the contract, the contracting right shall be awarded:

1) in accordance with the Public Procurement Law, if the Public Procurement Law applies to any of the activities intended under the contract;

2) in accordance with this Law, if neither the Public Procurement Law, nor the Law on the Procurement of Public Service Providers applies to any of the activities intended under the contract.

(9) If the subject-matter of a contract includes both concessions to which this Law applies and elements of a procurement contract or activities to which the laws and regulations governing procurement in the field of defence and security apply, and the public partner has decided to conclude a full contract or parts of the contract may not be separated objectively, the applicable legal arrangements shall be determined on the basis of the following features:

1) if Article 346 of the Treaty on the Functioning of the European Union applies to any lot or activity of the contract, the contract may be awarded without applying this Law, provided that awarding of the full concession contract is justified on objective grounds;

2) if the Law on the Procurement in the Field of Defence and Security applies to any lot or activity of the contract, the contract may be awarded in accordance with the Law on the Procurement in the Field of Defence and Security, provided that awarding of the full concession contract is justified on objective grounds;

3) if the contract corresponds to both Clause 1 and Clause 2 of this Paragraph, Clause 1 of this Paragraph shall be applicable.

(10) It shall not be permitted to divide contracts or enter into a full contract in order to avoid application of this Law, the Public Procurement Law, the Law on the Procurement of Public Service Providers, or the Law on the Procurement in the Field of Defence and Security.

(11) The provisions of the Commercial Law shall be applied to the establishment, operation, and termination of

operation of a joint venture unless this Law lays down otherwise.

(12) The procedures for managing capital shares of a public entity in a joint venture shall be governed by the Law on Management of Capital Shares and Capital Companies of a Public Entity.

(13) If several public partners conclude one public-private partnership contract with a private partner, the provisions of the State Administration Structure Law regarding the cooperation in the State administration shall be applied as far as this Law does not prescribe otherwise.

(14) If any features characterising aid for commercial activity may be established within the framework of a public-private partnership, control arrangements of aid for commercial activity shall be applied to the granting of the aid.

(15) The provisions of Chapter XIV of this Law shall not be applied to the public partner who ensures financing of the public partnership from the financial resources thereof.

[20 April 2017]

## **Section 5. Scope of Application of this Law**

(1) This Law prescribes:

1) the procedures by which public partners and representatives of public partners shall act if they jointly conclude one public-private partnership contract;

2) the procedures for taking the decision on the initiation of a public-private partnership procedure;

3) the information to be included in a public-private partnership contract, and also the procedures by which the public-private partnership contract may be amended or terminated before its expiry;

4) the procedures for disbursing compensation when terminating a public-private partnership contract before its expiry;

5) the procedures for the establishment of a special purpose entity and the procedures by which a public-private partnership contract shall be concluded with a special purpose entity;

6) the procedures for entering into an information exchange agreement and exercising of the lender's intervention right;

7) [5 May 2022];

8) the regulations for activities with the public partner resources transferred to a private partner.

(2) In the field of concessions the Law prescribes:

1) exceptions to the application of this Law;

2) the procedures for the exchange of information, concession procedure documentation, and document preservation;

3) the procedures for the establishment of the concession procedure commission and activity thereof;

4) the procedures for the establishment of the complaint examination commission and activity thereof;

5) concession procedures and procedures for their application;

6) [20 April 2017].

(3) In the field of institutional partnership the Law prescribes:

1) the procedures for selecting a private shareholder of a joint venture;

2) the procedures for the establishment of a joint venture, particularities of its operation and the regulations for terminating its operation;

3) the procedures by which a public-private partnership contract shall be concluded, amended, or terminated in case of an institutional partnership;

4) the procedures for disbursing compensation when terminating a public-private partnership contract before its expiry in case of an institutional partnership;

5) the procedures for entering into an information exchange agreement and exercising of the lender's intervention right in case of institutional partnership.

(4) In the field of public-private partnership monitoring the Law prescribes:

1) the authorities monitoring the public-private partnership process and the competence thereof in monitoring matters;

2) the procedures for determining and financing the monitoring authority and approval of the laws and regulations governing the activity thereof;

3) the functions, rights, and obligations of the monitoring authority;

4) the procedures by which the monitoring authority operates as a public-private partnership competence centre;

5) the procedures for controlling the performance of the public-private partnership contracts.

[20 April 2017; 5 May 2022]

## **Section 6. Joint Public-Private Partnership Contracts of Public Partners**

(1) One public-private partnership contract with a private partner may be concluded by several public partners.

(2) If several public partners conclude one public-private partnership contract, the representatives of public partners shall enter into a written agreement on the following:

1) which representative of the public partner shall conduct the partnership procurement procedure or concession procedure;

2) the procedures for taking decisions if a joint decision of public partners or representatives of public partners is required;

3) the procedures for the co-ordination of opinions if an individual decision of each public partner or representative thereof is required;

4) which representative of the public partner shall enter into an information exchange agreement with the lender and the procedures for the exchange of information between the representatives of public partners for the performance of this contract, unless the lender prefers entering into an information exchange contract with each representative of the public partner;

5) the procedures by which they shall cover the necessary expenses;

6) the procedures by which the representative of the public partner who conducts the partnership procurement procedure or concession procedure shall inform other representatives of public partners of the course of the relevant procedure.

(3) The condition of Paragraph two, Clause 2 of this Section regarding taking of a joint decision of public partners or representatives of public partners shall be applicable, if this Law does not stipulate that the decision is to be taken by each public partner or each representative of the public partner.

(4) The representative of the public partner who in accordance with Paragraph two, Clause 1 of this Section conducts the partnership procurement procedure or concession procedure:

1) shall establish the concession procedure commission in accordance with the procedures laid down in this Law where the persons proposed by other representatives of public partners are included;

2) shall provide information, notices or receive information that is provided for in the Public Procurement Law, the Law on the Procurement of Public Service Providers or this Law or in the public-private partnership contract;

3) shall preserve documents of concession procedure commission in accordance with the procedures laid down in Section 22 of this Law.

(5) If this Law lays down that the decision of the concession procedure commission is binding on the representative of the public partner, such a decision shall be also binding on all representatives of public partners who have signed the contract referred to in Paragraph two of this Section.

(6) The representative of the public partner who in accordance with Paragraph two, Clause 1 of this Section conducts the concession procedure shall be indicated in the regulations of the concession procedure (hereinafter - the regulations) and, if necessary, also in other concession procedure documents, and the monitoring authority shall be informed thereof in writing.

(7) If in case of an institutional partnership a public-private partnership contract is concluded by several public partners, all such public partners or any of such public partners may become the shareholders of the joint venture.

(8) If in case of institutional partnership there are several public partners in a joint venture as shareholders of the joint venture, each public partner as a joint venture shareholder shall individually exercise the rights laid down in this Law or perform the activities provided for in this Law unless this Law lays down that the relevant right shall be exercised or the relevant activity shall be performed jointly by all public partners of the joint venture.

(9) If several public partners conclude one public-private partnership contract, the monitoring authority shall send opinions and other documents to each representative of the public partner.

[20 April 2017]

### **Section 7. Selection of Institutional Partnership**

(1) A joint venture may be established for the performance of a public-private partnership contract if the public partner wishes to exercise reinforced control of the performance of the public-private partnership contract and to take part in the management of the capital company, and conforms to the following provisions:

1) according to the State Administration Structure Law the commercial activity which will be performed by the joint venture according to the public-private partnership contract may be performed by the public partner as well;

2) the joint venture will carry out some administration task assigned to the public partner according to the laws and regulations or the procedures laid down in the State Administration Structure Law if it conforms to the delegation provisions.

(2) The public partner which wishes to establish a joint venture for the performance of a public-private partnership contract shall specify it in the decision on initiation of the public-private procedure (Section 16, Paragraph six).

(3) If a joint venture is established, the private partner in co-operation with the public partner as the shareholder of the joint venture shall manage the joint venture so that the joint venture as a private partner would ensure the performance of the public-private partnership contract.

## **Chapter II Monitoring of the Public-Private Partnership Process**

### **Section 8. Competent Authorities**

(1) The Ministry of Finance, the Procurement Monitoring Bureau, and the monitoring authority shall supervise the public-private partnership process.

(2) The Ministry of Finance shall evaluate the expected impact of the conditions referred to in the financial and economic calculations on the amount of the long-term liabilities of the State budget, the balance of the general government sector budget, and the debt, and give an opinion thereon.

(3) The Procurement Monitoring Bureau:

1) shall monitor the conformity of the partnership procurement procedure and concession procedure with the requirements of laws and regulations;

2) shall examine complaints regarding infringements of the concession procedures referred to in Section 17, Paragraphs one and seven of this Law;

3) shall examine administrative violation cases in the field of public-private partnership, and impose administrative sanctions;

4) shall ensure that the notices specified in this Law are published on the website of the Procurement Monitoring Bureau and sent for publication in the Official Journal of the European Union, and also send information to the European Commission which has been requested thereby;

5) shall fulfil other functions as laid down in laws and regulations.

(3<sup>1</sup>) The Procurement Monitoring Bureau is functionally the highest authority in relation to the fulfilment of the function referred to in Paragraph three, Clause 2 of this Section.

(3<sup>2</sup>) The Procurement Monitoring Bureau is entitled to request and receive free of charge complete information on any public-private partnership, the procedures for the awarding of a contract, and the concluded contract.

(4) The monitoring authority shall be determined by the Cabinet.

(5) The State Audit Office of the Republic of Latvia and other competent authorities shall monitor the public-private partnership process within the competence thereof.

## **Section 9. Functions, Rights and Obligations of the Monitoring Authority**

(1) The monitoring authority shall evaluate the assumptions included in the financial and economic calculations and risk allocation between the public partner and the private partner in the public-private partnership contract and shall give opinion thereon.

(2) The monitoring authority shall give its opinions on the conformity of risk allocation between the public partner and the private partner with the concession contract within the meaning of this Law in the following cases:

1) on the regulations and draft concession contract attached thereto in the case referred to in Section 33 of this Law;

2) on amendments to the regulations in the case referred to in Section 35, Paragraph four of this Law;

3) on draft amendments to the concession contract in the case referred to in Section 64, Paragraph one of this Law;

4) on the draft new concession contract in the case referred to in Section 82, Paragraph three of this Law.

(3) If the monitoring authority has given a negative opinion on the assumptions included in the financial and economic calculations and the risk allocation between the public partner and the private partner in the public-private partnership contract, then the representative of the public partner shall not take further activities provided for in this Law. If the monitoring authority has given an opinion that the risk allocation between the public partner and the private partner does not correspond to the concession contract within the meaning of this Law, the representative of the public partner shall not perform further activities provided for in this Law. In this case the representative of the public partner shall assign the concession procedure commission to make changes in the risk allocation which would correspond to the concession contract within the meaning of this Law, or to take a decision to suspend the concession procedure.

(4) The Cabinet shall determine the procedures by which the monitoring authority shall give opinions referred to in Paragraph one of this Section, including the terms for giving the opinions, in conformity with the contract price and risk allocation between the public partner and the private partner provided for in the financial and economic calculations.

(5) In order for a public-private partnership contract not to make a negative impact on the amount of the long-term liabilities of the State budget, the balance of the general government sector budget, and the debt, the monitoring authority shall evaluate the conformity of the accounting rules of the public-private partnership assets with the conditions included in the opinion of the Ministry of Finance (Section 15, Paragraph two) in the following documents:

1) in the concession procedural documents (Paragraph two, Clauses 1, 2, 3, and 4 of this Section);

2) in the partnership procurement procedural documents (in regulations, draft partnership procurement contract and its amendments, and also in a new draft partnership procurement contract in case if the norms of Chapter XVII of this Law are applied), unless it has been laid down in the opinion of the Ministry of Finance (Section 15, Paragraph two) that the evaluation of the monitoring authority in relation to the abovementioned documents is not necessary;

3) in the reports on the performance of the public-private partnership contract.

(6) If the monitoring authority has given an opinion that the rules for the accounting of the public-private partnership assets in the concession procedure documents referred to in Paragraph two, Clauses 1, 2, 3, and 4 of this Section do not conform to the conditions included in the opinion of the Ministry of Finance, the representative of the public partner shall not take subsequent activities provided for in this Law. In this case the representative of the public partner shall assign the concession procedure commission to make changes in the rules for the accounting of the public-private partnership assets which would conform to the conditions included in the opinion of the Ministry of Finance, or take the decision to suspend the concession procedure.

(6<sup>1</sup>) If the monitoring authority has given an opinion that the rules for the accounting of the public-private partnership assets in the procurement procedure documents referred to in Paragraph five of this Section do not conform to the conditions included in the opinion of the Ministry of Finance, the representative of the public partner shall assign the procurement procedure commission to make changes in the rules for the accounting of the public-private partnership assets in order for them to conform to the provisions included in the opinion of the Ministry of Finance or take the decision to discontinue the procurement procedure.

(7) If the monitoring authority has given an opinion that the rules for the accounting of the public-private partnership assets determined in the progress reports of the public-private partnership contract do not comply with the conditions included in the opinion of the Ministry of Finance, the representative of the public partner shall perform activities in order to eliminate this non-compliance.

(8) When evaluating the progress reports of the public-private partnership contract, the monitoring authority shall prepare opinions on compliance of the construction work performed or services provided with the relevant contract.

(9) The monitoring authority has the right to:

1) request and receive information related to the public-private partnership procedure from the public-private partnership procedure commission or representative of the public partner;

2) request and receive information necessary to give the opinions referred to in Paragraph one of this Section from the representative of the public partner;

3) request and receive the concluded public-private partnership contract, amendments thereto and the new public-private partnership contract from the representative of the public partner (in the case referred to in Section 82 of this Law);

4) request and receive the reports referred to in Section 12, Paragraph one of this Law on the course of the performance of the concluded public-private partnership contract from the representative of the public partner;

5) to conclude contracts with experts to ensure that the functions laid down in this Law are fulfilled.

(10) The monitoring authority has the obligation:

1) to comply with the laws and regulations of the European Union and Latvia in the field of public-private partnership when fulfilling the function laid down in Paragraph one of this Section;

2) once a year to submit the report on the concluded public-private partnership contracts to the Cabinet;

3) in cases when it establishes facts not conforming to the laws and regulations or the concluded public-private partnership contracts, inform the representative of the public partner, the supreme institution of the representative of the public partner (if it exists), the institution having delegated the relevant public administration task to the representative of the public partner, the holder of capital shares of the State or local government capital company, another authority governed by private law determined in the articles of association of the legal person, and also the competent State authorities thereof in the cases provided for in the laws and regulations.

(11) The Cabinet shall determine the procedures for the submission of the report referred to in Section 12, Paragraph one of this Law and the information to be included therein.

(12) The representative of the public partner, the concession procedure commission, another person or authority may address the monitoring authority also in other cases not referred to in this Law in order for it to evaluate the conformity of the assumptions included in the financial and economic calculations and risk allocation between the public partner and the private partner to the concession contract and give an opinion thereon, or give an opinion whether the accounting rules of the public-private partnership assets determined in the progress reports of the contract comply with the conditions included in the opinion of the Ministry of Finance.

*[25 August 2010; 5 September 2013; 20 April 2017]*

## **Section 10. Monitoring Authority Acting as the Competence Centre**

The monitoring authority acting as the competence centre of the public-private partnership shall:

1) prepare proposals in order to facilitate public-private partnership development;

2) inform and consult regarding public-private partnership matters;

3) identify and facilitate implementation of the most appropriate foreign experience for Latvia in the field of public-private partnership;

4) develop methodological materials in the field of public-private partnership;

5) co-operate with other State administration authorities and non-governmental organisations in the field of public-private partnership;

6) carry out other tasks prescribed in the laws and regulations governing the operation of the monitoring authority.

## **Section 11. Laws and Regulations Governing Operation of the Monitoring Authority**

The Cabinet shall determine the procedures for the operation and financing of the monitoring authority.

## **Section 12. Control of the Performance of the Contract**

(1) Once a year, after concluding a public-private partnership contract, the representative of the public partner shall submit a report on the progress in the performance of the contract to the monitoring authority.

(2) Following the receipt of the progress report, the monitoring authority shall evaluate the conformity of the construction work or services referred to in the report with the public-private partnership contract and shall prepare an opinion thereon.

(3) The Cabinet shall determine the procedure for submitting the reports in the performance of the contract and the information to be included therein, and also the procedures by which the monitoring authority shall prepare an opinion on the conformity of the construction work or services referred to in the reports to the public-private partnership contract and shall send the abovementioned opinion to the representative of the public partner; and cases when the opinion shall be also sent to the State Audit Office and other competent authorities.

(4) The opinion referred to in Paragraph two of this Section shall be preserved for 10 years following the expiry of the relevant public-private partnership contract.

(5) The public partner and the private partner shall have the obligation to ensure a separate accounting of the public-private partnership project.

## **Chapter III Initiation of the Public-Private Partnership Procedure**

### **Section 13. Determining the Expected Contract Price**

(1) The estimated contract price of a partnership procurement contract shall be determined in accordance with the Public Procurement Law or the Law on the Procurement of Public Service Providers, unless otherwise provided for in this Law.

(2) The estimated contract price of a concession contract shall be determined as the total amount of financial resources (except for the value added tax) which the private partner would obtain by exercising rights and obligations resulting from the concession contract. Upon calculating the estimated contract price, the public partner shall take into consideration any option and any amendments to the concession contract, including extensions of the time periods, payments of an end user not made on behalf of the public partner, any payments made by the public entity, including consideration of the public partner the amount of which depends on the demand of an end user or any financial advantages provided by the public entity, income from the sale of any assets included in the concession, value of all supplies and services which the public partner has intended to make available to the private partner and necessary for the fulfilment of the concession contract, any third party payments or provided financial advantages related to the performance of the concession contract, and also the value of awards and payments if the public partner intends to grant awards or make payments to the tenderers of the concession procedure.

(3) The estimated contract price of a public-private partnership contract shall be determined concurrently with making financial and economic calculations, and it shall apply when the concession notice is submitted for publication or, if submission of such notice for publication is not necessary, before the initiation of the concession procedure. The method for the calculation of the estimated contract price shall be indicated in the public-private partnership procedure documents.

(4) If at the moment of taking the decision to award the concession contract the contract price of the concession contract exceeds the initially estimated price by at least 20 per cent, the contract price determined at the moment of taking the relevant decision shall be considered as the estimated contract price of the concession contract.

(5) For the purpose of determining the estimated contract price of the concession contract, it shall not be permitted to use a method which is aimed towards the non-application of the concession procedure laid down in the Law. It shall not be permitted to divide a concession project into lots in order to avoid application of the conditions of the relevant concession procedure.

(6) If several concessions regarding individual lots may be awarded with regard to the expected subject-matter of the concession contract, the estimated contract price shall be determined as the total amount of all lots. The requirements of this Law for publication in the Official Journal of the European Union shall be applied to each lot, if the total amount of lots is equal to or exceeds the thresholds of contract prices specified by the Cabinet.

[20 April 2017]

### **Section 13.<sup>1</sup> Threshold of the Contract Price**

The threshold of the contract price referred to in Section 13, Paragraph six, Section 20, Paragraph three, Section 31.<sup>1</sup>, Paragraph three, Clause 2, Sub-clause "a", Section 31.<sup>2</sup>, Paragraph one, Clause 2, Section 37.<sup>5</sup>, Paragraph three, Section 37.<sup>6</sup>, Paragraph three, Section 39, Paragraphs two, three, six, nine, and eleven, Section 63, Paragraph five, Clause 1 of this Law shall be determined by the Cabinet on the basis of the international commitments of the European Union in relation to the thresholds of contract prices which must be followed by the public partner. The Cabinet shall determine the threshold of contract price at least once in every two years within one month after the European Commission has notified the relevant threshold of contract price in the Official Journal of the European

Union.

[20 April 2017; 5 May 2022; 5 October 2023]

#### **Section 14. Making of Financial and Economic Calculations**

(1) Financial and economic calculations are made to determine the applicability of the public-private partnership to the implementation of the particular project from the point of view of rational and efficient use of financial resources of the public entity and what type of a public-private partnership contract is to be concluded in order to successfully implement the relevant project for performing construction work or providing services, taking into consideration the impact of the potential public-private partnership contract on the amount of the long-term liabilities of the State budget, the balance of the general government sector budget, and the debt.

(2) The Cabinet shall determine the procedures by which the type of a public-private partnership contract is determined and financial and economic calculations are made.

(3) The decision to make financial and economic calculations shall be taken:

- 1) if the public partner is the State - the member of the Cabinet who is responsible for the field where the public-private partnership project is intended to be implemented;
- 2) if the public partner is a local government - the council of this local government;
- 3) if the public partner is a derived public entity (except for the local government) - the body of this public entity;
- 4) if the public partner is a legal person - an authority of this legal person that is entitled to take such a decision.

(4) The decision to make financial and economic calculations shall be sent by the public partner to the monitoring authority which, upon receipt of the relevant decision, shall publish it on the website of the monitoring authority in accordance with the procedures laid down by the Cabinet.

[20 April 2017]

#### **Section 15. Opinions of the Competent Authorities**

(1) After making the financial and economic calculations, the abovementioned calculations shall be sent:

- 1) to the Ministry of Finance - in order to receive an opinion on the expected impact of the conditions referred to in the financial and economic calculations on the amount of the long-term liabilities of the State budget, the balance of the general government sector budget, and the debt;
- 2) to the monitoring authority - in order to receive an opinion on the assumptions included in the financial and economic calculations and the risk allocation between the public partner and the private partner within the public-private partnership contract.

(2) In its opinion, the Ministry of Finance shall indicate the rules for the accounting of the public-private partnership assets referred to in the financial and economic calculations that are the basis for the conclusion that the public-private partnership contract will not have undesirable effects on the amount of the long-term liabilities of the State budget, the balance of the general government sector budget, and the debt.

(3) The Cabinet shall determine the procedures by which the Ministry of Finance gives the opinion referred to in Paragraph one, Clause 1 of this Section.

[20 April 2017]

#### **Section 16. Taking the Decision on the Initiation of the Public-Private Partnership Procedure**

(1) The opinion of the Ministry of Finance finds that the potential public-private partnership contract does not have an undesirable effect on the amount of the long-term liabilities of the State budget, the balance of the general government sector budget, and the debt, the decision on the initiation of the public-private partnership procedure shall be taken by:

- 1) the Cabinet if the public-private partnership contract is concluded by the State or a derived public entity acting as a public partner (except for the local government);
- 2) the council of the local government if the public-private partnership contract is concluded by a local government acting as the public partner;
- 3) the decision-making body determined in the articles of association of the legal person if the public-private partnership contract is concluded by a legal person acting as a public partner;

4) the relevant authority referred to in Clause 1, 2, or 3 of this Paragraph if the public-private partnership contract is concluded by a public authority or a company of a public authority within the meaning of the Law on the Procurement of Public Service Providers.

(2) If the Ministry of Finance indicates in its opinion that the potential public-private partnership contract has undesirable effects on the amount of the long-term liabilities of the State budget, the balance of the general government sector budget, and the debt, the decision on the initiation of the public-private partnership procedure shall be taken by the Cabinet.

(3) If the State or a derived public entity have a decisive influence over a capital company within the meaning of the Group of Companies Law, then the authorities referred to in Paragraph one, Clauses 3 and 4 of this Section shall take the decision on the initiation of the public-private partnership procedure when receiving a prior written agreement of the holder of capital shares of the relevant State or derived public entity.

(4) The authorities referred to in Paragraph one and two of this Section shall take the decision on the initiation of the public-private partnership procedure based on the financial and economic calculations and opinions of the Ministry of Finance and the monitoring authority.

(5) If the monitoring authority has given an opinion that the risk allocation between the public partner and the private partner does not correspond to the concession contract, the decision on the initiation of the concession procedure shall not be taken.

(6) Each body of the public partner referred to in Paragraphs one and two of this Section involved in a public-private partnership project shall include the following information in the decision on the initiation of the public-private partnership procedure:

1) the public-private partnership procedure by which the tenderer with whom the public-private partnership contract will be concluded shall be determined;

2) the representative of the public partner;

3) the duration of the public-private partnership contract ensuing from the financial and economic calculations and opinion of the Ministry of Finance;

4) the public partner resources to be transferred to a private partner, or in case of institutional partnership - to be invested in a joint venture;

5) the rules indicated in the opinion of the Ministry of Finance for the accounting of the public-private partnership assets;

6) in case of institutional partnership - the fact that the representative of the public partner will be the holder of capital shares owned by the public partner in the joint venture in accordance with the Law on the State and Local Government Capital Shares and Capital Companies;

7) other conditions for the implementation of public-private partnership that are of significance for meeting the public interests.

(7) If the opinion of the monitoring authority indicates that an exact conclusion on whether the risk allocation referred to therein corresponds to the concession contract cannot be made based on the financial and economic calculations, the bodies of the public partner referred to in Paragraphs one and two of this Section shall take the decision to conclude the partnership procurement contract and to apply the partnership procurement procedure.

(8) The decision to conclude a public-private partnership contract for a period of time that exceeds 30 years shall be taken by considering the condition referred to in Section 60, Paragraph three of this Law.

(9) If it is determined in the decision on the initiation of the public-private partnership procedure that a partnership procurement contract is to be concluded, the period for the preservation of documents specified in Section 22 of this Law shall be applied to the preservation of the decision on the initiation of the public-private partnership procedure, the relevant financial and economic calculations and opinions of the competent authorities.

[25 August 2010; 20 April 2017]

## **Division B Concession Procedures**

### **Chapter IV. Types of Concession Procedures, Exchange of Information and Documentation**

## **Section 17. Types of Concession Procedures and their Application**

(1) In order to determine the tenderer to whom the concession contract will be awarded, the following concession procedures shall be applied:

- 1) the procedure without the selection of tenderers;
- 2) the procedure with the selection of tenderers;
- 3) the competitive dialogue;
- 4) the negotiated procedure.

(2) The competitive dialogue procedure shall be applied if:

- 1) the needs of the public partner cannot be met without adjusting solutions already available on the market;
- 2) the concession contract includes innovative solutions;
- 3) the concession contract cannot be awarded without prior negotiations due to special circumstances which refer to the character, complexity or legal and financial structure of the concession or due to related risks;
- 4) the public partner is not able to prepare technical specifications with a sufficient accuracy by referring to standards or technical specifications.

(3) [20 April 2017]

(4) [20 April 2017]

(5) [20 April 2017]

(6) The negotiated procedure shall be applied if:

1) the construction work or services provided for in the concession contract may only be ensured by a specific tenderer in one of the following cases:

- a) the objective of the concession contract is to create or purchase a unique piece of art or artistic performance;
- b) lack of competition due to technical reasons;
- c) exclusive right is present;
- d) protection of the exclusive rights which are not referred to in Sub-clause "c" of this Paragraph, including intellectual property rights, needs to be ensured;

2) the exceptions referred to in Clause 1, Sub-clauses "b", "c", and "d" of this Section are only applicable, if no valid alternative or substitute is present or if the reason for the lack of competition is not the requirements specified in the concession procedure documents;

3) as a result of the procedure referred to in Paragraph one, Clause 1, 2, or 3 of this Section, requests to participate or tenders have not been submitted or tenders which are not in conformity with the concession contract and fail to comply with the requirements specified in the concession procedure documents without significant amendments have been submitted, or requests to participate have been submitted by the tenderers who do not comply with the qualification requirements and are to be excluded from the concession procedure, and if the initial provisions for the performance of the concession contract are not significantly changed. Upon a request of the European Commissioner, the public partner shall send it the final report of the concession procedure.

(7) If the public partner enters into a concession contract for the services referred to in Annex 2 to this Law, it may decide not to apply the concession procedures specified in this Law, except for the requirements referred to in Sections 18, 19, 21, 22, 23, Chapter V, Section 33, Paragraphs twelve, thirteen, and fourteen, Sections 34, 35, 36, 36.<sup>2</sup>, Section 38, Paragraphs two and three, Section 39, Paragraphs six, seven, and eight, Section 53, Paragraphs two and three, Section 53.<sup>2</sup>, Section 62, Section 62.<sup>1</sup>, and Section 63 of this Law.

[20 April 2017; 5 October 2023]

### **Section 17.<sup>1</sup> Privileged Concession Contracts**

(1) If the subject-matter of the intended concession contract allows it, the public partner is entitled to, within the scope of measures intended for specific groups of persons, reserve a possibility to participate in the concession procedure only to such tenderers whose number of employees with disability account for more than 30 per cent of the average number of employees per year.

(2) If Paragraph one of this Section is applied, the concession procedure commission or the public partner shall indicate this in the relevant concession notice.

[20 April 2017; 5 October 2023]

### **Section 18. Exchange of Information**

(1) Exchange of information between the concession procedure commission and tenderers shall take place by transferring information in person (which is confirmed by a certificate of receipt thereof), by mail, fax or electronically in accordance with the provisions of Paragraphs three and four of this Section and Section 19 depending on the choice of the concession procedure commission.

(2) Verbal communication may be used for the exchange of information which does not refer to concession procedure documents, requests to participate, and tenders. If verbal communication may affect the content of requests to participate or tenders and the evaluation of tenders, the content thereof shall be documented in writing or audio recordings.

(3) The concession procedure commission shall choose such means for the exchange of information which are generally accessible, in order not to hinder the access by tenderers to the concession procedure, and such method for sending the documents referred to in this Law which ensures the receipt of information as soon as possible. If electronic means are used for the exchange of information, such means of communication shall be chosen which are publicly accessible and compatible with generally used products of information and communication technologies, thereby avoiding the possibility of discriminating tenderers on these grounds.

(4) The exchange and storage of information shall be carried out so as to protect all the data included in requests to participate and tenders and that the content of requests to participate and tenders could be examined after expiry of term for their submission.

(5) During the time period from the day of submission of the requests to participate or tenders until the moment of opening thereof, the concession procedure commission shall not provide information on the existence of other requests to participate or tenders. The concession procedure commission shall not provide information on the evaluation process during the evaluation of requests to participate and tenders until the publication of the results.

(6) The concession procedure commission shall ensure confidentiality of the submitted information in accordance with the laws and regulations in the field of information publicity.

(7) The concession procedure commission shall ensure free and direct electronic access to the concession procedure documents and all additional required documents in the profile of the purchaser, and also a possibility for a tenderer to become acquainted on site with the additional concession procedure documents to which free and direct electronic access cannot be ensured due to technical reasons or due to the information included therein, or for the purpose of protection of commercial interests, starting from the moment of the announcement of the relevant concession procedure. If a tenderer requests to issue the concession procedure documents in printed form, the concession procedure commission shall issue them within three working days after receipt of the request for these documents, provided that the request for documents has been submitted in due time before the expiry of term for the submission of requests to participate or tenders. The concession procedure commission may request a payment for the issue of the concession procedure documents in printed form which does not exceed the costs of copying and sending of documents.

(8) If a tenderer has requested additional information on the requirements included in the concession procedure documents in due time, the concession procedure commission shall provide it within five working days, but not later than six days before expiry of the term for the submission of requests to participate or tenders. The concession procedure commission shall send additional information to the tenderer which has asked the question, and shall concurrently publish this information in the buyer profile where the concession procedure documents are available, also indicating the question asked.

[20 April 2017]

### **Section 19. Requirements for the Receipt and Sending of Electronic Documents**

(1) The concession procedure commission shall provide for electronic submission of requests to participate and tenders, except for when this may not be ensured due to technical reasons, due to the information included in the requests to participate or tenders, or for the purpose of protection of commercial interests. For the receipt of requests to participate and tenders, the concession procedure commission shall select electronic information systems which may be used free of charge and are intended for electronic receipt of requests to participate and tenders.

(2) When using electronic information systems by which requests to participate and tenders are received, the following rules shall be complied with:

1) all interested tenderers have access to the information on specifications for the electronic submission,

encryption, and time-stamping of requests to participate and tenders;

2) a system-integrated signature tool is used, ensuring the validation of the identity of the signatory of electronic document, or an electronic signature which conforms to the laws and regulations regarding the status of electronic documents and electronic signature;

3) the date and time when requests to participate and tenders are to be submitted may be precisely defined;

4) the concession procedure commission ensures that no-one has access to information submitted prior to the end of the specified term;

5) only authorised persons may set or change the time for opening the received documents;

6) during the different stages of the concession procedure access to the documents submitted, or to a part thereof, shall be possible only after activities performed simultaneously by authorised persons;

7) the submitted documents may be accessed only on a specific date after activities performed simultaneously by authorised persons;

8) the submitted and opened documents remain accessible only to those authorised persons to whom such access has been granted;

9) it is possible to discover that the prohibition referred to in Clauses 4, 5, 6, 7, and 8 of this Paragraph has been infringed.

(3) The Cabinet shall determine the requirements and standards for the systems which are used for the submission of requests to participate and tenders.

(4) If necessary, the concession procedure commission may request that special equipment and technologies which are not generally accessible are used for the submission of requests to participate and tenders, provided that it offers such alternative possibilities of access:

1) in an unlimited and full amount, free of charge, direct electronic access to special equipment and technologies from the day of publication of the concession notice. The concession notice shall indicate the website address where the relevant technologies and equipment may be accessed;

2) it ensures that the tenderers which do not have access to the relevant technologies and equipment or are not able to acquire them within the relevant time periods (assuming that the relevant tenderer is not at fault for the lack of access) might access the concession procedure by exercising a temporary right of access which is available online free of charge;

3) it supports an alternative data channel for electronic submission of tenders.

(5) When submitting a request to participate or tender electronically, a tenderer is entitled to sign all documents as one set with one secure electronic signature. If a request to participate or tender may be submitted electronically, the concession procedure commission is not entitled to request the tenderer to also submit a written request to participate or tender in addition to the electronic request to participate or tender.

*[20 April 2017 / See Paragraph 30 of Transitional Provisions]*

## **Section 20. Notices, their Forms**

(1) The Cabinet shall determine the content of the notices referred to in Section 38, Section 53, Paragraphs one and two, Section 53.<sup>1</sup>, Section 53.<sup>2</sup>, Section 62.<sup>1</sup>, and Section 63, Paragraph seven of this Law. The notice forms shall be determined by the annex to Commission Implementing Regulation (EU) 2019/1780 of 23 September 2019 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986 (eForms).

(2) The concession procedure commission or the public partner shall prepare and publish in the publication management system the notice referred to in Paragraph one of this Section.

(3) The concession procedure commission or the public partner shall send the notice referred to in Paragraph one of this Section (except for the notice referred to in Section 53.<sup>2</sup> of this Law) in the publication management system to the Publications Office of the European Union for publication in the Official Journal of the European Union if the estimated contract price is equal to or exceeds the contract price thresholds specified by the Cabinet. The notice is published on the website of the Procurement Monitoring Bureau after receipt of the confirmation that the notice has been published in the Official Journal of the European Union or 48 hours after receipt of the confirmation from the Publications Office of the European Union that the notice has been received.

*[5 October 2023]*

## **Section 21. Documentation of the Concession Procedure**

(1) The concession procedure commission shall ensure documentation of the concession procedure and each stage thereof.

(2) The decision on the initiation of the concession procedure, financial and economic calculations, opinions of the competent authorities, minutes of the concession procedure commission, the regulations, requests to participate after their official opening, the final report of the concession procedure commission, other concession procedure documents, except for the tenders submitted by tenderers, shall be generally accessible information within the scope and in accordance with the procedures laid down in this Law.

(3) The representative of the public partner or the concession procedure commission shall provide the information referred to in Paragraph two of this Section within three working days after receipt of a request.

## **Section 22. Storage of Concession Procedure Documents**

(1) The representative of the public partner shall store all the original copies of the documents referred to in Section 21, Paragraph two of this Law, and also original copies of the tenders submitted by the tenderers for 10 years after expiry of a concession contract.

(2) If the concession procedure is terminated or suspended in accordance with the procedures laid down in this Law, the representative of the public partner shall store the relevant original copies of the documents referred to in Section 21, Paragraph two of this Law, and also original copies of the tenders submitted by tenderers for five years after the concession procedure commission has taken the decision to terminate or suspend the relevant concession procedure.

(3) If the decision of the concession procedure commission referred to in Paragraph two of this Section to terminate or suspend the relevant concession procedure is appealed in accordance with the procedures laid down in this Law, the representative of the public partner shall store the original copies of the documents referred to in Section 21, Paragraph two of this Law, and also original copies of the tenders submitted by the tenderers for five years after entry into effect of the court ruling.

(4) The period for the storage of the minutes of the complaint examination commission and the information obtained during the examination of a complaint shall be 10 years.

## **Section 23. Confidentiality**

(1) The concession procedure commission may determine conditions for the protection of the information that is transmitted to tenderers together with technical specifications, and also determine such conditions during the subsequent concession procedure.

(2) When notifying of the conclusion of a concession contract and informing the tenderers, the concession procedure commission is not entitled to disclose information which has been transferred thereto by other tenderers as a trade secret or confidential information.

(3) If a tenderer, when providing the information requested in this Law, considers that it is confidential or a trade secret, the tenderer shall particularly specify it.

[20 April 2017]

# **Chapter V. Concession Procedure Commission**

## **Section 24. Establishment of the Concession Procedure Commission**

(1) The concession procedure commission shall be established by the representative of the public partner. The concession procedure commission shall consist of persons on whom an administrative penalty - a prohibition to exercise the rights - a prohibition to hold offices the duties of which include taking of decisions in the field of public procurements and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts, has not been imposed for offences in the field of public procurement and public-private partnership, or the enforcement of such penalty has ended. A representative of the public partner shall, before establishment of the concession procedure commission or inclusion of a new member in the concession procedure commission, obtain the abovementioned information on the person from the publication management system.

(2) When establishing the concession procedure commission, the representative of the public partner shall ensure that it would be competent in the field for the conclusion of the concession contract.

(3) When fulfilling its obligations, the concession procedure commission is entitled to invite experts or competent persons in the field of public-private partnership that are not members of the commission.

(4) The concession procedure commission shall consist of at least five members.

[20 April 2017; 5 December 2019 / The new wording of Paragraph one shall come into force on 1 July 2020. See Paragraph 33 of Transitional Provisions]

### **Section 25. Basic Operating Principles of the Concession Procedure Commission**

(1) The person preparing the concession procedure documents (official or employee of the public partner or of the representative of the public partner), the members of the concession procedure commission, the secretary of the concession procedure commission, and the experts shall not represent the interests of the tenderer, including they shall not have any direct or indirect financial, economic, or other personal interest which may affect the objectivity and independence of the person in relation to the particular concession procedure, and also they may not be associated with the tenderer. Within the meaning of this Paragraph, the person preparing the concession procedure documents (official or employee of the public partner or of the representative of the public partner), the member of the concession procedure commission, the secretary of the concession procedure commission, and the expert are associated with the tenderer if he or she is the following to the tenderer:

1) the current or former employee, official, shareholder, stockholder, proctor, or member of a legal person which is the tenderer or subcontractor thereof and if this relation with the legal person has ended within the last 24 months;

2) the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister, or spouse of a shareholder, stockholder, or member who owns at least 10 per cent of the capital shares, proctor or official of the legal person which is the tenderer or subcontractor thereof (hereinafter - the relative);

3) the relative of a natural person who is the tenderer or subcontractor thereof;

4) the current or former beneficial owner of a legal person which is the tenderer and if this link to the legal person has ended within the last 24 months;

5) a relative of the beneficial owner of a legal person which is the tenderer.

(2) Relation of the person preparing the concession procedure documents (official or employee of the public partner or of the representative of the public partner), members of the concession procedure commission, the secretary of the concession procedure commission, and experts with the tenderer shall also refer to the cases when the tenderer is an association of persons the members of which are natural or legal persons with whom the person preparing the concession procedure documents (official or employee of the public partner or of the representative of the public partner), the member of the commission, the secretary of the concession procedure commission, or the expert has the relation referred to in Paragraph one, Clause 1, 2, 3, 4, or 5 of this Section.

(3) The person preparing the concession procedure documents (official or employee of the public partner or of the representative of the public partner), members of the concession procedure commission, the secretary of the concession procedure commission, and experts shall sign a certification that there are no such circumstances due to which it might be regarded that they are interested in selecting or activities of a particular tenderer or that they are associated with them within the meaning of Paragraph one of this Section and that they shall not disclose the information obtained during the concession procedure which may not be disclosed in accordance with laws and regulations.

[20 April 2017; 5 May 2022]

### **Section 26. Operation of the Concession Procedure Commission**

(1) The concession procedure commission shall ensure development of the concession procedure documents, record the course of the concession procedure and shall be responsible for the process of the procedure thereof.

(2) The concession procedure commission shall evaluate tenderers, tenders and other documents submitted thereby in accordance with this Law, the concession procedure documents, and also other laws and regulations. The decision of the concession procedure commission shall be binding on the representative of the public partner when concluding a concession contract.

(3) The chairperson of the concession procedure commission shall organise and conduct its work, determine the place, time, and agenda of the commission meetings, call and chair the commission meetings, and also ensure signing of the declaration referred to in Section 25, Paragraph three of this Law.

(4) The chairperson of the concession procedure commission shall be appointed by the representative of the public partner.

(5) The representative of the public partner may also appoint a deputy chairperson of the concession procedure commission who shall fulfil duties of the chairperson during lasting absence of the chairperson (e.g. illness, vacation and business trip) or upon assignment of the chairperson.

[20 April 2017]

## **Section 27. Procedures for the Taking of Decisions of the Concession Procedure Commission**

(1) The concession procedure commission shall take decisions at meetings.

(2) The concession procedure commission shall have a quorum if at least two thirds, but not less than three members of the members of the commission, are present at the meeting. The number of the members of the commission shall be determined by rounding up the obtained result.

(3) The concession procedure commission shall take decisions with a simple majority of votes. In the event of a tied vote of the members of the commission, the chairperson of the commission shall have the casting vote. The member of the commission may not abstain from taking the decision.

[20 April 2017]

## **Chapter VI Complaint Examination Commission**

### **Section 28. Complaint Examination Commission**

(1) The complaint examination commission established by the Procurement Monitoring Bureau and consisting of three members shall examine complaints regarding infringements of the concession procedure. Members of the complaint examination commission shall be officials of the Procurement Monitoring Bureau. The chairperson of the complaint examination commission must meet the criteria referred to in Paragraph two of this Section, and at least one more member of the commission shall have an academic or a second level higher vocational education in law. In order to examine complaints, the Procurement Monitoring Bureau may invite a procurement specialist or expert.

(2) The complaint examination commission shall be chaired by the chairperson who meets the following criteria:

1) he or she has an academic or a second level higher vocational education in law or management or economics;

2) he or she has at least one year work experience in the examination of complaints regarding infringements of the procurement procedure and knowledge of public-private partnership.

(3) A person who has previously provided consultations regarding the concession procedure referred to in a complaint or is interested in being awarded a concession contract, or is connected the submitter of the complaint or another tenderer, may not be a member of the complaint examination commission, specialist or expert. Prior to examination of the complaint, all members of the commission, the specialist and expert shall sign a respective certification. Within the meaning of this Section, a member of the complaint examination commission, specialist or expert is connected to the submitter of the complaint or another tenderer, if he or she is:

1) the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse of the owner or official of the legal person - submitter of the complaint or another tenderer;

2) the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse of the natural person - submitter of the complaint or another tenderer;

3) the current or former employee, official or owner of the legal person - submitter of the complaint or another tenderer - who has terminated an employment relationship or an ownership relationship with the submitter of the complaint or another tenderer within the time period which is shorter than 24 months, or is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister, or spouse of the abovementioned persons.

(4) The complaint examination commission shall take decisions by voting. When taking a decision, members of the commission shall be independent and subjected only to the law. A specialist and an expert shall participate in meetings of the complaint examination commission without the right to vote and express an independent professional opinion to the commission on the facts established during the examination of the complaint or provide a statement regarding questions asked by the commission.

[20 April 2017]

### **Section 29. Submission of a Complaint**

(1) A person who is or has been interested in being awarded a concession contract, or who is qualifying for concession contract award and who, in relation to the specific concession procedure to which this Law applies, believes that his or her rights have been infringed upon or infringement of these rights is possible, and it may be caused by a potential infringement of the legal acts of the European Union or other laws and regulations, is entitled to submit a complaint regarding the provisions for the selection of tenderers, technical specifications, and other requirements which relate to the specific concession procedure, or regarding the activities of the public partner,

representative of the public partner or concession procedure commission during the course of the concession procedure. Within the meaning of this Chapter, the procedures for the selection of tenderers referred to in Section 17, Paragraph seven of this Law shall also be considered the concession procedure.

(2) A complaint regarding the infringements referred to in Paragraph one of this Section (except for the cases referred to in Paragraph three of this Section) may be submitted to the Procurement Monitoring Bureau until the conclusion of a concession contract in the following time periods:

1) within 10 days after the day when the information referred to in Section 36, Paragraph four, Section 43, Paragraph one, Section 45, Paragraph one or Section 53, Paragraph three of this Law has been sent to the relevant person in electronic form, using secure electronic signature or attaching a scanned document to the electronic mail message, or by fax or handed over in person;

2) within 15 days after the day when the information referred to in Section 36, Paragraph four, Section 43, Paragraph one, Section 45, Paragraph one or Section 53, Paragraph three of this Law has been sent to the relevant person by post;

3) within 10 days after the day when the notice referred to in Section 53.<sup>1</sup>, Paragraph one of this Law has been published on the website of the Procurement Monitoring Bureau or in the Official Journal of the European Union.

(3) A complaint regarding the requirements included in the concession procedure documents may be submitted in the following time periods:

1) at least seven days prior to the expiry of the term for the submission of tenders - in relation to the requirements laid down in the regulations for the procedure without the selection of tenderers and the concession notice;

2) at least four working days prior to the expiry of the term for the submission of requests to request - in relation to the selection provisions referred to in the regulations or the procedure with the selection of tenderers, the requirements specified in the concession notice in the documents of the competitive dialogue, and the concession notice;

3) at least four working days prior to the expiry of the term for the submission of tenders - in relation to the requirements included in an invitation to the procedure with the selection of tenderers and competitive dialogue procedure;

4) at least two working days prior to the expiry of the term for the submission of tenders - in relation to the requirements included in the concession procedure documents in the case referred to in Section 17, Paragraph seven of this Law.

(4) A complaint to the Procurement Monitoring Bureau may be submitted, by delivering it in person or sending it by post, fax or electronically, using secure electronic signature or attaching a scanned document to the electronic mail message. A complaint shall be deemed submitted to the Procurement Monitoring Bureau within the term specified in Paragraphs two and three of this Section if it has been received at the Procurement Monitoring Bureau:

1) on the final day of the term at the latest, if sent by fax or electronically, using a secure electronic signature or attaching a scanned document to the electronic mail message;

2) on the final day of the term at the latest, within the office hours of the Procurement Monitoring Bureau, if sent by post or delivered in person.

(5) A complaint shall be submitted in writing and shall include the following information:

1) the name and address of the submitter of the complaint;

2) the name and address of the public partner regarding which the complaint has been submitted;

3) the title of the concession procedure and identification number of the concession procedure;

4) the facts regarding which the complaint is being submitted, indicating the infringement;

5) the legal basis for the complaint;

6) the claim of the submitter of the complaint.

(6) The Procurement Monitoring Bureau shall, within one working day after the complaint has been received, post information to this effect on its website, indicating the submitter of the complaint, the public partner, the representative of the public partner or the concession procedure commission, and the concession procedure the lawfulness whereof is contested by the submitter of the complaint, and also shall inform the representative of the public partner regarding the initiation of an administrative case, by sending a notice regarding the received complaint and a copy of the complaint to the fax number or electronic mail address indicated by the representative of the public partner. The public partner shall not conclude a concession contract until a decision of the commission on the results of the examination of the complaint or termination of the administrative case is received.

(7) If a complaint regarding the requirements prescribed by regulations for the procedure without the selection of tenderers or the concession notice, or the invitation to tender in the procedure with the selection of tenderers has been submitted, the concession procedure commission shall publish information in the buyer profile on the cancellation of the date and time for the opening of tenders, and shall not open the submitted tenders in accordance with Section 49, Paragraph 1.<sup>1</sup> of this Law.

(8) If a complaint regarding the activities of the public partner, the representative of the public partner or the concession procedure commission in relation to the lawfulness of the procurement procedure is submitted and a complaint regarding the same concession procedure has already been submitted by another submitter of the complaint but it has not been examined yet, such complaints may be combined and examined together.

(9) The submitter of the complaint is entitled to revoke the complaint submitted in writing, at any time, until the complaint examination commission has not taken a decision on the relevant complaint.

[20 April 2017; 5 October 2023]

### **Section 29.<sup>1</sup> Leaving Complaint Unexamined**

(1) The Procurement Monitoring Bureau is entitled to leave a complaint unexamined in any of the following cases:

- 1) the complaint does not conform to the requirements of Section 29, Paragraph one, two, three or five of this Law;
- 2) a complaint has already been submitted and examined with respect to a concession procedure for the same subject-matter and on the same grounds;
- 3) the information included in the complaint is evidently insufficient to satisfy the claim of the submitter of the complaint, or the complaint is evidently inadmissible on its merits;
- 4) in the case referred to in Section 29.<sup>2</sup>, Paragraph four of this Law.

(2) The decision may be appealed to a court in accordance with the procedures laid down in the Administrative Procedure Law. Appeal of the decision shall not suspend the operation thereof.

[20 April 2017]

### **Section 29.<sup>2</sup> Deposit**

(1) When submitting a complaint in accordance with the procedures laid down in Section 29 of this Law, a deposit shall be paid in or submitted.

(2) The submitter of the complaint is entitled to pay in the deposit as the sum of money or submit it in the form of a bank guarantee or insurance policy.

(3) The deposit shall comprise 0.5 per cent of the estimated contract price, however not more than EUR 15 000. If it is not possible to determine the estimated contract price or it is not specified in the concession procedure documents, the deposit shall amount to EUR 3400.

(4) Following the receipt of the complaint the Procurement Monitoring Bureau shall, within one working day, verify the fact of receipt or submission of a deposit payment. Where the payment of the deposit is not received or submitted, the Procurement Monitoring Bureau is entitled to leave a complaint unexamined.

(5) The Procurement Monitoring Bureau shall repay the deposit payment or return the deposit to the submitter of the complaint within five working days after:

1) the day of revocation of the complaint, if the submitter of the complaint has revoked the complaint prior to the examination thereof in the commission, on the basis of the fact that the public partner, the representative of the public partner, or the concession procedure commission has eliminated the infringements specified in the complaint;

2) the receipt of the true copy of the court judgment, if the court by the final judgment assigns to repay the paid-in deposit payment to the submitter of the complaint;

3) the day when the decision on leaving the complaint unexamined has been communicated;

4) the day when the decision the decision to prohibit to conclude the concession contract or to cancel the decision of the public partner, the representative of the public partner, or the concession procedure commission to terminate the concession procedure has come into effect.

(6) This Section shall not be applicable if the complaint contests the lawfulness of the termination of the concession procedure or the requirements prescribed by the concession procedure.

(7) The procedures for the payment or submission and repayment or return of the deposit shall be determined by the Cabinet.

[20 April 2017]

### **Section 30. Examination of a Complaint**

(1) The complaint examination commission shall examine a complaint within one month after receipt thereof in the Procurement Monitoring Bureau. If due to objective reasons it is not possible to comply with this time limit, the complaint examination commission may extend it by notifying the submitter of the complaint, the tenderer whose tender has been in accordance with the specified tender selection criteria, the representative of the public partner, and the concession procedure commission (hereinafter in this Section - the participants).

(2) Upon examining a complaint regarding infringements of the concession procedure, the complaint examination commission may, by a decision thereof:

1) allow to conclude a concession contract and to leave the requirements specified in the concession procedure documents or the decision of the public partner, the representative of the public partner or concession procedure commission in effect, if the complaint is not justified or is justified, however, the infringements established by the complaint examination commission cannot affect the decision on awarding of the concession contract;

2) prohibit concluding the concession contract, if the requirements of Section 43, Section 45, Paragraph one or Section 53, Paragraph three of this Law have not been complied with;

3) prohibit concluding the concession contract and cancel the requirements specified in the concession procedure documents or the decision of the public partner, the representative of the public partner, or the concession procedure commission in full or any part thereof, if the complaint is justified and the infringements established by the complaint examination commission can affect the decision on awarding of the concession contract;

4) leave the decision of the public partner, the representative of the public partner, or concession procedure commission on termination or suspension of the concession procedure in effect, if the complaint is not justified;

5) cancel the decision of the public partner, the representative of the public partner, or the concession procedure commission on termination or suspension of the concession procedure, if the complaint is justified.

(3) In the cases referred to in Paragraph two, Clauses 2, 3, and 5 of this Section, the complaint examination commission may decide on measures for the elimination of the established infringements. The complaint examination commission may assign the public partner or the representative of the public partner to suspend the concession procedure only when the infringements of the concession procedure committed by the public partner, the representative of the public partner, or the concessions procedure commission cannot be eliminated otherwise.

(4) If during the examination of a complaint the complaint examination commission establishes that the complaint should be left unexamined, it may take the decision on termination of the administrative case. If the submitter of the complaint withdraws the complaint, the relevant administrative proceedings shall be considered terminated.

(5) The Procurement Monitoring Bureau shall invite the participants to the complaint examination meeting by publishing an invitation on its website at least three working days in advance. The invitation shall be considered notified on the next working day of publication thereof on the website of the Procurement Monitoring Bureau. If the electronic mail address to which the invitation should be sent has been notified by the participants to the Procurement Monitoring Bureau, the Procurement Monitoring Bureau shall send the information on the complaint examination meeting to the participants also by electronic mail not later than on the day when the invitation is published on the website of the Procurement Monitoring Bureau.

(6) The complaint examination commission shall hear the opinion of all participants. After hearing the participants, it shall continue work without the presence of the participants.

(7) The complaint examination commission shall evaluate a complaint on the basis of the facts referred to by the relevant submitter of the complaint and the participants, explanations, and an opinion or a statement of an expert. If the participants have not arrived to the complaint examination meeting, the complaint examination commission shall examine the complaint on the basis of the facts available thereto. The complaint examination commission shall take a decision and, within three working days after taking of this decision, prepare and post it on the website of the Procurement Monitoring Bureau. The decision shall be considered notified on the next working day of publication thereof on the website of the Procurement Monitoring Bureau.

(8) The complaint examination commission shall indicate the following information in its decision:

1) the justification for the establishment of the commission;

2) the members of the commission, experts, and competent persons who have participated in the complaint examination meeting commission;

3) the submitter of the complaint, the representative of the public partner, the members of the concession procedure commission, and the representatives of other participants who have participated in the complaint examination meeting;

3<sup>1</sup>) the identification number of the concession procedure regarding which the complaint has been submitted;

4) facts regarding which the complaint has been submitted, and the claim of the submitter of the complaint;

5) the most important arguments of the submitter of the complaint and the representative of the public partner;

6) the justification of the decision;

7) the legal norms applied;

8) the obligation imposed on the representative of the public partner or the concession procedure commission and the term for its fulfilment if the complaint examination commission takes the decision on measures for the elimination of the established infringements;

9) the prohibition or permission to conclude the concession contract;

10) where and in what term this decision may be appealed.

(9) If the complaint examination commission has taken the decision on the measures for the elimination of the established infringements, the representative of the public partner, or the concession procedure commission shall eliminate the infringements and perform further activities referred to in this Law.

(10) The concession procedure commission shall send all information on the elimination of the infringements established by the complaint examination commission to the Procurement Monitoring Bureau not later than on the day when the notice of the concession procedure commission on the results of the concession procedure is published in accordance with the procedures laid down in Section 53 of this Law.

[25 August 2010; 20 April 2017]

### **Section 31. Appeal of the Decisions of the Complaint Examination Commission**

(1) The submitter of the complaint, the public partner, or the tenderer whose tender is selected in accordance with the specific tender selection criterion may appeal the decision of the complaint examination commission to the District Administrative Court in the procedures laid down in the Administrative Procedure Law. The case shall be heard by the court in the composition of three judges.

(2) A judgment of the District Administrative Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Senate of the Supreme Court. Other court rulings may be appealed in accordance with the Administrative Procedure Law.

(3) Appeal of the decision of the complaint examination commission shall not suspend the validity thereof.

[25 August 2010 / See Paragraph 15 of Transitional Provisions]

## **Chapter VI.<sup>1</sup> Recognition of a Concession Contract as Invalid, Amending or Repealing the Provisions of a Concession Contract or Reduction of the Term of a Contract, and Procedures for the Compensation of Losses**

[25 August 2010]

### **Section 31.<sup>1</sup> Submission of a Complaint on Recognising a Concession Contract as Invalid, on Amending or Repealing the Provisions Thereof or on the Reduction of the Term of a Concession Contract, and Examination of the Relevant Case**

(1) A complaint on the recognition of a concession contract as invalid, on amending or repealing the provisions thereof or reduction of the term of a concession contract may be submitted by the persons referred to in Section 29, Paragraph one of this Law.

(2) The complaint shall be submitted to the District Administrative Court which shall examine the case in the composition of three judges. The examination of the application and the case shall be subject to the norms of the Administrative Procedure Law, inter alia, the norms regarding examination of the contract governed by public law in the court, insofar as not prescribed otherwise by this Law.

(3) A complaint in relation to the infringements referred to in Section 31.<sup>2</sup>, Paragraph one of this Law may be submitted within the following time periods:

1) within six months after the day when the concession contract was concluded (except for the cases referred to in Clause 2, Sub-clauses "a" and "b" of this Paragraph);

2) within 30 days after the day when:

a) the concession award notice which includes a justification for the decision to award the concession contract without publishing the concession notice has been published on the website of the Procurement Monitoring Bureau or in the Official Journal of the European Union;

b) the public partner or the representative of the public partner has informed the relevant tenderer of the conclusion of the concession contract, indicating the information referred to in Section 53, Paragraph three, Clause 1 or 2 of this Law thereto or indicating the reasons for rejecting the request to participate submitted thereby.

(4) Concurrently with submission of an application or during examination of a case, the applicant may, in the cases and in accordance with the procedures laid down in the Administrative Procedure Law, request that an interim measure is applied.

(5) A decision of the District Administrative Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Senate of the Supreme Court.

(6) A claim for the recognition a concession contract as invalid that is not justified with the circumstances referred to in Section 31.<sup>2</sup> of this Law shall be submitted to the court of general jurisdiction in conformity with the procedures laid down in the Civil Procedure Law.

[20 April 2017; 5 October 2023]

### **Section 31.<sup>2</sup> Cases When a Concession Contract may be Recognised as Invalid, the Provisions Thereof may be Amended or Repealed or the Term of a Concession Contract may be Reduced**

(1) A court may recognise the concession contract as invalid, amend or repeal the provisions thereof or reduce the term of the concession contract in any of the following cases:

1) the concession contract has been concluded without applying the concession procedures specified in Section 17, Paragraph one of this Law or the procedures referred to in Section 17, Paragraph seven of this Law if the public partner had to apply it;

2) the concession contract has been concluded, by unjustly awarding the concession contract without publishing the concession notice on the website of the Procurement Monitoring Bureau or in the Official Journal of the European Union, if the contract price is equal to or higher than the contract price thresholds specified by the Cabinet;

3) the concession contract has been concluded without complying with the term laid down in Section 54 of this Law;

4) the concession contract has been concluded by violating the prohibition specified in Section 29, Paragraph six of this Law to conclude the concession contract.

(2) In the cases referred to in Paragraph one, Clause 1 or 2 of this Section, a concession contract shall not be recognised as invalid, the provisions thereof shall not be amended or repealed, the term of the concession contract shall not be reduced, even though the law has been violated, if the following conditions are met concurrently:

1) the public partner or the representative of the public partner has published the notice referred to in Section 53.<sup>1</sup>, Paragraph one of this Law;

2) the concession contract has been concluded for at least 10 days and additionally one working day after the day when the notice referred to in Section 53.<sup>1</sup>, Paragraph one of this Law has been published on the website of the Procurement Monitoring Bureau or in the Official Journal of the European Union;

3) the prohibition to conclude a concession contract specified in Section 29, Paragraph six of this Law has been complied with.

[20 April 2017; 5 October 2023]

### **Section 31.<sup>3</sup> Court Judgment on a Concession Contract**

(1) If a court establishes that the concession contract has been concluded by infringing the norms of this Law and concludes that the complaint should be satisfied, it shall, in compliance with the conditions of this Law, select itself one of the following types of judgments:

1) recognise the concession contract as invalid from the moment of conclusion thereof;

2) amend or repeal the provisions of the concession contract. When adopting such judgment, a court shall, in addition, reduce the term of concession contract;

3) reduce the term of the concession contract.

(2) When giving a judgment, a court shall not be limited by the subject-matter of the complaint indicated by the applicant and the limits of the claim.

(3) Upon selecting the type of judgment referred to in of Paragraph one, Clause 1 or 2 of this Section, a court shall evaluate which one of them is sufficiently commensurate, effective, and preventive in the particular case in order to ensure that the public partner or the representative of the public partner would not commit infringements of this Law in the future. A court shall give the judgment referred to in Paragraph one, Clause 3 of this Section only in cases laid down in Paragraphs four and five of this Section.

(4) A court shall not give the judgment referred to in Paragraph one, Clause 1 or 2 of this Section if it is essential for the public interests to preserve the consequences caused by the concession contract. Financial consequences (for example, costs due to delay of performance, change of the contractor, sanctions, or other legal liabilities) alone shall not be considered a sufficient basis for not giving the judgment referred to in Paragraph one, Clause 1 or 2 of this Section.

(5) If a concession contract has been concluded without complying with the term specified in Section 54 of this Law or violating the prohibition specified in Section 29, Paragraph six of this Law to conclude a concession contract, and it is established that the concession procedure until taking of the decision on determination of the winner has been performed in accordance with the requirements of this Law and the abovementioned decision has not affected the chances of the tenderer who has submitted an complaint to be awarded with the procurement contract, the court shall give the judgment referred to in Paragraph one, Clause 2 or 3 of this Section.

(6) A copy of the court judgment shall be sent to the Procurement Monitoring Bureau, monitoring authority, and Ministry of Finance.

[20 April 2017]

#### **Section 31.<sup>4</sup> Compensation for Losses**

(1) Losses caused within the scope of administrative proceedings shall be compensated in accordance with the laws and regulations governing the administrative procedure and the procedures for compensation for losses caused by State administration institutions. Cases on compensation for losses shall be examined by the District Administrative Court under the court proceedings in the composition of three judges.

(2) If compensation is requested concurrently with the claim provided for in Section 31.<sup>1</sup> of this Law, a court shall take a decision thereon by examining the relevant complaint and giving any of the judgments referred to in Section 31.<sup>3</sup>, Paragraph one of this Law. The burden of proof regarding existence of such losses and the amount of compensation shall lie with the applicant. Following the day when the judgment enters into effect, the compensation for such losses may be requested in accordance with the civil law procedures.

(3) Upon submitting a complaint to the Procurement Monitoring Bureau in accordance with Section 29 of this Law, the compensation for losses is not requested. Compensation for losses caused by the public partner or the representative of the public partner may be requested concurrently with submitting a complaint to a court or addressing the public partner in accordance with the procedures laid down in the laws and regulations governing compensation for losses caused by State administration institutions.

[20 April 2017]

## **Chapter VII General Issues for the Conduct of the Concession Procedures**

### **Section 32. Stages of the Concession Procedures**

[20 April 2017]

### **Section 33. Development of the Regulations**

(1) The concession procedure commission shall develop the regulations of the relevant concession procedure in conformity with the decision on the initiation of the public-private partnership procedure. The abovementioned regulations shall be approved by each representative of the public partner.

(2) If the procedure without the selection of tenderers is applied to the concession procedure, the following information shall be indicated in the regulations:

- 1) the name (company) of a public partner and representative thereof, legal address and other required details;
- 2) the date, time, place, and procedures for submission and opening of tenderers' tenders;
- 3) the requirements for the validity period of a tenderer's tender, preparation and submission, form of the financial tender, and also information on the language or languages in which the tender is to be submitted;
- 4) the conditions for the elimination of tenderers in accordance with Section 37 of this Law, and also the information to be submitted that is necessary to evaluate a tenderer in accordance with the requirements of the referred to Section;
- 5) the requirements for the possibilities of a tenderer to perform professional activity, the requirements for economic and financial standing of a tenderer, technical and professional capabilities, and also the information to be submitted that is necessary to evaluate a tenderer in accordance with the abovementioned requirements;
- 6) justified and objective requirements for the subject-matter of a concession contract, taking into account Paragraphs twelve, thirteen, and fourteen of this Section and ensuring that the abovementioned requirements provide equal possibilities to all tenderers and do not cause unjustified restrictions on competition;
- 7) the conditions for environmental protection (if such need to be determined);
- 8) the conditions for social protection (if such need to be determined);
- 9) the time period within which the concession procedure commission plans to review the tenders;
- 10) tender evaluation criteria in accordance with Section 51 of this Law, and also a reference whether a tenderer is allowed to submit variants of a tender;
- 11) the date, time, and manner by which the results of the procedure without the selection of tenderers will be notified to the tenderers;
- 12) the conditions according to which tenders shall be considered non-conforming to the regulations;
- 13) the period within which, following the determination of results, the final agreement with the winner of the procedure without the selection of tenderers on the conclusion of the concession contract shall be reached;
- 14) the provisions of the draft concession contract that may not be amended during the agreement upon the concession contract;
- 15) the means of communication whereby information shall be exchanged between the concession procedure commission and the tenderers;
- 16) other information provided for in this Law or considered by the concession procedure commission as necessary to be included in the regulations.

(3) If the procedure with the selection of tenderers is applied to the concession procedure, the following information shall be provided in the regulations in addition to the information referred to in Paragraph two of this Section:

- 1) the time and place where a tenderer may submit a request on readiness to participate in the procedure with the selection of tenderers;
- 2) the list of documents and information to be submitted;
- 3) the common criteria a tenderer must meet so that it could be invited to submit a tender in accordance with Section 40, Paragraph two of this Law;
- 4) the date, time, place, and procedures by which the concession procedure commission will open tenderers' tenders;
- 5) the period within which the concession procedure commission plans to select tenderers;
- 6) the date, time, and manner in which the results of the tenderer selection will be published;
- 7) the planned time schedule for implementing other stages of the procedure with the selection of tenderers;
- 8) other information related to the tenderer selection.

(4) If the procedure with the selection of tenderers is applied to the concession procedure, the regulations may include the condition that the concession procedure commission preserves the right to request that only a limited

number of tenderers who best meet the tenderer selection criteria may submit tenders. In this case the number of tenderers may not be less than three.

(5) If the competitive dialogue is applied to the concession procedure, the following information shall be determined in the regulations in addition to the information referred to in Paragraph two of this Section:

1) the time and place where a tenderer may submit a request on readiness to participate in the competitive dialogue procedure;

2) the list of documents and information to be submitted;

3) the common criteria a tenderer must meet so that the tenderer could be invited to negotiations in accordance with Section 40, Paragraph two of this Law;

4) the time period within which the concession procedure commission plans to evaluate tenderers in order to invite them to negotiations;

5) the needs and requirements of a public partner on which the negotiations with tenderers will take place;

6) information on the time and place of commencing the negotiations, and also the language planned to be used in negotiations with tenderers;

7) the date and time when and manner in which the tenderers will be invited to negotiations;

8) the stages of negotiations if it is planned that the negotiations with tenderers will be held in stages;

9) the date and time when and manner in which tenderers will be informed of the results of the negotiations;

10) the planned time schedule for implementing other stages of the competitive dialogue procedure;

11) amount and assigning of awards or making of payments to the participants of the negotiations, and also manner and terms of presentation to the tenderers who have participated in the negotiations referred to in Section 46 of this Law (if it is planned that there will be awards or payments for the participation in the negotiations);

12) other information on the course of the competitive dialogue procedure.

(6) If the information referred to in Paragraph two of this Section is not objectively compatible with the information referred to in Paragraph three or five of this Section, only the information referred to in Paragraph three or five of this Section shall be included in the regulations.

(7) If the concession contract intends to provide aid for commercial activity, the concession procedure commission shall indicate the abovementioned information in the regulations concurrently specifying the procedures for providing such aid and the applicable control arrangements of aid for commercial activity.

(8) If it is planned to attract financing of the European Union Funds for the performance of a concession contract, the concession procedure commission shall indicate the abovementioned information in the regulations simultaneously laying down the procedure for using such financing.

(9) The regulations shall indicate whether a tenderer with whom the concession contract is planned to be concluded may establish a special purpose entity for the performance of the contract or the tenderer is obliged to establish it.

(10) [20 April 2017]

(11) The draft concession contract shall be attached to the regulations. The draft concession contract need not be attached to the regulations in case of the competitive dialogue procedure.

(12) Technical specifications shall be included in the concession procedure documents, and they shall determine the requirements for construction work and services. The requirements may refer to a specific production or provision process or a method of the requested construction work or services, or a specific process in another stage of life cycle thereof even if such factors are not directly related to the nature of the construction work or services, provided that they are related to the subject-matter of the concession contract and are proportionate to the value and objectives of the concession contract.

(13) Technical specifications shall include technical descriptions which may contain such requirements of the public partner for construction work and services as the level of quality, environmental protection requirements, regulations for the mitigation of climate change (reduction in emissions of greenhouse gases), and adaptation to climate change, energy efficiency, construction requirements (also requirements for the accessibility of a structure or service to people with disabilities), requirements for conformity assessment and implementation, safety rules or measurements, terminology, symbols, testing rules and methods, designations and marking or user instructions. If possible, the amount of construction work shall be determined according to the building design and included in the list

of the amount of construction work. Construction costs shall be determined in accordance with the procedures stipulated by the Cabinet. If it is not decisive for the existence of the subject-matter of the concession contract, technical specifications shall not indicate a specific origin, a special process which characterises only products or services of a specific tenderer, a brand, patents or specific types of products that create advantages or a reason for the rejection of certain tenderers or products. In exceptional cases, such reference may be included, if a sufficiently precise and clear description of the subject matter of the concession contract cannot be drawn up. In such case the reference shall be used together with the words "or equivalent".

(14) The submitted tender shall not be rejected for the reason that the tendered construction work or services fail to conform to the standards or technical specifications indicated in the concession procedure documents, if a tenderer can prove, using any appropriate means, that his or her tender is equivalent and meets the requirements specified in the technical specification.

[20 April 2017]

### **Section 33.<sup>1</sup> Subcontractors**

(1) In order to ascertain that a tenderer will be able to perform a concession contract, the concession procedure commission is entitled to request the tenderer to indicate in the tender those lots of the concession contract which it will transfer to subcontractors for performance, and also all envisaged subcontractors.

(2) The concession procedure commission shall request the tenderer to indicate in the tender all subcontractors the value of the construction work to be performed or services to be provided by which is at least EUR 10 000 and the lot of the concession contract to be transferred for the performance to each such subcontractor.

(3) The total value of the construction work to be performed or the services to be provided by a subcontractor shall be determined by taking into account the value of the construction work to be performed or the services to be provided by the subcontractor and all companies related thereto within the scope of the relevant concession contract. Within the meaning of this Section, a related company shall be considered a capital company in which, in accordance with the laws and regulations governing the status of group of companies, a subcontractor has a decisive influence or which has a decisive influence in the subcontractor, or a capital company in which another capital company has a decisive influence that concurrently has a decisive influence in the relevant subcontractor.

(4) In the case of a services concession contract, if the services are provided in the object of the public partner, and in the case of a works concession contract the concession procedure commission shall request that after awarding of the concession contract and not later than at the moment of commencing the performance of the concession contract the private partner submits a list of the subcontractors (if such are planned to be involved) involved in the performance of construction work or provision of services by specifying the name, contact information of the subcontractor, and the person with representation rights thereof, insofar as such information is known. Subcontractors of subcontractors of the private partner shall also be indicated in the list. During performance of the concession contract, the private partner shall notify of any changes in the abovementioned information, and also supplement the list with the information on a subcontractor which is later involved in the performance of construction work or the provision of services.

(5) The concession procedure commission may provide in the concession procedure documents that in case of a works concession contract, upon a request of a subcontractor, payments for the services provided or construction work performed by this subcontractor to the private partner who has accepted them, and the payment term of which is past due, if the public partner has failed to pay all the contract price due to the private partner, shall, on the basis of an invoice submitted by the subcontractor, be transferred by the public partner directly to the subcontractor, and the next payment to the private partner shall be reduced by the relevant amount. Prior to the payment of the invoice of the subcontractor, the public partner shall inform the private partner of such request and allow him or her to express an opinion on the validity of the request. The procedures for making payments and exchanging information with the private partner and subcontractors thereof shall be provided for by the concession procedure commission in the concession contract.

(6) The procedures laid down in Paragraphs one and five of this Section shall not affect the issues regarding responsibility of the private partner for the performance of the concession contract.

[20 April 2017; 5 May 2022]

### **Section 34. Opinion of the Monitoring Authority on the Regulations and the Draft Concession Contract**

(1) The concession procedure commission shall send the regulations and the draft concession contract attached thereto to the monitoring authority in order to receive an opinion on the conformity of risk allocation between the public partner and the private partner to the concession contract.

(2) If it is indicated in the opinion of the monitoring authority that it arises from the information included in the regulations and the draft concession contract that the risk allocation between the public partner and the private partner conforms to the concession contract, the concession procedure commission shall publish the concession notice

referred to in Section 38 of this Law or an advance informative notice used for announcing the procurement of social and other special services.

(3) If the opinion of the monitoring authority indicates that the information included the regulations and the draft concession contract shows that the risk allocation between the public partner and the private partner does not conform to the concession contract, the concession procedure commission shall inform the representative of the public partner thereof and develop new regulations and draft concession contract by taking into account the written instructions of the representative of the public partner, or take the decision to suspend the concession procedure.

(4) If the concession procedure commission prepares new regulations and draft concession contract based on the instructions provided by the representative of the public partner, the commission shall send them to the monitoring authority in accordance with Paragraph one of this Section.

*[20 April 2017; 5 October 2023]*

### **Section 35. Making Amendments to the Regulations**

(1) The concession procedure commission may make amendments to the regulations if they do not substantially change the requirements included in the regulations. Substantial changes in the requirements included in the regulations shall be, in particular, considered the changes which allow submission of different tenders or participation or selection of other tenderers in the concession procedure, or as a result of which the determined risk allocation between the public partner and the private partner is changed, or the content of the tender, the proposed contract price and conditions are changed, or it becomes impossible to prepare the tender within the specified term, or other significant requirements included in the regulations.

(2) Amendments to the regulations shall be approved by the representative of the public partner.

(3) Amendments to the regulations may be made only if the time period for submitting the relevant request to participate or tender referred to in Section 39 of this Law has not expired.

(4) The concession procedure commission shall send the amendments to the regulations to the monitoring authority in order to receive an opinion in accordance with the procedures laid down in Section 34 of this Law.

(5) If the concession procedure commission has made amendments to the regulations or other concession procedure documents, it shall post the information on amendments to the buyer profile where such documents are available not later than on the day when the concession notice is republished.

*[20 April 2017; 5 October 2023]*

### **Section 36. Termination or Suspension of the Concession Procedure**

(1) The concession procedure commission shall take the decision to terminate the relevant concession procedure if:

1) as a result of this concession procedure requests to participate or tenders have not been submitted;

2) tenders which are not in conformity with the concession contract and fail to conform to the requirements specified in the concession procedure documents without significant amendments have been submitted;

3) requests to participate have been submitted by tenderers who do not meet the qualification requirements and are to be excluded from the concession procedure;

4) an agreement on the concession contract has not been reached with any of the tenderers in the negotiations on the draft concession contract in accordance with the procedures laid down in Section 52 of this Law.

(2) If the concession procedure commission has taken the decision to terminate the concession procedure in accordance with Paragraph one, Clause 1, 2, or 3 of this Law, the public partner may apply the negotiated procedure in accordance with Section 17, Paragraph six of this Law.

(3) The concession procedure commission is entitled to suspend the concession procedure and not to conclude a concession contract, if there is an objective justification and consent of each public partner has been received. If the concession procedure is suspended, it may not be resumed.

(4) If the concession procedure is terminated or suspended, the concession procedure commission shall, within three working days after taking of the decision, concurrently inform all tenderers of all the reasons due to which the concession procedure is terminated or suspended. The concession procedure commission shall inform all tenderers of the term by which the person, taking into consideration Section 29, Paragraph two, Clause 1 or 2 of this Law, may submit a complaint on violations of the concession procedure to the Procurement Monitoring Bureau. Within the meaning of this Section it shall be considered that the information is delivered to all tenderers concurrently if the relevant information is sent or delivered to them on the same day.

(5) The concession procedure commission shall send information on termination or suspension of the concession procedure by post, fax or electronically by using a secure electronic signature or attaching a scanned document to the electronic mail, or deliver in person. The concession procedure commission shall retain proof of the date and manner of sending or delivery of the information.

[20 April 2017]

### **Section 36.<sup>1</sup> European Single Procurement Document**

(1) The concession procedure commission shall accept the European Single Procurement Document as a preliminary evidence of the conformity with the requirements for the selection of tenderers specified in the concession notice or concession procedure documents. If a tenderer has chosen to submit the European Single Procurement Document, the tenderer shall, in order to certify his or her conformity with the requirements for the selection of tenderers specified in the concession notice or concession procedure documents, also submit this document for each person on whose capacities the tenderer relies upon to certify that the qualification thereof conforms to the requirements specified in the concession notice or concession procedure documents, and for the subcontractor indicated by the tenderer the value of the construction work to be performed or services to be provided by which is at least EUR 10 000. An association of persons shall submit an separate European Single Procurement Document for each participant thereof.

(2) A tenderer may submit the European Single Procurement Document which has already been submitted in another concession or procurement procedure, if it certifies that the information included therein is correct.

(3) The concession procedure commission is entitled to ask the tenderer at any stage of the concession procedure to submit all or part of the documents certifying compliance thereof with the requirements for the selection of tenderers specified in the concession notice or concession procedure documents. The concession procedure commission shall not request such documents and information which is at its disposal or available in public databases.

(4) Sample forms of the European Single Procurement Document shall be determined by the Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document.

[20 April 2017; 5 May 2022]

### **Section 36.<sup>2</sup> General Provisions in Relation to a Tenderer**

(1) The concession procedure commission shall not reject a tenderer, if it does not have a specific legal status in accordance with the laws and regulations of Latvia, but this tenderer is entitled to perform construction work or provide services in accordance with the laws and regulations of the European Union Member State where it has been founded.

(2) The concession procedure commission may request that the given name, surname, and professional qualification of the employee responsible for the performance of a concession contract is indicated in the request to participate or tender of a legal person.

(3) The concession procedure commission is not entitled to require for associations of persons to get organised in a specific legal status, so that they, as a tenderer, would submit a request for participation in the concession procedure, or a tender. It may be requested in the concession procedure documents that an association of persons in relation to which a decision has been taken to conclude a concession contract gets organised according to a specific legal status, if it is necessary for the successful performance of the provisions of the concession contract.

(4) It may be specified in the concession procedure documents how associations of persons shall fulfil the requirements regarding economic and financial standing or technical and professional capacity. The requirements must be commensurate, and they shall be determined on the basis of objective reasons. The concession procedure commission may determine different, commensurate, and objectively justified conditions for associations of persons regarding performance of a concession contract.

[20 April 2017]

### **Section 37. Provisions for the Exclusion of a Tenderer**

(1) The concession procedure commission shall exclude a tenderer from further participation in the concession procedure in accordance with the provisions of this Section.

(2) The reasons for the exclusion of a tenderer shall be as follows:

1) the tenderer or a person who is a member of the executive board or supervisory board, a person with representation rights, a proctor of the tenderer, or a person who is authorised to represent the tenderer in activities related to a branch has been found guilty of any of the following criminal offences by such prosecutor's penal order or a court judgment that has entered into effect and has become incontestable and unappealable, or a coercive measure

has been applied thereto:

a) establishment or leading of a criminal organisation, involvement in such organisation or in an organised group within such organisation, or in another criminal formation, or participation in criminal offences committed by such organisation;

b) accepting bribes, giving of bribes, misappropriation of a bribe, intermediation in bribery, unlawful participation in property transactions, unauthorised receipt of benefits, commercial bribery, unlawful requesting, receiving, or giving of benefit, trading with influence;

c) fraud, misappropriation, or money laundering;

d) terrorism, financing of terrorism, establishment or organisation of a terrorist group, travelling for terrorism purposes, justification of terrorism, invitation to terrorism, terrorism threats, or recruitment or training of a person for the committing of acts of terrorism;

e) human trafficking;

f) evasion of tax payments or payments equivalent thereto;

2) the tenderer has, on the last day of the term for the submission of requests to participate and tenders or on the day when the decision is taken to possibly award the concession contract, outstanding liabilities in the field of taxes (including State social insurance) in Latvia in accordance with the law On Taxes and Fees or in the country of registration or permanent residence thereof in accordance with the laws and regulations of the respective foreign country;

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

4) insolvency proceedings have been declared for the tenderer, the economic activity of the tenderer has been suspended, or the tenderer is being liquidated;

5) the tenderer, by such a decision of the competent authority or a court judgment which has entered into effect and become incontestable and unappealable, has been found guilty of or is liable for the payment of a fine for the violation of competition law manifested as a horizontal cartel agreement, except for when the relevant authority, upon establishing violation of the competition law, has given the tenderer immunity from a fine or reduced the fine for cooperation under the leniency programme;

6) the tenderer, by such a decision of the competent authority, a court judgment, or prosecutor's penal order which has entered into effect and has become incontestable and unappealable has been found guilty of and punished for a violation which manifests as:

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

b) employment of a person without concluding a written employment contract, failing to submit, within the time period specified in the laws and regulations regarding taxes, in relation to such person an informative declaration which should be submitted on persons who commence employment;

7) the concession procedure commission has sufficiently plausible indications at its disposal to conclude that the tenderer has entered into an agreement with other economic operators aimed at hindrance, restriction, or distortion of competition;

8) the concession procedure commission has specified in the concession notice or in the concession procedure documents and can demonstrate by any appropriate means that the tenderer has violated the laws and regulations of Latvia and legal acts of the European Union in the field of environmental, social, or labour law, the collective agreement, the general agreement, or the requirements laid down in the international conventions referred to in Annex 3 to this Law;

9) the concession procedure commission has specified in the concession notice or in the concession procedure documents and can demonstrate by any appropriate means that the tenderer has committed a fundamental breach in its professional activities due to which the performance in good faith of the concession contract may reasonably be called into question;

10) the tenderer, a participant or member thereof (if the tenderer is an association of economic operators or a partnership) as a contracting party or as a participant or member of the contracting party (if the contracting party has been an association of economic operators or a partnership) has failed to ensure the performance of a procurement contract, a framework agreement, or a public-private partnership contract concluded with the contracting authority, the public service provider, the public partner, or the representative of the public partner and therefore the contracting

authority, the public service provider, the public partner, or the representative of the public partner has unilaterally terminated the procurement contract, the framework agreement, or the public-private partnership contract;

11) the person preparing the concession procedure documents (an official or employee of the public partner or of the representative of the public partner), a member of the concession procedure commission, the secretary of the concession procedure commission, or an expert is related to the tenderer within the meaning of Section 25, Paragraphs one and two of this Law, or is interested in the selection of any tenderer, and the public partner or the representative of the public partner has no possibility to prevent this situation by less restrictive measures with respect to the tenderer;

12) the tenderer has attempted to unlawfully influence the public partner or the representative thereof or a decision of the concession procedure commission or a member of the concession procedure commission in relation to the concession procedure or has attempted to obtain confidential information that would provide unjustified advantage in the concession procedure, or has provided misleading information that could significantly influence the decision on further participation of the tenderer in the concession procedure or award of the concession contract;

13) the tenderer has provided false information to certify the conformity with the provisions of this Section or the qualification requirements for tenderers laid down in accordance with this Law, or has failed to submit the requested information;

14) in relation to concessions in the fields of defence and security, an opinion has been received from a State security institution stating that the conclusion of a concession contract with a tenderer may cause threats to national security.

(3) The reasons for exclusion referred to in Paragraph two of this Section shall also apply to any of the following persons:

1) a member of a partnership if the tenderer is a partnership;

2) the person specified by the tenderer on whose capacities the tenderer relies upon to certify that the qualification thereof conforms to the requirements laid down in the concession notice or in the concession procedure documents;

3) the subcontractor indicated by the tenderer the value of the construction work to be performed or services to be provided by which is at least EUR 10 000;

4) Paragraph two, Clauses 1, 2, and 3 of this Section - to persons who have a decisive influence in the tenderer on the basis of participation within the meaning of the laws and regulations regarding groups of companies;

5) Paragraph two, Clauses 1, 2, and 11 of this Section - to the beneficial owner of the tenderer.

(4) The concession procedure commission shall, however, not exclude a tenderer from further participation in the concession procedure in any of the following cases:

1) the tenderer has ensured reliability in accordance with the procedures laid down in Section 37.<sup>1</sup> of this Law;

2) in the case referred to in Paragraph two, Clauses 1, 5, and 6 of this Section, three years have elapsed from the date on which a court judgment, a prosecutor's penal order, or a decision taken by another competent authority has become incontestable and unappealable until the date on which the request to participate or tender is submitted;

3) in the case referred to in Paragraph two, Clause 7 of this Section, three years have elapsed in relation to a decision of the competent authority in the field of competition from the date of entry into effect thereof and, in the case referred to in Clauses 8 and 9, from the date of establishing the respective violation until the date of submission of the request to participate or tender;

4) in the case referred to in Paragraph two, Clause 10 of this Section, three years have elapsed from the date on which the contracting authority, the public service provider, the public partner, or the representative of the public partner unilaterally terminated the procurement contract, the general agreement, or the public-private partnership contract until the date of submission of the request to participate or tender.

(5) The concession procedure commission shall exclude a tenderer from further participation in the concession procedure due to the reasons referred to in Paragraph two, Clause 1, 2, 3, 4, 5, or 6 of this Section on the basis of the information obtained thereby in accordance with the following procedures:

1) using the information system stipulated by the Cabinet in relation to a person registered or permanently residing in Latvia, and also, on the basis of the reasons for exclusion referred to in Paragraph two, Clauses 1, 2, 5, and 6 of this Section, in relation to a person registered or permanently residing in a foreign country, ensuring compliance with the following procedures and without the necessity to request the consent of the respective persons:

a) information on the reason for exclusion referred to in Paragraph two, Clauses 1, 5, and 6 of this Section shall be obtained by the concession procedure commission, and also by the tenderer from the Information Centre of the

Ministry of the Interior (Punishment Register);

b) information on the person referred to in Paragraph two, Clause 1 of this Section (a member of the executive board or supervisory board, a person with representation rights, a proctor, or a person who is authorised to represent the tenderer in activities related to a branch) and the person referred to in Paragraph three, Clause 5 of this Section shall be obtained by the concession procedure commission from the Enterprise Register;

c) the information on the reason for exclusion referred to in Paragraph two, Clause 2 of this Section shall be obtained by the concession procedure commission, and also by the tenderer from the State Revenue Service and local governments of Latvia. The concession procedure commission shall take into account the information posted in the information system stipulated by the Cabinet on the date of the last data update of the public database of tax debtors of the State Revenue Service and the Administration System of Immovable Property Tax. If the concession procedure commission establishes that, in accordance with the information posted in the information system stipulated by the Cabinet on the date of the last data update of the public database of tax debtors of the State Revenue Service or in the Administration System of Immovable Property Tax, the tenderer or the person referred to in Paragraph three of this Section has, on the last day of the term for the submission of requests to participate and tenders or on the day when the decision is taken to possibly award the concession contract, outstanding liabilities in the field of taxes, the concession procedure commission shall specify a time period, i.e. three working days following the day of sending the request for information, for the submission of the evidence referred to in Paragraph six of this Section that the tenderer or the person referred to in Paragraph three of this Section did not have any outstanding liabilities in the field of taxes on the respective date;

d) the information on the reason for exclusion referred to in Paragraph two, Clauses 3 and 4 of this Section shall be obtained by the concession procedure commission, and also by the tenderer relating to itself from the Enterprise Register. If the data in respect of the reason for exclusion referred to in Paragraph two, Clause 3 of this Section are not available in the information system stipulated by the Cabinet, the concession procedure commission shall request a confirmation that the respective reason for exclusion does not apply to the tenderer or the person referred to in Paragraph three of this Section, specifying a time period for the submission of certification - at least 10 days following the day of sending the request for information;

e) the information on the person registered or permanently residing in a foreign country, and also on the persons referred to in Paragraph three, Clause 4 of this Section shall be obtained by the concession procedure commission from the tenderer;

2) upon request of the concession procedure commission and within the time period stipulated thereby which is not less than 10 working days following the day of sending the request for information, the tenderer shall submit the following in order to certify that the reasons for exclusion referred to in Paragraph two of this Section do not apply to the person registered or permanently residing in a foreign country, including a tenderer registered in Latvia, a member of the executive board or supervisory board, a person with representation rights, a proctor, or a person who is authorised to represent the tenderer in activities related to a branch of the person referred to in Paragraph three of this Section and who has permanent residence in a foreign country:

a) in relation to the reasons for exclusion referred to in Paragraph two, Clauses 1, 2, 4, 5, and 6 of this Section, a statement or another document issued by the competent authority of the respective foreign country certifying the absence of the reason for exclusion. The relevant statement of the competent authority of the foreign country may be replaced by an explanation if, in accordance with the legal acts of the country of registration of the tenderer or of the person referred to in Paragraph three of this Section, the person to whom the reasons for exclusion referred to in Paragraph two, Clause 1 of this Section apply may not be a member of the executive board or supervisory board, a person with representation rights, a proctor, or a person who is authorised to represent the tenderer in activities related to a branch;

b) in relation to the reason for exclusion referred to in Paragraph two, Clause 3 of this Section, a statement that the reason for exclusion does not apply to the tenderer or the person referred to in Paragraph three of this Section. A document certifying the country of registration of each person shall be appended to the certification;

c) if in the respective foreign country the statement or other documents of the competent authority referred to in Sub-clause "a" of this Clause are not issued or sufficient to certify that the reasons for exclusion referred to in Paragraph two of this Section do not apply to the tenderer or the person referred to in Paragraph three of this Section, the respective statement or other documents may be replaced by an oath or, if the legal acts of the respective country do not provide for taking of an oath, in relation to the reason for exclusion referred to in Paragraph two, Clause 1, 2, or 4 of this Section - the certification of the tenderer itself or another person referred to in Paragraph two or three of this Section to the competent executive institution or judicial institution, a sworn notary, or a competent organisation in the relevant sector in the country of registration or permanent residence thereof, but in relation to the reason for exclusion referred to in Paragraph two, Clause 5 or 6 of this Section - the certification of the tenderer itself or the person referred to in Paragraph three of this Section to the concession procedure commission.

(6) The evidence referred to in Paragraph five, Clause 1, Sub-clause "c" of this Section which may be used to prove that the tenderer or the person referred to in Paragraph three of this Section did not have any outstanding liabilities in the field of taxes on the respective date shall be the following:

- 1) a statement from the electronic declaration system of the State Revenue Service;
- 2) a statement issued by a local government that the relevant person did not have debts of the immovable property tax;
- 3) other objective evidence of the absence of tax debts or the tax compliance.

(7) The concession procedure commission may exclude a tenderer due to the reason for exclusion referred to in Paragraph two, Clause 7 of this Section in any of the following cases:

1) information on such a decision of the competent authority in the field of competition is available whereby the tenderer has been found guilty of violating the competition law manifesting as a horizontal cartel agreement, except for the case when the relevant authority, upon establishing violation of the competition law, has given the tenderer immunity from a fine or reduced the fine for cooperation under of the leniency programme;

2) examination of the request to participate, tender, or other available information has revealed indications which might suggest the existence of an agreement aimed at hindrance, restriction, or distortion of competition in the particular concession procedure, and an opinion of the Competition Council has been received that the indications established by the concession procedure commission might suggest the existence of a respective agreement. The Competition Council shall give its opinion within 10 working days from the date of receipt of the relevant request from the concession procedure commission.

(8) The concession procedure commission may exclude a tenderer due to the reason for exclusion referred to in Paragraph two, Clauses 8, 9, and 10 of this Section if there is such sufficient and objective information at the disposal thereof which proves the existence of the respective reason for exclusion. A tenderer registered in Latvia may be excluded due the reasons referred to in Paragraph two, Clauses 8 and 9 of this Section if the concession procedure commission is in possession of a decision of the competent authority whereby the respective violation is established. If the concession procedure commission, having assessed the information at the disposal thereof, has reasonable doubts as to the sufficiency of the evidence or the violations committed by the respective person are of a minor nature, the concession procedure commission shall not exclude the tenderer from further participation in the concession procedure.

(9) The concession procedure commission shall exclude a tenderer from further participation in the concession procedure if it establishes the reasons for exclusion referred to in Paragraph two, Clause 11, 12, 13, or 14 of this Section.

(10) The concession procedure commission shall verify the reasons for exclusion of tenderers specified in Paragraph two of this Section:

1) in the procedure without the selection of tenderers - in relation to each tenderer which should be awarded a concession contract in conformity with other requirements specified in the concession notice and in the concession procedure documents and the criteria chosen for tender evaluation;

2) in the procedure with the selection of tenderers and a competitive dialogue - in relation to each tenderer which meets the requirements laid down in the concession notice and in the concession procedure documents and should be invited to submit a tender. If it is provided for in the concession procedure documents, the examination may be carried out in respect of the tenderer which, according to the other requirements specified in the concession notice and the concession procedure documents and the chosen tender selection criteria, should be awarded the concession contract or, where a reduction in the number of tenderers is applied, the abovementioned examination shall be carried out before the reduction in the number of tenderers. The concession procedure commission shall perform an examination of the reason for exclusion referred to in Paragraph two, Clause 2 of this Section in respect of each tenderer which should be awarded a concession contract in conformity with other requirements laid down in the concession notice and in the concession procedure documents and the chosen tender selection criteria;

3) in the case referred to in Section 17, Paragraph seven of this Law (if the concession documents provide for the application of the reasons for exclusion referred to in Paragraph two of this Section) and in a negotiated procedure - in respect of each tenderer which should be awarded a concession contract;

4) in a negotiated procedure in the case referred to in Section 17, Paragraph six, Clause 3 of this Law, if only all those tenderers are invited to participate in negotiations which have not been excluded in the relevant concession procedure announced previously in accordance with the provisions of this Section and which conform to the qualification requirements brought forward. If the negotiated procedure is applied after termination of the competition without selection of tenderers, the verification shall be carried out in respect of each tenderer which has submitted a tender and has been invited to the negotiated procedure. This examination shall be carried out before the commencement of negotiations.

(11) The Cabinet shall determine:

- 1) the information system in which the verification referred to in Paragraph five, Clause 1 of this Section is to be

carried out, and also the procedures for maintaining and using such system;

2) the purpose and scope of processing the information to be verified and referred to in Paragraph five, Clause 1, Sub-clause "a" of this Section, and also the laws and regulations and sections thereof which correspond to the reasons for exclusion of tenderers specified in Paragraph two of this Section and for the violations and criminal offences provided wherein the verification referred to in Paragraph five, Clause 1, Sub-clause "a" of this Section is to be made;

3) the procedures by which the information system referred to in Clause 1 of this Paragraph receives and processes information from the information systems maintained by the institutions referred to in Paragraph five of this Section;

4) the scope of the information to be verified and referred to in Paragraph five, Clause 1 of this Section in the information system referred to in Clause 1 of this Paragraph in respect of the persons registered or permanently residing abroad.

[5 May 2022]

### **Section 37.<sup>1</sup> Ensuring of Reliability**

(1) If the concession procedure commission establishes that a tenderer should be excluded from further participation in the concession procedure due to the reasons for exclusion referred to in Section 37, Paragraph two, Clauses 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of this Law, including in relation to the person referred to in Section 37, Paragraph three, Clauses 1, 4, and 5 of this Law, and the exemptions referred to in Section 37, Paragraph four, Clauses 2, 3, 4, 5, and 6 of this Law are not applicable, the concession procedure commission shall grant the tenderer the right to submit an explanation and evidence certifying reliability of the tenderer in accordance with the provisions of this Section within a time period that is not less than 10 days following the day of sending the request for information.

(2) In order to certify reliability, a tenderer shall provide an explanation and evidence of the compensation for the damage caused or of the agreement concluded on the compensation for the damage caused, the cooperation with the investigating institutions and the technical, organisational, or personnel management measures taken in order to prove its reliability and to prevent recurrence of the same and similar cases in the future.

(3) The concession procedure commission shall evaluate the information provided in the explanation, the measures taken by a tenderer or a member of a partnership (if the tenderer is a partnership) and evidence thereof, taking into account the severity of the offence and the specific circumstances. The concession procedure commission may request opinions of the competent authorities in the field of the relevant offence on the fact whether the measures taken by the tenderer are sufficient to restore reliability and to prevent the same and similar cases in the future. An opinion shall not be requested if it is available to the concession procedure commission or if the tenderer has submitted an opinion of the competent authority in the field of the relevant offence on sufficiency of the measures taken by the specific tenderer to restore reliability and to prevent the same and similar cases in the future.

(4) If the concession procedure commission considers the information provided in the explanation and the measures taken to be sufficient to restore reliability and to prevent the same and similar cases in the future, it shall decide that the respective tenderer has ensured reliability and shall not be excluded from further participation in the concession procedure in accordance with Section 37, Paragraph four, Clause 1 of this Law.

(5) If a tenderer should be excluded from further participation in the concession procedure because the reasons for exclusion referred to in Section 37, Paragraph two of this Section apply to the person referred to in Section 37, Paragraph three, Clauses 2 and 3 of this Law, reliability shall be ensured by the tenderer replacing the person referred to in Section 37, Paragraph three, Clauses 2 and 3 of this Law with a person who meets the requirements laid down in the concession notice or in the concession procedure documents and the reasons for exclusion referred to in Section 37, Paragraph two of this Law are not applicable thereto.

(6) If a tenderer fails to submit the documents referred to in Paragraph one of this Section within the time period specified in Paragraph two of this Section or if the concession procedure commission does not consider the submitted explanations and evidence as sufficient for the restoration of reliability and prevention of the same and similar cases in the future, or if the tenderer fails to replace the persons referred to in Section 37, Paragraph three, Clauses 2 and 3 of this Law in accordance with Paragraph five of this Section, the concession procedure commission shall take the decision to exclude the tenderer from further participation in the concession procedure.

(7) The possibility provided for in this Section to ensure the restoration of reliability in accordance with Paragraphs two and three of this Section shall not apply to a person in respect of whom a final and unappealable judgment has entered into effect in the country of registration or permanent residence thereof, excluding the tenderer from further participation in the procurement or concession procedures, and the time period specified in the judgment for excluding the tenderer from further participation in the procurement or concession procedure has not expired.

[5 May 2022]

## **Section 37.<sup>2</sup> Conformity for the Performance of Professional Activities**

(1) The concession procedure commission may request evidence that the relevant tenderer is registered, licensed, or certified in accordance with the requirements of the laws and regulations of the country of registration or permanent residence.

(2) In the case of a service concession contract, insofar as the private partner must be authorised or a member of an organisation so that it could provide the specific service in the country of registration or permanent residence, the concession procedure commission may request evidence of such authorisation or participation.

(3) [30 April 2020]

(4) The concession procedure commission shall determine the requirements for the minimum period since registration, licensing, authorisation of the private partner or his or her becoming of a member of a specific organisation.

[20 April 2017; 30 April 2020]

## **Section 37.<sup>3</sup> Economic and Financial Situation**

(1) The concession procedure commission may specify the requirements for the economic and financial capacity of a tenderer that are needed for the performance of a concession contract. Such requirements may refer to the following:

1) the annual minimum financial turnover of the tenderer, including in the subject-matter of a specific concession contract;

2) the financial indicators of the tenderer;

3) the professional risk insurance.

(2) If the subject-matter of a concession contract is divided into lots, the annual minimum financial turnover of a tenderer may be determined regarding groups of lots, if the concession contract is to be awarded in several lots to be implemented concurrently.

(3) A tenderer may mainly certify the conformity of its economic and financial situation with the specified requirements by submitting the following documents:

1) certifications of a credit institution or, if necessary, evidence of the relevant professional risk insurance company;

2) a financial statement or an extract from a financial report, if the financial report constitutes publicly available information in accordance with the laws and regulations of the country of registration of the applicant;

3) a certification regarding the total net turnover thereof or, if necessary, the turnover which relates to the field of a specific concession contract, but not more than regarding three previous reporting years, insofar as the information on such turnover is available, taking into account the time of establishment or commencement of activities of the tenderer.

(4) When laying down the requirements for financial indicators of a tenderer, the concession procedure commission shall clearly indicate objective and non-discriminatory methods and criteria in the concession procedure documents which will be used for the determination of financial indicators.

(5) A tenderer may rely on economic and financial capacities of other persons, if it is necessary for the performance of the relevant concession contract, regardless of the legal nature of mutual relations thereof. In such case the tenderer shall prove that it will have the necessary resources at its disposal by submitting, for example, a certification of such persons or an agreement on cooperation for the performance of the relevant concession contract. The concession procedure commission may request that the tenderer and the person on whose economic and financial capacities the tenderer relies are jointly liable for the performance of the concession contract.

(6) The concession notice (if the relevant notice form provides for such information) or an invitation to submit a tender and concession procedure documents shall determine the documents which the tenderer submits to certify its compliance with the specified requirements. A tenderer which is not able to submit the required documents due to justified reasons is entitled to certify its economic or financial situation by any other documents if the concession procedure commission considers them as appropriate.

(7) The concession procedure commission may specify the minimum level of conformity with the requirements referred to in this Section.

[20 April 2017; 30 April 2020]

## **Section 37.4 Technical and Professional Capacity**

(1) The concession procedure commission may specify requirements for the technical and professional capacity of a tenderer necessary for the performance of a concession contract. Such requirements may refer to the personnel involved in the performance of the concession contract, and experience and technical resources of the tenderer.

(2) Technical and professional capacity of a tenderer may be certified by the following based on the nature, quantity, level of significance and use of construction work or service:

1) the information on the executed construction work by attaching statements and references on the execution of the most important work in the course of not more than five preceding years, except for when the concession procedure commission has specified a longer term for the certification of experience for the purpose of promotion of competition;

2) the information on the most significant services provided in the course of not more than three preceding years, indicating amounts, time, and recipients (public or private persons). If it is necessary for the promotion of competition, the concession procedure commission may specify a longer term for the certification of experience;

3) the information on technical personnel or authorities which are responsible for the quality control, but if construction work are to be executed, on the technical personnel or authorities which will be involved in the execution of construction work;

4) the description of the technical equipment and resources used by the tenderer for ensuring quality, and also the description of training and research equipment of the tenderer;

5) the information on the management and route control systems of the supply chain which the tenderer will use for the performance of the concession contract;

6) where the services to be provided are of a complex nature or the services are intended for a special purpose, the inspection carried out by the public partner or on its behalf by a competent public body of the country of the service provider. The abovementioned inspection shall relate to the technical capacity of the service provider and, where necessary, the quality control measures it will take;

7) the documents certifying education or professional qualification of personnel of the performer of construction work or the service provider, if education or professional qualification of the personnel is not provided for as one of the criteria for tender evaluation;

8) the description of the measures which the tenderer is planning to take for the purposes of meeting the environmental protection requirements when performing the concession contract;

9) information on the average number of employees of the performer of construction work and the service provided per year, and the number of the managerial staff during the last three years;

10) information on the tools, installations, and technical equipment available to the performer of construction work and the service provider for the performance of the concession contract;

11) indication of the lot of the concession contract which the tenderer intends to transfer to subcontractors.

(3) A tenderer may rely on technical and professional capacities of other persons, if it is necessary for the performance of the relevant concession contract regardless of the legal nature of mutual relations thereof. In such case the tenderer shall prove that it will have the necessary resources at its disposal by submitting, for example, a certification of such persons or an agreement on transfer of the necessary resources to the tenderer. In order to certify the professional experience or the availability of the personnel meeting the requirements of the concession procedure commission of the tenderer, it may rely on the capacities of other persons only if such persons are to perform the construction work or to provide services for the execution whereof the relevant capacities are necessary.

(4) The concession procedure commission may request that especially important tasks are carried out by the tenderer itself or a member of an association of persons.

(5) The concession notice (if the relevant notice form provides for such information) or an invitation to submit a tender and concession procedure documents shall determine the documents which the tenderer submits to certify its compliance with the specified requirements.

(6) The concession procedure commission may specify the minimum level of conformity with the requirements referred to in this Section.

[20 April 2017; 30 April 2020]

## **Section 37.5 Quality Assurance Standards**

(1) If the concession procedure commission requires a certificate of an independent authority regarding conformity of a tenderer with the specific quality assurance standards, including provision of access for persons with disability, it shall refer to the quality assurance systems which have been approved by authorities accredited in accordance with the procedures laid down in laws and regulations according to the European standards. The concession procedure commission shall recognise a certificate issued by an authority accredited in accordance with the procedures laid down in laws and regulations of another European Union Member State. If it has been impossible for the tenderer to obtain such certificates by the day of submission of a request to participate or tender for reasons beyond the control of the tenderer, it shall submit other evidence that equal quality assurance measures have been taken, and prove that the offered quality assurance measures conform to the specified requirements.

(2) [30 April 2020]

(3) Paragraph one of this Section shall only apply if the estimated contract price of a concession contract is equal to or exceeds the threshold of contract price specified by the Cabinet.

[20 April 2017; 30 April 2020]

### **Section 37.<sup>6</sup> Environmental Management Standards**

(1) If the concession procedure commission requests a certificate of an independent authority regarding conformity of a tenderer with the environmental management standards or environmental management systems, it shall refer to the Eco-Management and Audit Scheme (EMAS) or other systems which have been recognised in accordance with Section 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC, or other environmental management standards that conform to the European or international environmental management system standards and have been approved by institutions accredited in accordance with the procedures laid down in laws and regulations. The concession procedure commission shall recognise a certificate issued by an authority accredited in accordance with the procedures laid down in laws and regulations of another European Union Member State. If it has been impossible for the tenderer to obtain such certificates by the day of submission of a request to participate or tender for reasons beyond the control of the tenderer, it shall submit other evidence of equal measures which should be ensured according to the environmental management system or standard required by the concession procedure commission.

(2) [30 April 2020]

(3) Paragraph one of this Section shall only apply if the estimated contract price of a concession contract is equal to or exceeds the threshold of contract price specified by the Cabinet.

[20 April 2017; 30 April 2020]

### **Section 38. Concession Notice and an Advance Informative Notice Used for Announcing the Procurement of Social and Other Special Services**

(1) If the public partner wishes to conclude a concession contract and the concession procedure commission applies the procedure without the selection of tenderers, procedure with the selection of tenderers, or a competitive dialogue, it shall publish the concession notice.

(2) If the public partner wishes to conclude a concession contract for the services referred to in Annex 2 to this Law, the concession procedure commission shall publish an advance informative notice used for announcing the procurement of social and other special services. The concession procedure commission is entitled not to publish the abovementioned notice, if a negotiated procedure is applied in accordance with the cases referred to in Section 17, Paragraph six of this Law.

(3) If the concession procedure commission makes the amendments referred to in Section 35 of this Law to the concession procedure documents or extends the terms specified for the submission of requests to participate or tenders by tenderers, it shall republish the concession notice.

[20 April 2017; 5 October 2023]

### **Section 39. Time Periods for the Submission of the Tenderers' Requests to Participate and Tenders**

(1) When determining the terms for the submission of requests to participate or tenders, the concession procedure commission shall take into account the level of complexity of the potential concession contract and the period necessary for the preparation of requests to participate or tenders, and also the minimum time limits for the submission of requests to participate and tenders specified in this Section.

(2) If the procedure without the selection of tenderers or a negotiated procedure is applied to the concession procedure, the term for the submission of tenders shall be not less than 30 days after the day when the concession notice is published on the website of the Procurement Monitoring Bureau or when an invitation to negotiations is sent

to the selected tenderers. If the estimated contract price is equal to or exceeds the threshold of contract price specified by the Cabinet, the term for the submission of tenders shall be not less than 30 days after the day when the concession notice is sent to the Publications Office of the European Union for publication in the Official Journal of the European Union.

(3) If the procedure with the selection of tenderers or a competitive dialogue is applied to the concession procedure, the term for the submission of requests to participate shall be at least 30 days starting from the day when the concession notice is published on the website of the Procurement Monitoring Bureau. If the estimated contract price is equal to or exceeds the threshold of contract price specified by the Cabinet, the term for the submission of requests to participate shall be not less than 30 days after the day when the concession notice is sent to the Publications Office of the European Union for publication in the Official Journal of the European Union.

(4) If the procedure with the selection of tenderers is applied to the concession procedure, the term for the submission of tenderers' tenders shall be not less than 22 days after the day when an invitation to submit tenders is sent to tenderers.

(5) If a competitive dialogue is applied to the concession procedure, the term for the submission of tenders by tenderers who have participated in the negotiations shall be not less than 22 days after the day when an invitation to submit tenders is sent to tenderers. The concession procedure commission shall agree on the term for the submission of tenders with all the selected tenderers which have participated in the negotiations but, if it is not possible to agree, the term shall be not less than 22 days after the day when an invitation to submit tenders is sent to the tenderers.

(6) If the public partner enters into a concession contract for the services referred to in Annex 2 to this Law, the term for expression of interest shall be not less than 35 days after the day when the advance informative notice used for announcing the procurement of social and other special services is published on the website of the Procurement Monitoring Bureau. If the estimated contract price is equal to or exceeds the threshold of contract price specified by the Cabinet, the term for expression of interest shall be not less than 35 days after the day when the advance informative notice used for announcing the procurement of social and other special services is sent to the Publications Office of the European Union for publication in the Official Journal of the European Union.

(7) The concession procedure commission may reduce the term for the submission of tenders by tenderers by five days, if tenders are intended to be submitted electronically in accordance with Section 19, Paragraph one of this Law.

(8) The concession procedure commission shall specify a longer term for the submission of tenders than the minimum terms for the submission of requests to participate and tenders specified in this Section, if a request to participate or a tender may only be prepared after visiting the place of the performance of the concession contract indicated by the concession procedure commission, or after becoming acquainted with the additional documents which have been specified in the concession procedure documents, at the place indicated by the concession procedure commission. The term for the submission of requests to participate and tenders shall be such that the tenderers concerned would be able to become acquainted with all the information necessary for the preparation of a request to participate and a tender.

(9) The concession procedure commission may make amendments to the concession procedure documents, provided that the amended provisions do not allow submission of different tenders or participation or selection of other tenderers in the concession procedure. If amendments are made to the concession procedure documents, the term for the submission of requests to participate or tenders shall be extended according to the significance of information or changes, so that the tenderers could become acquainted with all the information necessary for the preparation of a request to participate or a tender. The minimum term for the submission of requests to participate or tenders may not be less than half of the original term for the submission of requests to participate or tenders after the day when the concession notice is republished on the website of the Procurement Monitoring Bureau or sent to the Publications Office of the European Union for publication in the Official Journal of the European Union.

(10) If the concession procedure commission makes amendments to the invitation to submit tenders, the minimum term for the submission of tenders shall, after the day when the concession procedure commission has informed all the tenderers which have been invited to submit tenders, be at least half of the term specified initially for the submission of tenders.

(11) The concession procedure commission is entitled to extend the specified terms for the submission of requests to participate and tenders by republishing the concession notice. If the estimated contract price of a concession contract is equal to or exceeds the threshold of contract price specified by the Cabinet, the minimum time period by which the concession procedure commission is entitled to extend the term for the submission of requests to participate or tenders shall be seven days. Such extension of terms shall not be considered an amendment to the concession procedure documents within the meaning of Paragraph nine of this Section.

(12) If the concession procedure commission uses an electronic information system for the submission of requests to participate or tenders and such malfunctions of the system are established due to which it has not been possible to submit tenders or applications for at least two hours within the last 24 hours in total or for 10 minutes within the last four hours until expiry of the term for the submission of tenders or requests to participate, the holder of the system shall, after restoration of the operation of the system, postpone the term for the submission of tenders or

requests to participate by one working day. On the day of restoring the operation of the system, a notice of the malfunctions of the system shall be posted thereon, indicating the concession procedures the terms of which have been postponed. Such postponement of the terms shall not be considered an amendment to the procurement or procurement procedure documents or extension of the term for the submission of the tenders and requests to participate within the meaning of Paragraph nine of this Section.

[20 April 2017; 5 October 2023]

## Chapter VIII Selection of Tenderers

### Section 40. Submission of Tenderers' Requests to Participate

(1) If in accordance with the regulations the procedure with the selection of tenderers is organised, a tenderer shall submit a written request to participate in the tenderer selection procedure to the concession procedure commission within the time period specified in the notice on invitation to participate in this concession procedure, where it shall certify the conformity thereof with the tenderer selection criteria specified in the Regulations.

(2) In the case referred to in Paragraph one of this Section, a tenderer must meet the following requirements:

1) appropriate and sufficient professional qualification;

2) equipment and other devices requested for the performance of all activities planned within the scope of a concession contract are available or the tenderer shall provide evidence that he or she will obtain the requested equipment and other devices after conclusion of the concession contract;

3) appropriate financial resources are available for the performance of all activities planned within the scope of a concession contract (own resources or a written certification of a lender);

4) appropriate management and organisational experience;

5) other requirements that are laid down in the regulations and important for the performance of the particular concession contract.

### Section 41. Opening of the Tenderers' Requests to Participate

(1) The requests to participate shall be opened on the date, at the time and place specified in the regulations not earlier than four hours after expiry of the term for the submission thereof. Opening of requests to participate shall be public.

(2) Requests of the tenderers to participate shall be opened in the order in which they were submitted. After opening of a request to participate, the concession procedure commission shall name the tenderer, the date and the time of submission of the tender and enter this information in the minutes of the commission meeting.

[5 October 2023]

### Section 42. Selection of Tenderers

(1) The concession procedure commission shall select tenderers in conformity with the qualification requirements specified in the concession procedure documents.

(2) The amount of requirements, and also the requested minimum level of capacities for the performance of the relevant concession contract shall be determined by the concession procedure commission in proportion to the subject-matter of the concession contract. Such requirements for the minimum level of conformity shall be included in the concession notice, and also in the concession procedure documents.

(3) The concession procedure commission shall accept and recognise statements and other documents which are issued by the competent authorities of Latvia in the cases referred to in this Law, if they are issued not earlier than a month prior to the day of issue, and the concession procedure commission shall accept and recognise statements and other documents which are issued by foreign competent authorities if they are issued not earlier than six months prior to the day of submission thereof, provided that the issuer of a statement or a document has not specified a shorter period of validity thereof.

(4) If the concession procedure commission obtains the necessary information on a tenderer directly from the competent authority, databases or other sources, the relevant tenderer is entitled to submit a statement or another document regarding the relevant fact, if the information obtained by the concession procedure commission does not conform to the actual situation.

(5) If the concession procedure commission has doubts regarding the authenticity of the submitted copy of the document, it shall request that a tenderer presents the original document or submits a certified copy of the document.

(6) If the concession procedure commission establishes that the information included in a request to participate or document submitted by a tenderer is unclear or incomplete, it shall request that the tenderer or the competent authority explains or supplements the abovementioned information or document or submits the missing document by ensuring equal treatment of all tenderers. The concession procedure commission shall determine the term for the submission of the necessary information or document in proportion to the time which is necessary for the preparation or submission of such information or document.

(7) If the concession procedure commission has, in accordance with Paragraph six of this Section, requested to explain or supplement the information included in the request to participate or submitted by a tenderer, but the tenderer has failed to do it in conformity with the requirements stipulated by the concession procedure commission, the concession procedure commission shall evaluate the request to participate according to the information at the disposal thereof.

(8) If the concession procedure documents include a condition that the concession procedure commission preserves the right to request tenders only from a limited number of tenderers, the commission shall prepare a list of the tenderers who will be invited to submit tenders.

[20 April 2017]

#### **Section 43. Informing Tenderers of Selection Results**

(1) Within three working days after the decision has been taken, the concession procedure commission shall inform simultaneously all tenderers of the decision taken on the results of the tenderer selection (the rejected tenderer shall be also informed of the reasons for the rejection of the request to participate submitted thereby) and invite the selected tenderers to submit tenders. The concession procedure commission shall inform all tenderers of the term by which the person, taking into consideration Section 29, Paragraph two, Clause 1 or 2 of this Law, may submit a complaint on violations of the concession procedure to the Procurement Monitoring Bureau. Within the meaning of this Section it shall be considered that the information has been delivered to all tenderers concurrently if the relevant information has been provided to them on the same day.

(2) The concession procedure commission shall send the information on results of the selection of tenderers by post, fax or electronically using a secure electronic signature, or attaching a scanned document to the electronic mail, or deliver in person. The concession procedure commission shall keep a proof of the date and manner of sending or delivery of the information.

(3) When informing of the results of tenderer selection, the concession procedure commission is entitled to omit the information, the publication of which might delay the application of laws and regulations or would be contrary to the public interests, or would restrict competition among tenderers, or damage substantial commercial interests of tenderers (public or private).

[20 April 2017]

## **Chapter IX Process of the Competitive Dialogue**

#### **Section 44. Submission of Requests to Participate and Selection of the Tenderers to be Invited to the Negotiations**

(1) In order to participate in the competitive dialogue procedure, a tenderer shall submit a written request to participate in the competitive dialogue procedure to the concession procedure commission within the time period specified in the notice on invitation to participate in this concession procedure.

(2) The concession procedure commission shall select tenderers to be invited to negotiations within the time periods provided for in the Regulations.

(3) In order for a tenderer to be invited to negotiations, the tenderer must meet the requirements laid down in Section 40, Paragraph two of this Law.

#### **Section 45. Invitation of Tenderers to Negotiations**

(1) The concession procedure commission shall inform all tenderers who have submitted the requests to participate referred to in Section 44, Paragraph one of this Law of the results of the tenderer selection in accordance with the procedures laid down in Section 43 of this Law by specifying the tenderers who are invited to negotiations and other information referred to in Section 43, Paragraph one of this Law.

(2) The regulations may specify that, if the number of tenderers exceeds the number of tenderers provided for in the regulations, the concession procedure commission shall invite only a certain number of tenderers to negotiations. In this case the number of tenderers may not be less than three.

(3) In the case referred to in Paragraph two of this Section, the concession procedure commission shall invite the number of tenderers provided for in the regulations to the negotiations.

(4) The invitation to negotiations shall indicate at least the date for the initiation of negotiations and time and place for their organisation, and also the language to be used in the competitive dialogue.

[25 August 2010]

#### **Section 46. Negotiations with the Tenderers**

(1) On the date, at the time and place determined in the invitation to negotiations, the invited tenderer shall submit the solution thereof to the needs and requirements of the public partner determined in the regulations to the concession procedure commission.

(2) The task of the negotiations is to develop one or more alternative solutions that meet the requirements of the regulations, based on which the tenderers invited to the negotiations will be invited to submit tenders.

(3) The concession procedure commission shall conduct negotiations with each invited tenderer individually.

(4) During negotiations, the concession procedure commission is entitled to discuss all aspects related to a concession contract with the invited tenderers.

(5) During negotiations, the concession procedure commission shall ensure equal treatment of all tenderers without creating more advantageous conditions to any of the tenderers than to others.

(6) When conducting negotiations with tenderers, the concession procedure commission shall not disclose solutions tendered by other tenderers, and also any confidential information provided by a tenderer participating in the negotiations, unless the relevant tenderer has expressly agreed thereto.

(7) If it is provided for in the regulations, the concession procedure commission is entitled to organise negotiations in several consecutive stages in order to reduce the number of solutions to be discussed during the negotiations.

(8) The concession procedure commission shall continue negotiations with tenderers until the moment when a solution or solutions are developed that meet the needs and requirements of the public partner specified in the regulations.

#### **Section 47. Closure of Negotiations and Invitation to Submit Tenders**

(1) If during the negotiations a solution that meets the needs and requirements of the public partner determined in the regulations is developed, the concession procedure commission shall inform each representative of the public partner thereof in writing by sending the developed solution thereto.

(2) If each representative of the public partner accepts in written form the solution elaborated during the negotiations, the concession procedure commission shall send the solution and the draft concession contract to the monitoring authority to receive an opinion on the risk allocation between the public partner and the private partner.

(3) If the opinion of the monitoring authority indicates that the solution developed during the negotiations and the draft concession contract show that the risk allocation between the public partner and the private partner corresponds to the concession contract, the concession procedure commission shall close the negotiations.

(4) If the opinion of the monitoring authority indicates that the solution elaborated during negotiations and the draft concession contract show that the risk allocation between the public partner and the private partner fails to conform to the concession contract, the concession procedure commission shall inform the representative of the public partner thereof and continue negotiations with tenderers, taking into account written instructions of the representative of the public partner, or take the decision to terminate the concession procedure.

(5) If the opinion of the monitoring authority indicates that the draft concession contract shows that the risk allocation between the public partner and the private partner does not correspond to the concession contract, the concession procedure commission shall elaborate a new draft concession contract.

(6) In the cases referred to in Paragraphs four and five of this Section, the concession procedure commission shall act in accordance with Paragraph one and two of this Section.

(7) The concession procedure commission shall inform all tenderers who participated in the negotiations of the closure of negotiations and invite these tenderers to submit tenders within the time period laid down in accordance with Section 39, Paragraph five of this Law.

(8) The invitation to submit tenders must include at least the following information:

1) the solution elaborated during the negotiations with tenderers;

2) the term for the submission of tenders, address to which the tenders are to be sent and the language the tender is to be submitted in;

3) the tender validity period.

(9) The concession procedure commission shall specify in the invitation that a tender shall include all the required elements that are included in the solution developed during the negotiations.

(10) The draft concession contract shall be attached to the invitation. The provisions of the draft concession contract that are immutable shall be specified in the invitation.

(11) If the regulations provide that awards are assigned or payments made to the tenderers for participation in the negotiations, the awards shall be assigned and the payments shall be made in accordance with the procedures provided for in the regulations.

[20 April 2017]

## Chapter X Determination of the Winner of a Concession Procedure

### Section 48. Submission of Tenderers' Tenders

(1) If the procedure without the selection of tenderers is organised, the tenderer shall submit a tender within the time period specified in the notice referred to in Section 38, Paragraph one of this Law which has been published on the website of the Procurement Monitoring Bureau.

(2) If the procedure with the selection of tenderers is organised, the tenderer who has received the invitation to submit a tender referred to in Section 43 of this Law shall submit a tender within the time period specified in the invitation.

(3) If the competitive dialogue is organised, the tenderer who has received the invitation to submit a tender referred to in Section 47, Paragraph seven of this Law shall submit a tender within the time period specified in the invitation.

(4) The tenderer shall specify the following in the tender:

1) the tendered technical solution in accordance with the safety, environmental protection, and other conditions specified in the regulations;

2) the tendered financial and commercial solution of the concession;

3) other information specified in the regulations or invitation to submit a tender.

(5) If a tender is submitted by a tenderer who has participated in the competitive dialogue, the tender shall also include all the required elements that are included in the solution elaborated during the negotiations.

(6) The regulations may provide that tenderers may submit variants of a tender.

(7) Tenderers are entitled to request from the concession procedure commission explanations of the regulations and other information on the concession procedure if such a request is submitted no later than nine days before the expiry of the time period for the submission of tenders.

(8) The concession procedure commission shall reply to the requests for information referred to in Paragraph seven of this Section within five working days.

[20 April 2017]

### Section 48.<sup>1</sup> Tender Security and Performance Bond

(1) The concession procedure commission is entitled to request that a tenderer submits or pays in a tender security and performance bond. The concession procedure commission shall specify in the concession procedure documents the types, amount of and time limits of the tender security and performance bond, and also the provisions for the submission and issue, payment, and disbursement thereof.

(2) The amount of the tender security shall be determined commensurately, taking into account the estimated contract price of the relevant concession contract and the subject-matter of the concession contract, but not more than two per cent of the estimated contract price.

(3) The time limit of the tender security shall be determined commensurately, taking into account the complexity of the relevant concession contract and the estimated time limit for the evaluation of tenders, but it may not exceed six months counting from the day when tenders were opened.

(4) A tenderer is entitled to submit the tender security and performance bond as a bank guarantee, insurance policy or, if the concession procedure commission has provided for such an option in the concession procedure documents, as a payment of a sum of money in the account indicated by the representative of the public partner.

(5) The tender security shall be in effect for the shortest of the following time periods (except in the case referred to in Paragraph six of this Section):

1) within the minimum time limit of validity of the tender security laid down in the concession procedure documents;

2) if the concession procedure documents specify that the tenderer to whom the concession contract has been awarded submits a performance bond after conclusion of the concession contract - until the day when the selected tenderer submits such performance bond;

3) until conclusion of the concession contract.

(6) The provider of security shall disburse, or the representative of the public partner shall deduct the amount of the tender security paid in by the tenderer, if:

1) the tenderer withdraws its tender during the period of validity of the tender security;

2) the tenderer to whom the concession contract has been awarded has not submitted the performance bond provided for in the concession procedure documents and concession contract within the time limit laid down by the concession procedure commission;

3) the tenderer to whom the concession contract has been awarded does not sign the concession contract within the time limit laid down by the concession procedure commission.

[20 April 2017]

#### **Section 49. Opening of Tenderers' Tenders**

(1) The concession procedure commission shall open the submitted tenders not earlier than four hours after expiry of the term for the submission of tenders at the place and time specified in the invitation (except for the case referred to in Section 29, Paragraph seven of this Law). Opening of tenders shall be public.

(1<sup>1</sup>) If in the case referred to in Section 29, Paragraph seven of this Law the complaint examination commission takes the decision referred to in Section 30, Paragraph two, Clause 1 of this Law, or the administrative case is terminated, the concession procedure commission shall publish information in the buyer profile on the place and time of the tender opening meeting, and also inform the tenderers thereof at least three working days in advance. If the complaint examination commission takes the decision referred to in Section 30, Paragraph two, Clause 3 or Paragraph three of this Law, the concession procedure commission shall not open the submitted tenders and shall issue or send them back to the tenderers.

(2) Tenders shall be opened according to the submission sequence thereof by naming the tenderer, the tender submission time, the offered contract price and other information that describes the tender, and this information shall be entered in the minutes of the commission meeting.

(3) Upon a request of a tenderer, the concession procedure commission shall present the financial tender where the offered contract price is determined in accordance with the requested form of a financial tender.

[20 April 2017; 5 October 2023]

#### **Section 50. Evaluation of Tenderers' Tenders**

(1) If the procedure without the selection of tenderers is applied to the concession procedure, the concession procedure commission shall select tenderers in conformity with the qualification requirements specified in the concession procedure documents, verify the conformity of tenders with the requirements specified in the concession procedure documents, and select a tender according to the criteria specified for tender evaluation.

(2) If the procedure with the selection of tenderers is applied to the concession procedure, the concession procedure commission shall verify the conformity of tenders with the requirements specified in the concession procedure documents, and select a tender according to the criteria specified for tender evaluation.

(3) If a competitive dialogue is applied to the concession procedure, the concession procedure commission shall verify the conformity of a tender with the requirements specified in the solution elaborated during negotiations, and select a tender according to the criteria specified for tender evaluation.

(4) If the concession procedure commission establishes that the information included in a tender or document submitted by a tenderer is unclear or incomplete, it shall request the tenderer to explain or supplement the abovementioned information or document or submit the missing document by ensuring equal treatment of all

tenderers. However, such explanation, updating, harmonisation and provision of additional information may not change the main elements of the tender. The concession procedure commission shall determine the time limit for the submission of the necessary information or document in proportion to the time which is necessary for the preparation or submission of such information or document.

(5) If the concession procedure commission has, in accordance with Paragraph four of this Section, requested to explain or supplement the information included in a tender or submitted by a tenderer, but the tenderer has failed to do it in conformity with the specified requirements, the concession procedure commission shall evaluate the tender according to the information at the disposal thereof.

(6) During evaluation of tenders, the concession procedure commission shall verify whether a tender does not contain arithmetical errors. If the concession procedure commission finds such errors, it shall correct these errors. The concession procedure commission shall inform the tenderer whose errors have been corrected of the correction of errors and the corrected sum of the tender. When evaluating a financial tender, the concession procedure commission shall take into account corrections.

(7) During evaluation of tenders, the concession procedure commission is entitled to request a tenderer to submit a certification that it has developed the tender independently.

(8) Each member of the concession procedure commission shall evaluate a tender individually according to all the evaluation criteria specified in the concession procedure documents. The tender which upon aggregation of individual evaluations has received the highest score shall be recognised as the most economically advantageous tender.

(9) After the evaluation of tenderers' tenders, the concession procedure commission shall prepare a list of all the tenderers who submitted tenders listing them according to the scores and enter it in the minutes of the concession procedure commission meeting.

[20 April 2017]

#### **Section 51. Criteria for the Evaluation of Tenderers' Tenders**

(1) The concession procedure commission shall award the concession contract to the most economically advantageous tender which is determined as follows:

1) on the basis of the price or costs by applying the efficiency approach, for example, evaluating the costs of the life cycle;

2) taking into account the price or costs and the quality criteria linked to the subject-matter of the concession contract, for example:

a) the quality, including technical merit, aesthetic and functional characteristics, accessibility, conformity with universal design, social and environmental protection requirements, innovative characteristics and trading conditions;

b) management structure of the performance of the concession contract and qualification and experience of the staff involved, if the qualification and experience of the staff involved can have a significant impact on the quality of performance of the procurement contract;

c) the after-sale services and technical assistance, delivery conditions, such as delivery date, delivery process and delivery period or period of completion of delivery.

(2) Quality criteria are linked to the subject-matter of the concession contract if they relate to the construction work, supply or services at any stage of their life cycle, and also the factors involved in the process of the performance of the construction work, production or trade of the products or provision of services, or any other process in a stage of their life cycle, even if such factors are not directly linked to the subject-matter of the concession contract (for example, conformity with the environmental protection requirements or social criteria during the provision of service or performance of construction work).

(3) The following conditions may be used as the criteria for the evaluation of the non-financial and non-commercial aspects of a tender:

1) technical evaluation provided in the tender (the minimum tender for the implementation of the standard of technical design or delivery of service, or the improvement thereof specified in the concession procedure documents);

2) exploitation and management evaluation provided in the tender (the procedures, the method and conformity with the determined standards of exploitation and management of the planned structure);

3) quality of services and the manners for ensuring the continuity thereof;

4) other conditions important for the performance of the particular concession contract.

(4) The following conditions may be used as the criteria for the evaluation of financial and commercial aspects of a

tender:

- 1) any payments to be made to the public partner within the scope of a concession contract;
- 2) any payments to be made to the private partner within the scope of a concession contract;
- 3) the offered design and construction costs, annual exploitation and maintenance costs, and also the offered financing procedures;
- 4) the amount of any financial support (if such is planned) that is expected from the public partner or any other State or local government institution;
- 5) justification of the financing offered in accordance with the submitted documentation and the conditions determined therefor;
- 6) other conditions important for the performance of the particular concession contract.

(5) The concession procedure commission shall determine such tender evaluation criteria which do not restrict competition and are objectively comparable or evaluable, and supplement them with the requirements which allow to efficiently verify the information submitted by tenderers.

(6) The concession procedure commission shall indicate in the concession procedure documents all the tender evaluation criteria in order of importance thereof, the values of the criteria, and, where appropriate, spread of values, and also the selection algorithm of a tender in accordance with these criteria and shall describe how each of the evaluation criteria indicated will be applied.

(7) The concession procedure commission shall indicate in the concession procedure documents the decisive tender selection criterion according to which it will select the tender, if, prior to taking the decision on the award of the concession contract, it establishes that score of at least two tenders is identical.

(8) If such a tender is received which suggests an innovative solution with a special functional operational level which the concession procedure commission could not have foreseen, the concession procedure commission may, in exceptional cases, change the order of the tender evaluation criteria in order to take account of the specific innovative solution. Amendments to the order of the importance of the tender evaluation criteria may be made by ensuring equal treatment of all tenderers.

(9) Subject-matter of the concession, criteria and the minimum requirements for tender evaluation may not be changed during negotiations with tenderers or negotiations on a draft concession contract.

(10) If the concession procedure commission changes the order of the tender evaluation criteria in the case referred to in Paragraph eight of this Section, the concession procedure commission shall concurrently inform all tenderers of the change in the order of the tender evaluation criteria and send an invitation to submit a tender in conformity with the time limit for the submission of tenders specified in Section 39, Paragraphs four and five of this Law. If the tender evaluation criteria are published at the moment when the concession notice is published, the concession procedure commission shall publish a new concession notice.

[20 April 2017]

### **Section 51.<sup>1</sup> Life-cycle Costs**

(1) Life-cycle costs shall fully or partially cover the following costs over the life cycle of a construction work or service:

- 1) the costs borne by the public partner or other users, such as:
  - a) the costs relating to acquisition;
  - b) the costs of use (for example, consumption of electricity and other resources);
  - c) the maintenance costs;
  - d) the end of life costs (for example, collection and regeneration costs);

2) the costs incurred during the life cycle of construction work or service and related to the environmental impact (for example, cost of emissions of greenhouse gases and of other pollutant emissions, costs of measures oriented towards mitigation and adaptation to climate change), if they may be expressed in monetary terms and verified.

(2) The concession procedure commission shall indicate in the concession procedure the method for calculating the life-cycle costs and the data to be provided by the tenderers required for making the calculation.

(3) The methodology for the calculation of the costs related to environmental impact shall conform to the following

conditions:

- 1) it is based on objectively verifiable and non-discriminatory criteria;
- 2) it is accessible to all interested persons;

3) the data necessary for calculations are at the disposal of tenderers, including at the disposal of the tenderers registered in the country other than the European Union Member State, but which is a contracting party to the Agreement on Government Procurement of the World Trade Organisation or other international agreements binding on the European Union, or they are easily accessible.

[20 April 2017]

### **Section 51.<sup>2</sup> Abnormally Low Tender**

(1) If a tender for a particular works concession contract or service concession contract appears to be abnormally low, the concession procedure commission shall ask the tenderer for an explanation of the tendered price or costs, and also for information on the average hourly tariff rates in profession groups of the employees of the tenderer and of subcontractors specified in the tender thereof.

(2) The explanation may specifically relate to:

- 1) the costs of the construction method or of the services to be provided;
- 2) the technical solutions chosen and exceptionally favourable conditions available to the tenderer for the execution of construction work or provision of services;
- 3) the characteristics and originality of the tendered construction work or services;
- 4) the compliance with the obligations laid down in the laws and regulations governing the fields of environmental, social, and labour law, and labour protection, and collective agreements;
- 5) the commitments towards subcontractors;
- 6) the aid for commercial activity received by the tenderer.

(3) The concession procedure commission shall, upon consultation with a tenderer, evaluate the explanations provided by the tenderer.

(4) The concession procedure commission shall reject a tender as abnormally low, if the explanations provided does not satisfactorily account for the low level of price or costs tendered by the tenderer, or the price or costs do not cover the costs related to the compliance with the obligations specified in laws and regulations governing the fields of environmental, social, and labour law, and labour protection, and collective agreements.

(5) If the concession procedure commission establishes that a tender is abnormally low because the tenderer has received aid for commercial activity, the tender may be rejected after consultations with the tenderer only on the basis of the fact that the tenderer is not able to prove, within a reasonable time period specified by the concession procedure commission, that the received aid for commercial activity is compatible with the internal market in accordance with Section 107 of the Treaty on the Functioning of the European Union. If the concession procedure commission rejects the tender for this reason, it shall inform the European Commission and the Procurement Monitoring Bureau of the rejection of the tender and the reason for rejection thereof.

(6) The information referred to in Paragraph one of this Section in respect of a person registered or permanently residing in Latvia on the average hourly tariff rates in profession groups of its employees shall be obtained by the concession procedure commission and also by the tenderer relating to itself, in accordance with the procedures stipulated by the Cabinet, from the State Revenue Service using the information system stipulated by the Cabinet. The concession procedure commission is entitled to receive the abovementioned information from the State Revenue Service without requesting a consent from the tenderer and the subcontractors specified in the tender thereof.

(7) The Cabinet shall determine:

- 1) the information system where the information referred to in Paragraph one of this Section can be obtained from the State Revenue Service, and also the procedures for maintaining and using such system;
- 2) the purpose of processing and scope of the information referred to in Paragraph one of this Section and to be verified;
- 3) the procedures by which the information system referred to in Clause 1 of this Paragraph shall receive information from the information system maintained by the institution referred to in Paragraph six of this Section and process it.

[20 April 2017; 5 May 2022]

## **Section 52. Negotiations on the Draft Concession Contract**

(1) The concession procedure commission shall invite the tenderer who according to Section 50, Paragraph one, two or three of this Law has received the highest score from the concession procedure commission (hereinafter - the winner of the procedure) to the negotiations on the draft concession contract.

(2) Negotiation may be held only on those provisions of the draft concession contract which are not determined as immutable in the regulations. The provisions of the draft concession contract according to which the tenderers' tenders were evaluated and the winner of the tendering procedure has been determined may not be changed.

(3) If the concession procedure commission reaches an agreement with the winner of the procedure on the concession contract, it shall take the decision to conclude a concession contract with the winner of the tendering procedure.

(4) If the concession procedure commission fails to reach an agreement with the winner of the tendering procedure on the concession contract and this tenderer refuses to conclude a concession contract with the public partner, the commission is entitled to invite the tenderer who stands next in the list referred to in Section 50, Paragraph nine of this Law to the negotiations, if it is agreed with the representative of the public partner, or terminate the concession procedure without selecting any tender.

(5) If the concession procedure commission agrees upon the concession contract with the tenderer with the next highest score in accordance with the procedure referred to in Paragraph four of this Section, it shall take the decision to enter into the concession contract with this tenderer.

[20 April 2017]

## **Chapter XI Termination of the Concession Procedure**

### **Section 53. Notice on the Results of the Concession Procedures and Procedures by which Tenderers Shall Be Informed of the Results**

(1) The concession procedure commission shall publish the concession award notice within 10 working days after conclusion of the concession contract or taking of the decision to terminate or suspend the concession procedure.

(2) If a concession contract is to be concluded for the services referred to in Annex 2 to this Law, the concession procedure commission shall publish the concession award notice for social and other special services within 10 working days after conclusion of the concession contract or taking of the decision to terminate or suspend the concession procedure. The public partner may combine notices on awarding of concession for social and other special services within one quarter and publish them not later than within 10 working days after the end of each quarter.

(3) The concession procedure commission shall, within three working days after taking of the decision on the results of the concession procedure, concurrently inform all tenderers of the decision taken. The concession procedure commission shall announce the name of the selected tenderer by specifying:

1) the reasons for the rejection of the submitted tender to the rejected tenderer;

2) the characterisation and relative advantages of the selected tender to the tenderer which has submitted an appropriate tender;

3) the time period within which a tenderer, taking into consideration Section 29, Paragraph two, Clause 1 or 2 of this Law, may submit a complaint on infringements of the concession procedure to the Procurement Monitoring Bureau.

(4) When informing of the results of the concession procedure, the concession procedure commission is entitled to omit such information the publication of which might delay the application of laws and regulations or would be contrary to the public interests, or would restrict competition among tenderers, or damage substantial commercial interests of tenderers (public or private).

(5) The concession procedure commission shall send the information on results of the concession procedure by post, fax or electronically using a secure electronic signature, or attaching a scanned document to the electronic mail, or deliver in person. The concession procedure commission shall keep proof of the date and manner of sending or delivery of the information.

(6) Within the meaning of this Section, it shall be considered that the information is delivered to all tenderers concurrently if the information is sent or delivered to them on the same day.

[20 April 2017; 5 October 2023]

### **Section 53.1 Notice on the Results of the Concession Procedure**

(1) In the cases referred to in Section 3 of this Law or in the case of a negotiated procedure, the public partner or the representative of the public partner may publish a voluntary notice on the results of the concession procedure.

(2) A voluntary notice on the results of the concession procedure shall be published in order for the interested persons to be able to appeal justification of the concession procedure which, due to an error, has been carried out without applying an appropriate procurement procedure or without publishing the concession notice, and in order to concurrently eliminate the consequences referred to in Section 31.3, Paragraph one of this Law.

[20 April 2017; 5 October 2023]

### **Section 53.2 Notice on Performance of the Contract**

The concession procedure commission shall publish a notice on performance of the contract within 10 working days after performance of the concession contract.

[5 October 2023]

### **Section 54. Conclusion of the Concession Contract**

(1) The public partner or the representative of the public partner shall conclude a concession contract with a private partner no sooner than on the next working day after the end of the waiting period if a complaint regarding infringements of the concession procedure has not been submitted to the Procurement Monitoring Bureau in accordance with the procedures laid down in Section 29 of this Law.

(2) The waiting period referred to in Paragraph one of this Section shall be:

1) 10 days after the day when the information referred to in Section 53, Paragraph three of this Law has been sent to all tenderers electronically by using a secure electronic signature or attaching a scanned document to the electronic mail, or by fax or handed over in person, and one additional working day;

2) 15 days after the day when the information referred to in Section 53, Paragraph three of this Law has been sent to at least one tenderer by post, and one additional working day.

(3) A concession contract may be concluded without complying with Paragraph one of this Section if:

1) the concession contract is awarded to the sole tenderer and there are no tenderers which would be entitled to submit a complaint in accordance with the procedures laid down in Section 29 of this Law;

2) the negotiated procedure is applied.

[20 April 2017]

### **Section 55. Final Report of the Concession Procedure Commission**

(1) The concession procedure commission shall prepare the final report not later than on the day when a notice on the results of the concession procedure is sent to tenderers.

(2) The final report of the concession procedure commission is a report of the commission reflecting the course of the concession procedure and including all the most significant events and stages of the concession procedure.

(3) The final report of the concession procedure commission shall include the following information:

1) the name and address of the public partner, the identification number of the concession procedure, the type of the concession procedure, and also the subject-matter of the concession contract, short description thereof, and contract price;

2) the date when the concession notice is published on the website of the Procurement Monitoring Bureau and, if applicable, in the Official Journal of the European Union;

3) the composition of the concession procedure commission and the justification for the establishment thereof, the person preparing the concession procedure documents, and the invited experts;

4) the time limit for the submission of tenders and validity period of tenders;

5) the place, date, and time for the opening of tenders, the given name, surname, and position of the persons present at the opening of tenders;

6) the names of the tenderers which have submitted tenders by specifying name of each tenderer, time of the

submission of tender, tendered contract price, and other information characterising the tender;

7) the name of the tenderer with whom it has been decided to conclude a concession contract, contract price, and also a summary of the evaluation of tenders, and justification for the selected tender;

8) the information (if it is known) regarding the lot of the concession contract which the selected tenderer has intended to transfer to subcontractors, and also the names of subcontractors;

9) the justification for the decision on the rejected tenderers, and also on the tenders not conforming to the concession procedure documents;

10) the justification for rejection of a tender, if the concession procedure commission has recognised a tender as abnormally low;

11) the justification for a decision, if the concession procedure commission has taken the decision to terminate the concession procedure without selecting any tender, or suspend the concession procedure;

12) the justification for a decision, if the concession procedure commission has taken the decision to conclude a concession contract with another tenderer who has the next highest evaluated tender;

13) the information on notification of results to tenderers;

14) the requests received to explain the concession procedure or the regulations, answers provided, and also indications on whether all tenderers have been informed of questions and answers in the same scope;

15) the identified conflicts of interest and measures taken with regard to them;

16) the reasons (if applicable) for which means of communication other than electronic ones have been used for the submission of tenders.

(4) In the case of the procedure with the selection of tenderers, the following information shall be included in the final report of the concession procedure commission in addition to the information referred to in Paragraph three of this Section:

1) the time limit for the submission of requests to participate;

2) the place, date, and time for the opening of requests to participate, the given name, surname, and position of the persons present at the opening of requests to participate;

3) the names of the tenderers which have submitted requests to participate by specifying name of each tenderer, time of the submission of request to participate, and other information characterising the request to participate;

4) in the case of the reduction of the number of tenderers, the names of the selected tenderers and the reasons for selection thereof, the names of the rejected tenderers and the reasons for rejection thereof.

(5) In the case of a competitive dialogue, the following information shall be included in the final report of the concession procedure commission in addition to the information referred to in Paragraphs three and four of this Section:

1) needs and requirements of a public partner indicated in the regulations on which negotiations have been carried out with tenderers;

2) when and where the negotiations have been initiated, and also the language that has been used in the negotiations;

3) information on how the tenderers were invited to the negotiations;

4) stages of negotiations if the negotiations with tenderers were held in stages, and results thereof;

5) in the case of reducing the number of solutions, the names of the selected tenderers and the reasons for their selection, names of the rejected tenderers and the reasons for their rejection;

6) amount of the awards or payments to the participants of the negotiations for the participation in the negotiations, manner and time limits for assigning the awards or manner and terms for making the payments (if it was planned that there would be awards or payments for participation in the negotiations).

(6) The concession procedure commission shall prepare the final report of the concession procedure commission and publish it in the buyer profile within five working days after taking of the decision on the results of the concession procedure.

[20 April 2017]

## Chapter XII Special Conditions for the Work Concession Procedure

[20 April 2017]

### Section 56. General Conditions for the Award of a Works Concession Contract

[20 April 2017]

### Section 57. Publication of the Notice

[20 April 2017]

### Section 58. Time Periods for the Submission of Tenders

[20 April 2017]

### Section 59. Specific Conditions for the Conclusion of a Contract on the Execution of Construction Work with Third Parties

[20 April 2017]

## Division C

### Public-Private Partnership Contracts, Special Purpose Entities, Information Exchange Agreement, Activities with Public Partner Resources and Lender's Intervention Right

## Chapter XIII Conclusion, Amendment, Early Termination and Registration of a Public-Private Partnership Contract

### Section 60. Time Periods of a Public-Private Partnership Contract

(1) A partnership procurement contract is a civil contract that may be concluded for a period of time that exceeds 5 years, but does not exceed 30 years, except for the case determined in Paragraph three of this Section.

(2) A concession contract is a civil contract that may be concluded for a period of up to 30 years, except for the case determined in Paragraph three of this Section.

(2<sup>1</sup>) When specifying the duration of a concession contract that is longer than five years, the construction work or services provided for in the concession contract and the time which would be necessary for the private partner to recover the investments made within the scope of a concession contract shall be taken into account.

(3) A public-private partnership contract may be concluded for a time period that exceeds 30 years if it is necessary for the purpose of the contract and the results to be achieved that are justified by financial and economic calculations.

(4) The duration of a concession contract shall be included in the concession procedure documents, except when it is used as one of the tender evaluation criteria.

(5) The public partner may specify shorter duration of a concession contract than that provided for in Paragraph 2.<sup>1</sup> of this Section, if the compensation related thereto for the private partner does not exclude exploitation risks of a structure or service.

[20 April 2017]

### Section 61. Contracting Parties of the Public-Private Partnership Contract

(1) A public-private partnership contract shall be concluded by each public partner and the tenderer to whom the relevant contract is awarded as a result of the public-private partnership procedure.

(2) Each representative of the public partner shall sign the contract on behalf of the public partner.

(3) The representative of the public partner shall send the concluded public-private partnership contract to the monitoring authority.

### Section 62. Information to be Included in the Public-Private Partnership Contract

The following information shall be included in a public-private partnership contract:

- 1) the subject-matter of the contract including the amount, content, quality, and type of construction work or services;
- 2) the financial conditions of the contract;
- 3) the set of the rights which each public partner transfers to the private partner;
- 4) the public partner resources which each public partner transfers to the private partner and the procedures for transferring such resources;
- 5) the property rights of the contracting parties to the tangible property newly created during the validity period of the contract, and also intangible assets related thereto - licences, permits, and other documentation.
- 6) the validity period of the contract;
- 7) the time periods for the execution of construction work or provision of services and the conditions for the revision thereof;
- 8) the procedures by which the public partner resources and the property newly created during the performance of the contract that is necessary for further provision of services or management of property will be transferred to the public partner in case of early termination of the contract or upon expiry of the contract;
- 9) the restrictions or conditions for changes in the equity capital of the private partner or to the decisive influence of the private partner in the commercial company, or to any changes in the commercial companies over which the private partner has a decisive influence;
- 10) the risks which each public partner transfers to the private partner;
- 11) the payments the contracting parties make to each other during the validity period of the contract and the conditions for the revision thereof (if such are provided for);
- 12) the right (if necessary) for the private partner to collect payments from end-users for any services, the amount of the payment of the service recipient for the relevant service during the validity period of the contract and the conditions for the revision thereof;
- 13) the obligations of the private partner (if necessary) to provide third parties with an uninterrupted access to the object used or service provided during the validity period of the contract;
- 14) the right of the contracting parties to transfer their rights and obligations within the scope of the contract to third parties and conditions that restrict such a right;
- 15) a condition regarding the fact whether the private partner is obliged to acquire an insurance for the risks related to the performance of the contract and if such is required - the risks and the amount thereof to be insured;
- 16) the obligations of the private partner as regards environmental protection and cultural heritage protection (if necessary);
- 17) the obligations of the contracting parties as regards ensuring, transfer or purchase of immovable property, equipment, and other property requested for the performance of the contract and other conditions referring to these obligations (if such are provided for);
- 18) the procedures by which each public partner will verify the performance of the contract;
- 19) the force majeure circumstances and actions of the contracting parties if such have occurred;
- 20) the cases of early termination of the contract in accordance with Section 65 of this Law, the procedures for early termination of the contract in accordance with Section 66 of this Law, the procedure for the determination of the amount of compensations for the contracting parties and the payment thereof in these cases in accordance with Section 67 of this Law;
- 21) the cases when a contracting party may unilaterally demand early termination of the contract in accordance with Section 65, Paragraph one, Clause 1 and Paragraph two, Clause 1 of this Law;
- 22) the intervals for amending the provisions of the contract, the permissible limits and the procedures;
- 23) linking the contract with other previously concluded contracts (or obligations towards third parties if such exist), the obligations to be taken over from such contracts;
- 24) the conditions upon occurrence of which the public partner or the lender may take over fulfilment of any obligations of the private partner in order to ensure efficient and uninterrupted execution of construction work or

provision of services provided for in the contract;

25) a certification on the right of the representative of the public partner to receive information from the lender on private partner financing conditions and on the fact that the private partner conforms to the financing conditions;

26) the procedures by which the contract shall be continued if the legal person as a public partner terminates the activity (if the legal person is a public partner) in accordance with Section 65, Paragraphs five and six of this Law;

27) the dispute settlement procedures;

27<sup>1</sup>) the condition that in case the economic operator or - if the public partner or its representative has provided for the direct payments to the subcontractors in accordance with Section 33.<sup>1</sup>, Paragraph five of this Law - the subcontractor submits an electronic invoice, it shall conform to the laws and regulations regarding the applicable standard of an electronic invoice and the specifications for the use of its key elements and the procedures for its handling. In accordance with the laws and regulations regarding the applicable standard of an electronic invoice and the specifications for the use of its key elements and the procedures for its handling, additional key elements to be mandatorily indicated in the electronic invoice may be specified in the public-private partnership contract;

28) other provisions ensuing from the Public Procurement Law or this Law or that are considered by the contracting parties as necessary and that are not in contradiction to laws and regulations.

[21 February 2019 / See Paragraph 32 of Transitional Provisions]

### **Section 62.<sup>1</sup> Contract Register**

The Procurement Monitoring Bureau shall, within one working day after publishing the concession award notice, the concession award notice for social and other special services, the notice on changes in the concession contract during the period of validity thereof, or the notice on performance of the contract, as appropriate, make an entry or supplement an entry in the Contract Register on the concluded concession contract or the amendments thereto with the information specified in the respective notice.

[5 October 2023]

### **Section 63. Amending the Public-Private Partnership Contract**

(1) Amendments to a concession contract shall be admissible if they do not change the general nature of the concession contract (the type and the objective specified in the concession procedure documents) and conform to one of the following cases:

1) amendments are non-substantial;

2) amendments are substantial, and they are only made in the cases referred to in Paragraph three of this Section;

3) amendments are made in the case referred to in Paragraph five of this Section, irrespective of whether they are substantial or non-substantial.

(2) Amendments to a concession contract shall be substantial in any of the following cases:

1) if the amended provisions of the concession contract had been provided for in the concession procedure documents, they would have allowed for the submission of different tenders, or participation or selection of other tenderers in the concession procedure;

2) economic balance (for example, risk allocation and related compensatory means) provided for in a concession contract is changed in the interests of the tenderer selected in the concession procedure;

3) amendments significantly expand the scope of concession;

4) the tenderer selected in the concession procedure (a contracting party) is replaced by another tenderer in the cases not referred to in Paragraph three, Clause 4 of this Section.

(3) Substantial amendments to a concession contract shall be admissible in the following cases:

1) the concession procedure documents and the concession contract clearly and unequivocally provide for a possibility of amendments, conditions when amendments are admissible, the scope and nature of amendments. Such provisions shall not provide for changes or possibilities which would change the general nature of the concession contract;

2) in order to perform the initial concession contract the public partner requires additional construction work or services which were not included in the initial concession contract, and change of the private partner would cause a significant increase in costs, and such change may not be made for economic and technical reasons, such as the

requirements for substitutability or compatibility with the equipment, services, or installations purchased under the initial concession contract, or the change of the private partner would cause significant difficulties;

3) changes in the concession contract are necessary for reasons which the public partner could not foresee before, and they do not change the general nature of the concession contract;

4) the tenderer selected in the concession procedure (a party to the concession contract) is replaced by another tenderer in accordance with the provisions of the laws and regulations in the field of commercial law regarding reorganisation of merchants and transition of a company, this tenderer conforms to the qualification requirements laid down in the concession notice or in the concession procedure documents, and the reasons for exclusion of tenderers referred to in Section 37, Paragraph two of this Law are not applicable thereto.

(4) Each increase in the contract price of the concession contract which has not been concluded to ensure the activities referred to in Section 3, 4, 5, 6, or 7 of the Law on the Procurement of Public Service Providers, in the case of the amendments referred to in Paragraph three, Clauses 1, 2, and 3 of this Section may not exceed 50 per cent of the initial contract price of the concession contract.

(5) Amendments to a concession contract shall be admissible, if the value of such amendments which is determined as the total monetary value of all amendments made consecutively (without taking into account of value the amendments which are made in accordance with Paragraph three, Clauses 1, 2, and 3 of this Section) concurrently fails to reach the following:

1) the threshold of contract price specified by the Cabinet starting from which the concession notice should be published in the Official Journal of the European Union;

2) 10 per cent of the initial contract price of the concession contract.

(6) If a concession contract provides for the indexation of contract price, the initial contract price of the concession contract referred to in Paragraphs four and five of this Section shall be a contract price subject to indexation. If the concession contract does not provide for the indexation of contract price, the contract price shall, upon making of amendments, be specified, taking into account the average inflation level in a Member State of the public partner.

(7) If the public partner has made the amendments referred to in Paragraph three, Clauses 2 and 3 of this Section to the concession contract, the representative of the public partner shall, within 10 working days after entering into effect of the amendments, publish a notice on changes in the concession contract during the period of validity thereof.

(8) The concession procedures specified in this Law shall be applicable to the amendments to a concession contract which fail to conform to Paragraph one of this Section.

(9) In order to sign the amendments to a public-private partnership contract, the public partner shall receive an opinion of the monitoring authority and, if the amendments to the contract change the accounting rules of the public-private partnership assets specified in the contract, also an opinion of the Ministry of Finance on the impact of the amendments on the amount of the long-term liabilities of the State budget, the balance of the general government sector, and the debt. If it is determined in the opinion of the Ministry of Finance that the amendments to the public-private partnership contract will have a negative impact on the amount of the long-term liabilities of the State budget, the balance of the general government sector, and the debt, the Cabinet shall take a decision on amendments to the contract.

(10) The representative of the public partner shall send the amendments to the public-private partnership contract signed by the contracting parties to the monitoring authority.

[20 April 2017; 24 March 2022; 5 May 2022]

### **Section 63.<sup>1</sup> Change of the Personnel and Subcontractors Involved in the Performance of a Concession Contract and Involvement of New Personnel and Subcontractors**

(1) A tenderer selected in the concession procedure (a party to the concession contract) is not entitled to change the personnel and subcontractors specified in the tender and involve additional subcontractors in the performance of the concession contract without coordination with the public partner. The public partner may request the opinion of the personnel and subcontractors on the reasons for this change. The public partner may provide in the concession contract that the tenderer selected in the concession procedure (a party to the concession contract) shall coordinate involvement of additional personnel in the performance of the concession contract with the public partner.

(2) The change of the personnel specified in a tender shall only be admissible according to the procedures and in the cases specified in the concession contract. The public partner shall not agree with the change of the personnel specified in the tender in the cases provided for in the concession contract and in the cases when the tendered personnel fails to comply with the requirements specified for the personnel in the concession procedure documents, or they do not have at least the same qualification and experience as the personnel which was evaluated when determining the economically most advantageous tender.

(3) The public partner shall not agree to the change of the subcontractor specified in a tender, if any of the following conditions applies:

1) the tendered subcontractor does not meet the requirements specified for subcontractors in the concession procedure documents;

2) the subcontractor on whose capacities the tenderer selected in the concession procedure has relied upon to certify that the qualification thereof conforms to the requirements laid down in the concession notice and in the concession procedure documents is replaced, and the tendered subcontractor does not have at least the same qualification to which the tenderer selected in the concession procedure has referred to when certifying its conformity with the requirements laid down in the concession procedure, or it corresponds to the reasons for exclusion of tenderers referred to in Section 37, Paragraph two of this Law;

3) the tendered subcontractor the value of the construction work to be performed or the services to be provided by which is at least EUR 10 000 corresponds to the reasons for exclusion of tenderers referred to in Section 37, Paragraph two of this Law;

4) as a result of the change of a subcontractor, such amendments would be made to the tender of a tenderer which, if they had been initially included therein, would have affected the selection of tender according to the criteria for tender evaluation specified in the concession procedure documents.

(4) The public partner shall not agree to the involvement of a new subcontractor, provided that such changes, if made in the initial tender, would affect selection of tender according to the criteria for tender evaluation specified in the concession procedure documents.

(5) In verifying the conformity of the new subcontractor, the public partner shall apply the provisions of Section 37 of this Law and the verification of the reasons for exclusion shall be carried out on the date when the public partner decides to grant an authorisation to the successful tenderer (party to the concession contract) to replace the subcontractor or to engage a new subcontractor for the performance of the concession contract. The time periods referred to in Section 37, Paragraph four, Clauses 2, 3, and 4 of this Law shall be counted from the day when a request for the change of a subcontractor is submitted to the public partner.

(6) The public partner shall, within as short period of time as possible, but not later than within five working days after it has received all the information and documents necessary for taking the decision in accordance with the provisions of this Section, take the decision to permit or refuse change of the personnel or subcontractors of the tenderer selected in the concession procedure (a party to the concession contract) or involvement of new subcontractors in the performance of the concession contract.

[20 April 2017; 5 May 2022]

#### **Section 64. Opinion of the Monitoring Authority on Amendments to a Public-private Partnership Contract**

(1) After the parties to a public-private partnership contract have agreed upon amendments to the public-private partnership contract, the agreed draft amendments to the public-private partnership contract shall be sent to the monitoring authority in order to receive an opinion on whether the risk allocation between the public partner and the private partner conforms to the initial contract and is not changed in the interests of the private partner.

(2) If the opinion of the monitoring authority indicates that the information included in the agreed draft amendments to the public-private partnership contract shows that the risk allocation between the public partner and the private partner is not changed, each representative of the public partner shall sign an agreement on the relevant amendments to the concession contract.

(3) If the opinion of the monitoring authority indicates that the information included in the agreed draft amendments to the public-private partnership contract shows that the risk allocation between the public partner and the private partner is changed in the interests of the private partner, the representative of the public partner shall inform the private partner thereof, and the contracting parties shall re-agree on the amendments to the public-private partnership contract.

(4) The representative of the public partner shall send the new agreed draft amendments to the public-private partnership contract to the monitoring authority in order to receive the opinion referred to in Paragraph one of this Section.

(5) If the contracting parties fail to agree on amendments to the public-private partnership contract where the risk allocation between the public partner and the private partner would correspond to the initial contract and the interests of the private partner would not be changed, the public-private partnership contract shall not be amended or shall be terminated prior to expiry thereof in accordance with Section 65, Paragraph three of this Law.

[20 April 2017]

#### **Section 65. Early Termination of the Public-Private Partnership Contract**

(1) The public partner has the right to unilaterally terminate a public-private partnership contract before its expiry by sending a written notice to the private partner in the following cases:

- 1) in the cases provided for in the contract;
- 2) when it is necessary for the purpose of the State security, environmental protection or public health and security;
- 3) if the public partner has submitted the application for the termination of its activity to a Commercial Register Office;
- 4) if a decision has been taken on commencement of a bankruptcy procedure of a private partner in accordance with the procedures laid down in the Insolvency Law;
- 5) if substantial amendments are made to the public-private partnership contract which are not admissible in accordance with Section 63, Paragraph one of this Law;
- 6) if the public-private partnership contract is not concluded in accordance with the provisions provided for in the public-private partnership procedure documents or substantial provisions of the draft public-private partnership contract included in the public-private partnership procedure documents are changed;
- 7) if, at the moment of awarding the public-private partnership contract, the private partner had conformed to any of the reasons for exclusion referred to in Section 37, Paragraph two of this Law and was to be excluded from the procurement procedure;
- 8) if the private partner was not supposed to be awarded with the public-private partnership contract due to a serious violation of the obligations provided for in the Treaty on European Union, Treaty on the Functioning of the European Union, and this Law which has been established by the Court of Justice of the European Union in accordance with the procedure laid down in Article 258 of the Treaty on the Functioning of the European Union.

(2) The private partner has the right to unilaterally terminate a public-private partnership contract before its expiry by sending a written notice to the public partner in the following cases:

- 1) in cases of violations of the contract provided for in the contract;
- 2) if all legal persons as public partners have submitted applications to a Commercial Register Office for the termination of their activity;
- 3) if the decision on commencement of a bankruptcy procedure against all legal persons as a public partner has been taken in accordance with the procedures laid down in the Insolvency Law.

(3) The contracting parties may also terminate a public-private partnership contract before its expiry upon an agreement of the contracting parties.

(4) A public-private partnership contract may be also terminated in cases of force majeure circumstances in accordance with the Civil Law. Within the meaning of this Law, the force majeure shall not be considered laws and regulations adopted during the validity of the public-private partnership contract, actions of the public administration institutions and the documents adopted thereby.

(5) A legal person as a public partner may take a decision to terminate its activity (Section 65, Paragraph two, Clause 2) during the validity of the public-private partnership contract only when the founder or shareholder of this legal person:

- 1) has created a new legal person or transferred the obligation to fulfil the public partner commitments ensuing from the concluded public-private partnership contract to another legal person where he or she is the only founder or shareholder;
- 2) continues himself or herself to fulfil the public partner obligations ensuing from the concluded public-private partnership contract.

(6) If, in accordance with the procedures laid down in the Insolvency Law, the decision on the commencement of a bankruptcy procedure in relation to the legal person as a public partner

(Section 65, Paragraph two, Clause 3) has been taken, the founder or shareholder of this legal person shall:

- 1) create a new legal person or transfer the obligation to fulfil the public partner commitments ensuing from the concluded public-private partnership contract to another legal person where he or she is the only founder or shareholder;
- 2) continues himself or herself to fulfil the public partner obligations ensuing from the concluded public-private

partnership contract.

[20 April 2017; 5 May 2022]

### **Section 66. Procedures for the Early Termination of the Contract**

(1) If in the case referred to in Section 65, Paragraph one, Clause 1 or Paragraph two, Clause 1 of this Law any of the cases specified in the public-private partnership contract has occurred due to which the public partner or the private partner may unilaterally terminate the contract and other contracting party may prevent it, the relevant public partner or private partner shall warn in written form the other contracting party that, if it does not eliminate the violation of the contract within the time period laid down in the warning, the public partner or the private partner respectively will exercise the right provided for in Section 65, Paragraph one, Clause 1 or Paragraph two, Clause 1 of this Law to terminate the contract early. The time period for the elimination of the violation determined in the warning shall be such that the particular violation could be eliminated within this time period.

(2) If in the case referred to in Paragraph one of this Section the relevant contracting party is not able to prevent the cause for the termination of the contract specified in the public-private partnership contract at all or does not prevent the violation of the contract within the time period indicated in the warning, the other contracting party shall inform it in writing of the early termination of the public-private partnership contract.

(3) The decision on the early termination of the contract, if it is necessary for the purpose of the State security, environmental protection or public health and security, shall be taken by each public partner institution that has taken the decision on the initiation of the procedure for the receipt of the contracting right to a public-private partnership contract in the cases referred to in Section 16, Paragraphs one and two of this Law.

(4) If the institution referred to in Paragraph three of this Section has taken the decision on unilateral early termination of a public-private partnership contract, the representative of the public partner shall inform the private partner in writing that the public partner exercises the right provided for in Section 65, Paragraph one, Clause 2 of this Law to unilaterally terminate the contract before its expiry.

(5) Before the private partner or the public partner has taken the decision to terminate its activity, it shall inform the other contracting party of this decision in a timely manner, and also immediately after the submission of the application to a Commercial Register Office on the termination of its activity and the Commercial Register Office has taken the decision to terminate its activity.

(6) The contracting party that has received the decision referred to in Paragraph five of this Section shall send to the other contracting party a notice on unilateral early termination of the public-private partnership contract in accordance with the rights provided for in Section 65, Paragraph one, Clause 3 and Paragraph two, Clause 2 of this Law.

(7) Before the private partner or the public partner takes the decision to submit the application for insolvency proceedings, it shall inform the other contracting party thereof in a timely manner, and also immediately after the submission of the application to the court and after the court has taken the decision to declare its insolvency proceedings.

(8) The contracting party that received the court decision on insolvency of the other contracting party referred to in Paragraph seven of this Section shall send a notice on unilateral early termination of the public-private partnership contract to the other party in accordance with the rights provided for in Section 65, Paragraph one, Clause 4 or Paragraph two, Clause 3 of this Law.

(9) A public-private partnership contract may be terminated early upon agreement of the contracting parties only if the decision on it is taken by each public partner institution that in the cases referred to in Section 16, Paragraphs one and two of this Law has taken the decision on the initiation of the procedure for the receipt of the contracting rights for a public-private partnership contract.

(10) In the public-private partnership contract, the contracting parties shall foresee the time period within which the contract expires after receipt of a written notice of the representative of the public partner in the cases referred to in Paragraphs two, four, six and seven of this Section.

(11) In cases of force majeure circumstances, a public-private partnership contract shall be terminated early in the cases and in accordance with the procedure provided for in the Civil Law and the public-private partnership contract.

(12) The representative of the public partner shall send the notices referred to in this Section on unilateral early termination of the public-private partnership contract or agreement on early termination of the contract to the monitoring authority.

### **Section 67. Compensation in the Case of Early Termination of the Contract**

(1) In a public-private partnership contract, the contracting parties shall agree upon the procedures for the determination and payment of a compensation when terminating the contract prior to the expiry thereof which is not in

contradiction to the provisions of this Law and the Civil Law, complying with the conditions of this Section.

(2) If a public-private partnership contract is terminated early in the cases referred to in Section 65, Paragraph one, Clauses 1 (if early termination of the contract is not related to a violation of the contract committed by the private partner), 2, 5, 6, 7, and 8 of this Law, the private partner shall receive a compensation consisting of the following:

- 1) payments for investments made by the private partner according to the conditions of the contract;
- 2) payment for the early termination of the contract according to the conditions of the contract.

(3) If a public-private partnership contract is terminated early in the cases referred to in Section 65, Paragraph one, Clauses 1 (if early termination of the contract is related to a violation of the contract committed by the private partner), 3 and 4 and Paragraph two of this Law, the contracting party unilaterally terminating the contract before the specified term shall receive a compensation calculated according to the conditions of the contract and that may also include payments for investments made by the private partner.

(4) In the public-private partnership contract, the public partner may not undertake accidental risk regarding early termination of the contract in the case referred to in Section 65, Paragraph four of this Law.

[20 April 2017]

### **Section 68. Availability of the Contracts**

(1) Generally accessible information of a public-private partnership contract shall be the information that is not a trade secret according to the Commercial Law.

(2) The complete public-private partnership contract shall be available to the monitoring authority, State Audit Office, Ministry of Finance, Ministry of Economics, and also the competent State institutions in the cases and in accordance with the procedures laid down in laws and regulations.

(3) Not later than within 10 working days from the day when the public-private partnership contract or amendments thereto have entered into effect, the public partner shall post in the buyer profile the text of the public-private partnership contract, the text of amendments to the public-private partnership contract, and the justification for the substantial amendments to the public-private partnership contract in accordance with the procedures laid down in laws and regulations, following the requirements for the protection of trade secret. The public-private partnership contract and the text of amendments thereto shall be available in the buyer profile during the entire duration of the public-private partnership contract, but not less than 36 months after the day when the public-private partnership contract has entered into effect.

[20 April 2017]

### **Section 69. Registration of the Contracts**

[5 May 2022]

## **Chapter XIV Establishment of a Special Purpose Entity, Concluding Contracts with the Special Purpose Entity and Lender's Intervention Right**

### **Section 70. Application of Legal Provisions in Case of a Special Purpose Entity**

If a special purpose entity is established in accordance with the procedures laid down in this Law, provisions of Chapter XIII of this Law shall be applied for the conclusion, amendment, or termination of the public-private partnership contract, complying with the provisions of this Chapter.

### **Section 71. Establishment of a Special Purpose Entity**

(1) A special purpose entity shall be established if the public-private partnership procedure documents provide that the tenderer determined as a result of this procedure should establish a special purpose entity or that the tenderer may establish a special purpose entity.

(2) In the case referred to in Paragraph one of this Section, each tenderer shall specify the following in its tender:

1) type of a commercial company and the shareholders or members thereof if the public-private partnership procedure documents provide that the tenderer should establish a special purpose entity;

2) whether he or she will establish a special purpose entity and if will establish - type of a commercial company and the shareholders or members thereof if the public-private partnership procedure documents provide that the tenderer may establish a special purpose entity.

(3) A special purpose entity shall be established in accordance with the Commercial Law. If the special purpose entity is a joint stock company, all stocks of the company shall be registered stocks.

(4) If the tenderer is one person, only this tenderer may be the founder of the special purpose entity. If the tenderer is an association of persons, only the persons that are members of such an association of persons may be the founders of the special purpose entity.

(5) The founders shall prepare documents of incorporation of the special purpose entity in such a way that the replacement of the shareholder or member of the special purpose entity with a new shareholder or member of the special purpose entity proposed by the lender and approved by the public partner is ensured in the cases referred to in Section 73, Paragraph one of this Law.

(6) The founders of the company may submit the application for the registration of a special purpose entity in the Commercial Register provided for in the Commercial Law not earlier than 15 days from the day when the notice on the results of the public-private partnership procedure has been published on the website of the Procurement Monitoring Bureau.

[20 April 2017]

### **Section 72. Conclusion of the Public-Private Partnership Contract with a Special Purpose Entity**

(1) The representative of the public partner shall conclude a public-private partnership contract with a special purpose entity after the Enterprise Register as a Commercial Register Office has announced the entry on registration of a special purpose entity in the Commercial Register in accordance with the procedures laid down in the Commercial Law, complying with the provisions of Paragraph two of this Section.

(2) The representative of the public partner shall sign the public-private partnership contract with a special purpose entity after the founders of the special purpose entity have fulfilled the requirements of Section 71, Paragraph five of this Law.

(3) If a special purpose entity is established, each public partner and the special purpose entity shall conclude a public-private partnership contract.

(4) The public-private partnership contract on behalf of the special purpose entity shall be concluded by the officials of the special purpose entity in accordance with the Commercial Law.

### **Section 73. Procedures for the Early Termination of the Public-private Partnership Contract Concluded with a Special Purpose Entity and Calculation of a Compensation**

(1) In addition to the provisions of Section 65, Paragraph one of this Law, the public partner may also terminate the public-private partnership contract concluded with a special purpose entity before its expiry in the following cases:

1) if the only shareholder of the special purpose entity has submitted an application on the termination of its activity to the Commercial Register Office;

2) a court has declared insolvency of the only shareholder of the special purpose entity.

(2) Before taking the decision to terminate its activity, any shareholder or member of the special purpose entity shall inform the public partner and the special purpose entity thereof in a timely manner, and also immediately after submission of the application on the termination of its activity to a Commercial Register Office and the Commercial Register Office has taken the decision to terminate its activity.

(3) Having received the decision from the only shareholder of the special purpose entity on the termination of its activity referred to in Paragraph two of this Section, the public partner shall inform the lender of the private partner thereof to provide him or her with the possibility to exercise the intervention right referred to in Section 79, Paragraph one of this Law. If in accordance with the procedures laid down in Section 80, Paragraph one of this Law the lender informs that it does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership contract to the private partner in accordance with Paragraph one, Clause 1 of this Section.

(4) Before taking the decision to submit a complaint to a court so that the court would declare his or her insolvency, any shareholder or member of the special purpose entity shall inform the public partner and the special purpose entity of this decision in a timely manner, and also immediately after the submission of the complaint to the court and the court has taken the decision on insolvency of this shareholder.

(5) Having received the court decision on insolvency of the only shareholder referred to in Paragraph four of this Section, the public partner shall inform the lender of the private partner thereof to provide it with the possibility to exercise the intervention right referred to in Section 79, Paragraph one of this Law. If in accordance with the procedures laid down in Section 80, Paragraph one of this Law the lender informs that it does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership

contract to the private partner in accordance with Paragraph one, Clause 2 of this Section.

(6) If in the cases referred to in Paragraph one of this Section the special purpose entity does not ensure the replacement of the shareholder or member of the special purpose entity with the new shareholder or member of the special purpose entity proposed by the lender and approved by the public partner in the cases referred to in Section 74 of this Law, each representative of the public partner shall take the decision on the termination of the public-private partnership contract in accordance with Paragraph one, Clause 1 or 2 of this Section and inform the private partner, the lender, and the monitoring authority thereof.

(7) If the public-private partnership contract is terminated early in the case referred to in Paragraphs three and four of this Section, the provisions of Section 67, Paragraph three of this Law shall be applied for the calculation of compensation.

#### **Section 74. Replacement of Shareholders of the Special Purpose Entity**

(1) Cases when a shareholder or a member of the special purpose entity discontinues to be a shareholder or a member of this entity or another person becomes a shareholder or a member of the special purpose entity and procedures for making thereof shall be determined in the public-private partnership contract in conformity with the Commercial Law, complying with the provisions of this Section.

(2) If the public-private partnership contract provides that the private partner shall perform construction work, the replacement of the shareholders or members of the special purpose entity until the moment when the structure provided for in the contract is put into operation by the acceptance-delivery deed may be made only after receipt in advance of a written consent of each representative of the public partner.

(3) If the public-private partnership contract provides that the private partner shall continue management of the constructed structure, the consent of the representative of the public partner is not required for the replacement of the shareholders or members of the special purpose entity following the putting into operation of the structure provided for in the contract unless the public-private partnership contract prescribes otherwise.

(4) If the public-private partnership contract is a public service contract or a services concession contract not providing for construction work, the replacement of the shareholders or members of the special purpose entity may be made only after receipt in advance of a written consent of each representative of the public partner unless the public-private partnership contract prescribes otherwise.

## **Chapter XV Information Exchange Agreement**

#### **Section 75. Entering into an Information Exchange Agreement**

(1) If the private partner has submitted a submission of his or her lender including a draft information exchange agreement to the public partner, the public partner shall enter into an information exchange agreement simultaneously with the public-private partnership contract.

(2) The information exchange agreement shall remain valid until the private partner fulfils all the obligations ensuing from the financing agreement towards the lender unless the contracting parties agree otherwise.

#### **Section 76. Information to be Included in the Information Exchange Agreement**

The following information shall be indicated in the information exchange agreement:

1) the procedures by which the contracting parties shall inform each other of violations of the obligations of the public-private partnership contract;

2) the procedures by which the lender informs the public partner of violations of the obligations of the credit agreement of the private partner;

3) the procedures for exercising the intervention right of the lender of the public-private partnership contract in accordance with Sections 79, 80, 81, 82, and 83 of this Law;

4) the procedures determined in the public-private partnership contract by which the performance of the contract is continued until the conclusion of the new public-private partnership contract referred to in Section 82 of this Law if the lender exercises the intervention right;

5) actions if the lender waives the intervention right or fails to find such a private partner with whom the public partner could conclude a new public-private partnership contract;

6) actions upon early termination of the public-private partnership contract in the cases laid down in Section 65, Paragraph one, Clause 2 and Paragraphs two, three, and four of this Law;

- 7) the procedures by which the contracting parties shall exchange other information;
- 8) other provisions that are considered as necessary by the contracting parties.

## **Chapter XVI Activities with the Public Partner Resources**

### **Section 77. Actions with the Public Partner Resources**

(1) The private partner may not alienate the public partner resources specified in the public-private partnership contract that have been transferred to the private partner for use, including invest in equity capital of other capital companies, pledge or encumber in another way or perform any other activities as a result of which these resources could become property of another person.

(2) If the court has declared insolvency proceedings of the private partner in accordance with the Insolvency Law, the public partner resources referred to in Paragraph one of this Section shall be the property of third parties and shall not be included in the property of the private partner as debtor to which the creditors' claims are to be made in the insolvency proceedings.

(3) In case of failure to fulfil the obligations of the private partner, the recovery according to executive documents shall not be enforced to the public partner resources referred to in Paragraph one of this Section unless the international documents prescribe otherwise.

(4) If activity of the private partner is terminated, the liquidator may prepare the liquidation closing financial account and the property division plan only after the public partner resources referred to in Paragraph one of this Section have been transferred back to the public partner or the new private partner in accordance with the procedures laid down in the public-private partnership contract.

(5) If a public-private partnership contract is terminated early or the validity of the contract expires, the public partner resources referred to in Paragraph one of this Section shall be transferred back to the public partner in accordance with the procedures laid down in the public-private partnership contract.

(6) If a public-private partnership contract is terminated early or the validity of the contract expires, the property newly created during the fulfilment of the public-private partnership contract shall be transferred to the public partner in the cases and in accordance with the procedures laid down in the public-private partnership contract.

### **Section 78. Corroboration of Property Rights to the Public Partner Resources**

(1) For the validity period of a public-private partnership contract, the private partner may corroborate the public-private partnership contract or individual encumbrances ensuing from the contract to the immovable property that is the public partner resources referred to in Section 77, Paragraph one of this Law in the Land Register.

(2) If a public-private partnership contract expires in the time period provided for therein, the corroboration in the Land Register referred to in Paragraph one of this Section shall be extinguished based on a submission of the representative of the relevant public partner.

(3) If a public-private partnership contract is terminated early in the cases referred to in Section 65 or Section 73, Paragraph one of this Law, the corroboration in the Land Register referred to in Paragraph one of this Section shall be extinguished based on a submission of the representative of the relevant public partner to which the document referred to in Section 66 or Section 73, Paragraph six of this Law that has been the basis for the early termination of the agreement shall be attached.

## **Chapter XVII Lender's Intervention Right and Procedures for the Conclusion of a New Contract**

### **Section 79. Intervention Right**

(1) In order to ensure continuation of a public-private partnership contract in the cases referred to in Section 65, Paragraph one, Clauses 1, 3, and 4 and Section 73, Paragraph one of this Law and to allow the lender to continue financing of the performance of the public-private partnership contract and to recover the funds lent to the private partner for this purpose, the lender shall have the intervention right by proposing the following to the public partner:

- 1) a new private partner in the cases referred to in Section 65, Paragraph one, Clauses 1, 3, and 4 of this Law;
- 2) a new private partner in the cases referred to in Section 73, Paragraph one of this Law.

(2) Exercising of the intervention right referred to in Paragraph one of this Section may be initiated after the representative of the public partner has taken the decision to terminate the relevant public-private partnership contract

early in the cases referred to in Section 65, Paragraph one, Clauses 1, 3, and 4 and has informed the private partner and the lender thereof. If the relevant public-private partnership contract is concluded by several public partners, the contract may be terminated upon a joint decision of the representatives of all public partners.

(3) A public-private partnership contract and information exchange agreement may provide that the lender shall also have the intervention right when any shareholder or member of a special purpose entity is replaced. In this case the procedures by which the lender uses the intervention right and each representative of a public partner gives the consent to the replacement of a shareholder or member of the special purpose entity shall be also provided for in the contract.

### **Section 80. Procedures for Exercising the Intervention Right**

(1) If the representative of the public partner has informed the private partner and its lender of the decision referred to in Section 79, Paragraph two of this Law or the notice referred to in Section 73, Paragraph three or five of this Law, the lender shall inform the representative of the public partner representative of whether he or she wishes to use the intervention right within one month.

(2) The lender shall exercise the intervention right in accordance with the procedures and within the time periods specified in the information exchange agreement. The time period laid down in the information exchange agreement for exercising the lender's intervention right complying with the provisions of Section 81, Paragraph five of this Law may not exceed six months from the day when the notice of the public partner referred to in Section 79, Paragraph two of this Law is received.

### **Section 81. Tenderer Selected by the Lender and its Evaluation**

(1) The tenderer selected by the lender shall meet the requirements and criteria determined for the tenderers in the partnership procurement procedure or concession procedure taking into consideration the stage of the performance of the particular public-private partnership contract.

(2) The requirements and criteria to be met by the lender's proposed tenderer taking into consideration the stage of performance of the particular public-private partnership contract, and also the documents that shall certify the conformity of the tenderer with these requirements and criteria shall be determined by the public partner in the notice referred to in Section 79, Paragraph two or Section 73, Paragraph three or five of this Law.

(3) The representative of the public partner shall evaluate the documents submitted by the lender's proposed tenderer in accordance with the same procedures as such documents were evaluated when the tenderer with whom the public partner concluded a public-private contract was determined, considering legal norms that were in force on the day when the documents of the lender's proposed tenderer are evaluated.

(4) The representative of the public partner may refuse to conclude a new public-private partnership contract with the lender's proposed tenderer only if the tenderer does not meet the requirements and criteria referred to in Paragraph two of this Section.

(5) If in the case referred to in Paragraph four of this Section the representative of the public partner refuses to conclude a new public-private partnership contract with the lender's proposed tenderer, the lender may propose another tenderer one more time within one month after receipt of the refusal referred to in Paragraph four of this Section.

### **Section 82. Conclusion of a New Public-Private Partnership Contract**

(1) The new public-private partnership contract shall be concluded on the same subject-matter of the contract and in accordance with the same provisions as the initial public-private partnership contract, taking into consideration the stage of the performance of the particular contract.

(2) The representative of the public partner shall attach the new draft public-private partnership contract to the notice referred to in Section 79, Paragraph two of this Law by specifying the immutable provisions of the contract so that the lender's proposed tenderer could get acquainted with the draft contract, taking into consideration the provisions of Paragraph one of this Section.

(3) Prior to sending the new draft concession contract to the lender, the representative of the public partner shall send the draft contract to the monitoring authority to receive an opinion on the conformity of risk allocation between the public partner and the private partner with the concession contract. The monitoring authority shall give its opinion on the new draft concession contract in accordance with the procedures laid down in Section 34 of this Law.

(4) Negotiations with the lender's proposed tenderer on the draft public-private partnership contract shall be conducted in accordance with the procedures laid down in Section 52 of this Law.

(5) The representative of the public partner shall send the new public-private partnership contract signed by the contracting parties to the monitoring authority.

### **Section 83. Ensuring the Performance of a Public-Private Partnership Contract**

(1) In the public-private partnership contract the contracting parties shall agree upon the procedures by which the performance of the contract shall be continued until:

1) the new public-private partnership contract referred to in Section 82 of this Law is concluded, if the lender uses the intervention right;

2) the termination of the contract in the cases referred to in Section 65 and Section 73, Paragraph one of this Law.

(2) In the case referred to in Paragraph one, Clause 1 of this Section, the contracting parties shall agree that the private partner or the public partner shall continue fulfilling the obligations of the private partner determined in the public-private partnership contract until entering into a new agreement.

(3) In the case referred to in Paragraph one, Clause 1 of this Section the contracting parties may agree that the lender shall continue fulfilling the obligations of the private partner determined in the public-private partnership contract until entering into a new agreement if it is also provided for in the information exchange agreement.

## **Division D Institutional Partnership**

### **Chapter XVIII General Provisions of the Institutional Partnership**

#### **Section 84. Creation of a Joint Venture**

A joint venture shall be created:

1) by the public partner and the private shareholder establishing a new capital company in accordance with the Commercial Law and complying with the State Administration Structure Law;

2) by the private shareholder acquiring the capital shares in a capital company of a public entity in accordance with the provisions on attraction of private capital of the Law on Governance of Capital Shares of a Public Entity and Capital Companies, paying for capital shares in cash (hereinafter - the reorganisation of a capital company of a public entity).

[20 April 2017]

#### **Section 85. Application of Legal Provisions in Case of a Joint Venture**

(1) If the public partner concludes a partnership procurement contract together with a joint venture as a private partner, the following shall be applied for the determination of a private shareholder of the joint venture:

1) the provisions of the Public Procurement Law regarding an open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue, innovation partnership procedure, and procurements of the services referred to in Annex 2 to the Public Procurement Law, as provided for in this Division;

2) the provisions of the Law on the Procurement of Public Service Providers regarding an open procedure, restricted procedure, negotiated procedure by publishing an invitation to participate, competitive dialogue, innovation partnership procedure, and procurements of the services referred to in Annex 2 to the Public Procurement Law, as provided for in this Division.

(2) If the public partner concludes a concession contract with a joint venture as a private partner, the concession procedures referred to in Section 17, Paragraphs one and seven of this Law shall be applied for the determination of a private shareholder of the joint venture, as provided for in this Division.

(3) In case of institutional partnership, the provisions of Division C of this Law shall be applied by complying with the provisions of this Division.

(4) Following the establishment of a joint venture the public-private partnership procedures shall not be applied again for the conclusion of the public-private partnership contract.

[20 April 2017]

### **Chapter XIX Determination of the Private Shareholder of a Joint Venture**

#### **Section 86. Application of Partnership Procurement Procedures in Case of Institutional Partnership**

(1) If a public partner applies the provisions of the Public Procurement Law for the determination of a private shareholder of a joint venture, the following shall be indicated in the relevant documents in addition to the information determined in the Public Procurement Law:

1) that for the performance of a partnership procurement contract the public partner (one or several) and the private shareholder will establish a capital company or reorganise a State or local government capital company into a joint venture with which each public partner as a private partner concludes the partnership procurement contract;

2) provisions for the allocation of capital shares in the joint venture;

3) conditions for the activity of the joint venture and the potential thereof to undertake additional tasks during the performance of the partnership procurement contract;

4) actions with the assets of the joint venture following the expiry of the partnership procurement contract;

5) provisions for the termination of the activity of the joint venture;

6) provisions of the draft documents referred to in Paragraph two or three of this Section that may not be amended during the harmonization thereof.

(2) If, for the performance of a partnership procurement contract, the public partner and the private partner establish a capital company, the following shall be attached in addition to the relevant document specified in the Public Procurement Law:

1) draft memorandum of association of the joint venture;

2) draft articles of association of the joint venture;

3) draft shareholder contract;

(3) If for the performance of a partnership procurement contract the public partner and the private partner reorganise a State or local government capital company, the following shall be attached in addition to the relevant document determined in the Public Procurement Law:

1) provisions for increasing the equity capital of the State or local government capital company;

2) draft articles of association of the joint venture;

3) draft shareholder contract;

### **Section 87. Regulations of the Concession Procedures in Case of Institutional Partnership**

(1) If the public partner applies any of the concession procedures referred to in Section 17, Paragraphs one and seven of this Law for the determination of a private shareholder of a joint venture, the following shall be specified in the regulations in addition to the information referred to in Section 33 of this Law:

1) that for the performance of a concession contract the public partner (one or several) and the private shareholder will establish a joint venture or reorganise a State or local government capital company into a joint venture with which each public partner as a private partner concludes the concession contract;

2) provisions for the allocation of capital shares in the joint venture;

3) conditions for the activity of the joint venture and the potential thereof to undertake additional tasks during the performance of the concession contract;

4) actions with the assets of the joint venture after the expiry of the concession contract;

5) provisions for the termination of the activity of the joint venture;

6) provisions of the draft documents referred to in Paragraph two or three of this Section that may not be amended during the harmonization thereof.

(2) If, for the performance of a concession contract, the public partner and the private partner establish a joint venture, the following shall be attached to the regulations in addition to the referred to in Section 33, Paragraph eleven of this Law:

1) draft memorandum of association of the joint venture;

2) draft articles of association of the joint venture;

3) draft shareholder contract;

(3) If, for the performance of a concession contract, the public partner and the private partner reorganise a State or local government capital company, the following shall be attached to the regulations in addition to the referred to in Section 33, Paragraph eleven of this Law:

- 1) provisions for increasing the equity capital of the State or local government capital company;
- 2) draft articles of association of the joint venture;
- 3) draft shareholder contract;

(4) If a public partner applies a competitive dialogue for the determination of a private shareholder of a joint venture, the documents referred to in Paragraphs two and three of this Section may be not attached to the regulations. In this case the aforementioned documents shall be attached to the invitation referred to in Section 47, Paragraph eight of this Law specifying the provisions of the referred to draft documents that may not be amended during the harmonization thereof.

[20 April 2017]

#### **Section 88. Termination or Suspension of a Concession Procedure in Case of Institutional Partnership**

If a public partner wishes to conclude a public-private partnership contract with a joint venture, the concession procedure commission shall take the decision to terminate the relevant concession procedure (Section 36, Paragraph one) also in the following cases:

- 1) if, during the negotiations on the draft concession contract and the documents attached to the regulations referred to in Section 87, Paragraph two or three of this Law, the concession procedure commission does not reach an agreement on any of these documents with any of the tenderers in accordance with the procedures laid down in Section 52 of this Law;
- 2) if a joint venture is not established after the agreement on the documents referred to in Section 87, Paragraphs two and three of this Law has been reached in accordance with the procedures laid down in Section 89 of this Law.

#### **Section 89. Negotiations on the Draft Concession Contract and Other Documents**

(1) When negotiating on a draft concession contract in accordance with the procedures laid down in Section 52 of this Law, negotiations on the documents referred to in Section 87, Paragraph two or three of this Law shall be conducted simultaneously.

(2) The negotiations may be held only on those provisions of the draft documents referred to in Paragraph one of this Section which are not determined as immutable in the Regulations.

#### **Section 90. Conclusion of a Memorandum of Association of a Joint Venture and a Public-Private Partnership Contract**

(1) Each representative of the public partner shall conclude a memorandum of association of a joint venture with the private partner not earlier than 15 days following the day when the concession ward notice has been published on the website of the Procurement Monitoring Bureau.

(2) Each representative of the public partner shall conclude a public-private partnership contract with a joint venture after the Enterprise Register as a Commercial Register Office has published the entry on registration of the joint venture in the Commercial Register in accordance with the procedures laid down in the Commercial Law.

[20 April 2017]

#### **Section 91. Final Report of the Commission in Case of Institutional Partnership**

In addition to the documents referred to in Section 55, Paragraph six of this Law, the concession procedure commission shall also attach the documents referred to in Section 87, Paragraph two or three of this Law to the final report.

## **Chapter XX Public-Private Partnership Contract in Case of Institutional Partnership**

#### **Section 92. Public-Private Partnership Contract in Case of Institutional Partnership**

(1) In case of institutional partnership, a public-private partnership contract shall, in addition to the information laid down in Section 62 of this Law, specify the following:

- 1) that upon expiry of the public-private partnership contract (also when it is terminated early in accordance with

the procedures laid down in this Law) the activity of the joint venture shall be terminated in accordance with the procedures laid down in the articles of association thereof;

2) allocation of capital shares in the joint venture and the manner according to which and the date until which such a capital share allocation will be achieved;

3) the conditions as regards the activity of the joint venture and the potential thereof to undertake additional tasks during the fulfilment of the public-private partnership contract;

4) action with the assets of the joint venture following the public-private partnership contract is executed or upon early termination thereof;

5) the procedures for determining the liquidation quota of the joint venture in accordance with Section 96, Paragraph two of this Law;

6) the procedures for the payment of compensations if, upon termination of the activity of the joint venture, the liquidation quota does not cover the amount of compensation ensuing from this agreement;

7) the procedures by which the private shareholder of the joint venture shall be reimbursed for decrease in the liquidation quota in the case referred to in Section 117, Paragraph two of this Law.

(2) The public-private partnership contract shall be signed on behalf of the joint venture by its executive board.

(3) In accordance with Section 61, Paragraph two of this Law, each representative of the public partner shall sign the public-private partnership contract on behalf of the public partner.

### **Section 93. Amending the Contract in Case of Institutional Partnership**

Amendments to a public-private partnership contract in case of institutional partnership shall be made in accordance with Sections 63 and 64 of this Law.

### **Section 94. Early Termination of the Contract in Case of Institutional Partnership**

In case of institutional partnership, the public partner has the right to unilaterally terminate the public-private partnership contract before its expiry also in the following cases in addition to the cases referred to in Section 65, Paragraph one of this Law:

1) if the only private shareholder of the joint venture has submitted an application to a Commercial Register Office on the termination of its activity;

2) if the court has declared the insolvency proceedings of the only private shareholder of the joint venture.

### **Section 95. Procedures for the Early Termination of the Contract in Case of Institutional Partnership**

(1) Before the private partner of the joint venture has taken the decision to terminate its activity, it shall inform the public partner of this decision in a timely manner, and also immediately after the submission of the application for the termination of its activity to a Commercial Register Office and when the Commercial Register Office has taken the decision to terminate the activity of this shareholder.

(2) Having received the decision from the private shareholder of the joint venture on termination of the activity thereof referred to in Paragraph one of this Section, the public partner shall inform the lender of the private partner thereof to provide it with the possibility to exercise the intervention right. If in accordance with the procedures laid down in Section 100, Paragraph one of this Law the lender informs that it does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership contract to the private partner in accordance with Section 94, Clause 1 of this Law.

(3) Before taking the decision to submit a complaint to a court so that the court would declare its insolvency, the private shareholder of the joint venture shall inform the public partner of this decision in a timely manner, and also immediately after the submission of the complaint to the court and after the court has taken the decision on the declaration of insolvency of this shareholder.

(4) Having received the court decision on the declaration of insolvency of the private shareholder of the joint venture referred to in Paragraph three of this Section, the public partner shall inform the lender of the private partner thereof to provide it with the possibility to exercise the intervention right. If in accordance with the procedures laid down in Section 100, Paragraph one of this Law the lender informs that it does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership contract to the private partner in accordance with Section 94, Clause 2 of this Law.

### **Section 96. Compensation for the Early Termination of the Contract in Case of Institutional Partnership**

(1) If a public-private partnership contract is terminated early in the cases referred to in Sections 65 and 94 of this

Law, compensations shall be determined and paid by the shareholders receiving the joint venture liquidation quota in accordance with the Commercial Law.

(2) When determining the liquidation quota of a joint venture in the case referred to in Paragraph one of this Section, justification for the early termination of the public-private partnership contract, investments of the shareholders in the equity capital of the joint venture and the provisions of Section 67 of this Law shall be taken into consideration.

#### **Section 97. Availability of the Contracts and other Documents**

(1) Memorandum of association of a joint venture and provisions for increasing the equity capital of a State or local government capital company shall be generally accessible in accordance with the procedures laid down in the Commercial Law.

(2) Shareholder contract shall be accessible to the authorities specified in Section 68, Paragraph two of this Law.

## **Chapter XXI Information Exchange Agreement and Lender's Intervention Right in Case of Institutional Partnership**

#### **Section 98. Information Exchange Agreement in Case of Institutional Partnership**

(1) In case of institutional partnership, an information exchange agreement shall be entered into by a public partner and a lender in accordance with the procedures laid down in Sections 75 and 76 of this Law.

(2) In case of institutional partnership, the following shall be indicated in an information exchange agreement:

1) the information referred to in Section 76, Clauses 1, 2, 5, 6, 7, and 8 of this Law;

2) the procedures for exercising the intervention right of the public-private partnership contract in accordance with Section 100 of this Law;

3) actions if the lender waives the intervention right or fails to find a new private shareholder of a joint venture.

#### **Section 99. Intervention Right in Case of Institutional Partnership**

(1) In addition to the cases referred to in Section 79, Paragraph one of this Law, the lender shall also have the intervention right by proposing a new private shareholder of a joint venture to the public partner also in the cases referred to in Section 94 of this Law.

(2) In order to ensure exercising of the lender's intervention right, the representative of the public partner shall send a notice and offer the lender to exercise the intervention right in the cases referred to in Section 94 of this Law in accordance with the procedures laid down in Section 95, Paragraph two or four of this Law.

#### **Section 100. Procedures for Exercising the Intervention Right in Case of Institutional Partnership**

(1) The lender shall exercise the intervention right in the cases referred to in Section 79, Paragraph one of this Law in accordance with the procedures laid down in Section 80 of this Law.

(2) In the cases referred to in Section 94 of this Law, the lender shall inform the representative of the public partner of whether he or she wishes to exercise the intervention right within one month after receipt of the notice referred to in Section 95, Paragraph two or four of this Law.

(3) In case of institutional partnership, the lender shall exercise the intervention right in accordance with the procedure and within the time periods specified in the information exchange agreement by complying with Section 80, Paragraph two of this Law.

#### **Section 101. Lender's Proposed Private Shareholder and the Evaluation thereof**

(1) The lender's proposed private shareholder shall meet the requirements and criteria determined for the tenderers of a private shareholder of the joint venture who have been determined in a partnership procurement procedure or concession procedure, taking into consideration the stage of performance of the particular public-private partnership contract.

(2) The public partner shall specify the requirements and criteria the lender's proposed private shareholder shall meet, taking into consideration the stage of performance of the public-private partnership contract, and also the documents that shall certify the conformity of a tenderer to these requirements and criteria in the notice referred to in Section 99, Paragraph two of this Law.

(3) The representative of the public partner shall evaluate the documents submitted by the lender's proposed

private shareholder in accordance with the same procedure by which the documents were evaluated when the private shareholder with whom the public partner established a joint venture was determined, taking into consideration legal provisions in force on the day when the documents of the lender's proposed private shareholder are evaluated.

(4) The representative of the public partner may refuse the lender's proposed private shareholder becoming a shareholder of the joint venture only if he or she does not meet the requirements and criteria referred to in Paragraph two of this Section.

(5) If in the case referred to in Paragraph four of this Section the representative of the public partner does not agree that the lender's proposed private shareholder becomes a shareholder of the joint venture, the lender may propose another private shareholder one more time within one month after receipt of the refusal referred to in Paragraph four of this Section.

#### **Section 102. Replacement of a Private Shareholder of a Joint Venture**

(1) If the representative of the public partner has no objections against the lender's proposed private shareholder, the representative of the public partner shall take the decision that the lender's proposed private shareholder becomes the private shareholder of the joint venture and shall inform thereof:

- 1) the lender;
- 2) the lender's proposed private shareholder;
- 3) the private shareholder of the joint venture;
- 4) the executive board of the joint venture;
- 5) the monitoring authority.

(2) The lender's proposed private shareholder shall become a shareholder of the joint venture by fulfilling the requirements specified in Section 112 of this Law.

(3) The lender's proposed private shareholder shall become a shareholder of the joint venture in accordance with the procedures laid down in the Commercial Law by signing the contract of the shareholders of the joint venture and an agreement on joining the documents of incorporation of the joint venture.

(4) The public partner shall attach the draft agreement on amendments to the memorandum of association and the draft contract of shareholders to the notice referred to in Section 99, Paragraph two of this Law so that the lender's proposed private shareholder could get acquainted with the amendments to the memorandum of association and shareholder contract.

## **Chapter XXII Establishment of a Joint Venture**

#### **Section 103. Provisions for the Establishment of a Joint Venture**

(1) When establishing a joint venture, the entire equity capital of the joint venture determined in the memorandum of association of the joint venture shall be signed and paid up until submitting the application for registration.

(2) Until submitting the application for registration to the Commercial Register the equity capital of the joint venture shall be paid only in cash.

(3) Each public partner and the private shareholder shall invest the resources with which they participate in the performance of a public-private partnership contract in the equity capital of the joint venture after the joint venture is registered in the Commercial Register if it is provided for in the relevant contract.

(4) Each public partner and the private shareholder as shareholders of the joint venture shall also sign the shareholder contract simultaneously with documents of incorporation of the joint venture (memorandum of association and articles of association).

#### **Section 104. Attraction of the Private Capital to a State or Local Government Capital Company**

(1) The private capital shall be attracted to a capital company of a public entity in accordance with the provisions of the Law on Governance of Capital Shares of a Public Entity and Capital Companies by complying with the conditions of this Section.

(2) If, when taking a decision on the initiation of a public-private partnership procedure, the institution referred to in Section 16, Paragraph one, Clauses 1 and 2 of this Law wishes to establish a joint venture by attracting the private capital to a capital company of a public entity, it shall specify in the decision referred to in Section 16, Paragraph six of this Law the capital company of the public entity to which the private capital will be attracted.

(3) The decision referred to in Paragraph two of this Section shall replace the Cabinet order or the decision of the highest decision-making institution of the derived public entity to attract the private capital to a capital company of the public entity provided for in the Law on Governance of Capital Shares of a Public Entity and Capital Companies.

(4) After the joint venture has been registered in the Commercial Register, the private shareholder of the joint venture together with each public partner as a shareholder of the joint venture shall sign the contract of shareholders.

[20 April 2017]

#### **Section 105. Memorandum of Association of a Joint Venture**

The following shall be specified in the memorandum of association of a joint venture in addition to that provided in the Commercial Law:

1) purpose for the establishment of a joint venture - the joint venture is established for the performance of the public-private partnership contract that will be concluded by the public partner and the joint venture;

2) harmonized provisions of the draft public-private partnership contract the performance of which depends on the activities of the private partner of the joint venture;

3) that the activity of the joint venture shall be terminated if the public-private partnership contract concluded by it expires, (also if it is terminated prior to the expiry thereof in accordance with the procedures laid down in this Law), and also the procedures by which the joint venture shall take the decision on termination of its activity;

4) that in case of termination of the activity of the joint venture, the liquidation quota of each shareholder shall be determined in accordance with the procedure determined in the public-private partnership contract in case of complete performance or early termination of this contract;

5) the procedures laid down in Section 102 of this Law in accordance to which the private shareholder of the joint venture shall be replaced if the lender exercises the intervention right in accordance with the procedures laid down in Section 100 of this Law and proposes another private shareholder instead of the existing private shareholder of the joint venture.

#### **Section 106. Articles of Association of a Joint Venture**

(1) The following shall be specified in the articles of association of a joint venture in addition to that provided in the Commercial Law:

1) the purpose of the activity of the joint venture specified in Section 105, Clause 1 of this Law;

2) the types of commercial activities of the joint venture that meet the provisions of the public-private partnership contract;

3) the information referred to in Section 105, Clauses 2, 3, 4, and 5 of this Law;

4) that in case of the death of the private shareholder the capital shares shall be transferred to the joint venture.

(2) If a joint venture is established by reorganising a State or local government capital company, the information referred to in Paragraph one of this Section shall be also specified in the amendments to the articles of association of the State or local government capital company.

#### **Section 107. Contract of Shareholders of a Joint Venture**

(1) The contract of shareholders of a joint venture shall specify the following:

1) the information referred to in Section 105, Clauses 2, 3, 4, and 5 of this Law;

2) the action of the shareholders of the joint venture to ensure compliance with Sections 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, and 118 of this Law in the activity of the joint venture;

3) the exercising of the right of the shareholders of the joint venture to facilitate the performance of the public-private partnership contract;

4) other provisions considered by the shareholders as necessary to be included in the contract that are not in contradiction with this Law, the memorandum of association of the joint venture, and the articles of association.

(2) The contract of shareholders of a joint venture shall become invalid if any of the contracting parties is no longer a shareholder of the joint venture.

## **Chapter XXIII Particularities of the Activity of a Joint Venture**

### **Section 108. Activity of a Joint Venture**

(1) During the performance of a public-private partnership contract, the joint venture is entitled to be engaged in other types of commercial activity not provided for in the contract if it does not impede successful performance of the public-private partnership contract and is specified in the public-private partnership contract, taking into consideration the provisions of the State Administration Structure Law.

(2) If during the performance of a public-private partnership contract the joint venture wishes to perform other type of commercial activity and it meets the provisions of Paragraph one of this Section, it shall be decided by the meeting of shareholders of the joint venture. The decision shall be considered taken if all shareholders of the joint venture pass their votes for it.

### **Section 109. Capital Shares and Shareholders of a Joint Venture as a Limited Liability Company**

If the joint venture is a limited liability company:

1) the private shareholder of a joint venture may encumber his or her capital shares only in favour of the lender, if encumbering of shares is not prohibited in the articles of association;

2) in case of the death of a private shareholder of the joint venture, his or her capital shares shall be transferred to the joint venture and the heirs of this shareholder shall receive compensation for the capital shares in accordance with the procedures laid down in the Commercial Law;

3) a shareholder of the joint venture may not be excluded from the company.

### **Section 110. Securities of a Joint Venture as a Joint Stock Company**

If the joint venture is a joint stock company:

1) all shares of the company shall be registered shares;

2) the company may not issue preference shares;

3) it may not issue convertible bonds or other securities that may be exchanged for the shares of this company.

### **Section 111. Transfer of the Capital Shares of the Private Shareholder to the Joint Venture**

(1) If the lender exercises the intervention right referred to Section 99, Paragraph one of this Law and proposes another private shareholder instead of the existing private shareholder of the joint venture in accordance with the procedures laid down in Section 100, Paragraph two of this Law so that the private partner would continue to perform the public-private partnership contract, the capital shares of such a private shareholder of the joint venture shall be transferred to the joint venture.

(2) After receipt of the decision referred to in Section 102, Paragraph one of this Law, the executive board of the joint venture shall make an entry in the shareholder register or stockholder register of the joint venture (hereinafter - the shareholder register) on the transfer of the capital shares to the joint venture in accordance with the procedures laid down in the Commercial Law.

(3) In the case referred to in Paragraph one of this Section, the joint venture has the obligation to pay compensation to the former shareholder of the joint venture in accordance with the liquidation quota he or she would receive if the activity of the joint venture were terminated at the moment of transferring the capital shares.

(4) The liquidation quota referred to in Paragraph three of this Section shall be calculated in accordance with the procedures laid down in Section 96 of this Law.

### **Section 112. Alienation of Capital Shares of a Joint Venture to the New Private Shareholder**

(1) A joint venture shall alienate the capital shares referred to in Section 111, Paragraph one of this Law to the lender's proposed private shareholder determined in the decision referred to in Section 102, Paragraph one of this Law by concluding a contract with him or her where the following information shall be indicated:

1) amount to be paid for the capital shares;

2) terms of payment;

3) other provisions of the contract.

(2) After the contract referred to in Paragraph one of this Section has been concluded, the executive board of the joint venture shall register the new private shareholder in the shareholders register of the joint venture in accordance with the procedures laid down in the Commercial Law.

(3) The new private shareholder shall pay the amount corresponding to the liquidation quota referred to in Section 111, Paragraph three of this Law for the capital shares referred to in Paragraph one of this Section.

(4) Prior to registration of the joint venture in the shareholder register each public partner of the joint venture and the new private shareholder shall sign the agreement on joining the documents of incorporation and the new shareholder contract.

#### **Section 113. Meeting of Shareholders of a Joint Venture**

(1) A meeting of shareholders of a joint venture shall have legal power when all shareholders of the joint venture participate in it.

(2) Each capital share of a joint venture shall grant one vote to the shareholder.

(3) A meeting of shareholders of a joint venture may take a decision on making amendments to the articles of association of a joint venture, changes in the equity capital, reorganisation of a joint venture, entering into, amendment or termination of a group of companies agreement, merging of a company, agreement upon merging and termination or continuation of the activity by the votes determined in the articles of association if each public partner as a shareholder of the joint venture pass his or her vote for it.

#### **Section 114. Representation of the Public Partner in the Management Bodies of a Joint Venture**

(1) Irrespective of the amount of the owned capital shares in a joint venture each public partner shall have at least one seat as a member of the executive board and, if the joint venture has a supervisory board, at least one seat as a member of the supervisory board.

(2) The procedures by which the joint venture ensures the provisions referred to in Paragraph one of this Section shall be determined in the articles of association of the joint venture.

### **Chapter XXIV Termination of the Activity of a Joint Venture**

#### **Section 115. Basis for the Termination of the Activity of a Joint Venture**

Activity of a joint venture shall be terminated:

- 1) by a court ruling;
- 2) upon commencement of a bankruptcy procedure;
- 3) if the public-private partnership contract concluded by the public partner and the joint venture expires.

#### **Section 116. Closing Financial Statement and Property Division Plan**

The liquidation closing financial statement of a joint venture and the plan for the division of the remainder of the property of the company shall be verified by a certified auditor.

#### **Section 117. Division of the Remainder of the Property of a Joint Venture**

(1) Upon termination of the activity of a joint venture, the property of the company shall be divided within the framework of the liquidation quota so that the public partner resources which the public partner has invested in the equity capital of the joint venture would be returned to the public partner together with the permanent investments.

(2) If the value of the liquidation quota pertaining to the public partner is smaller than the value of the public partner resources and the permanent investments referred to in Paragraph one of this Section, the procedures for compensating the decrease of the liquidation quota to the private shareholder of the joint venture shall be provided for in the public-private partnership contract.

#### **Section 118. Continuation of the Activity of a Joint Venture**

Shareholders of a joint venture may take the decision to continue the activity of the joint venture only if the institution referred to in Section 16, Paragraph one or two of this Law has previously taken a decision thereon and all shareholders of the joint venture agree thereto.

### **Chapter XXIV Other Provisions**

[20 April 2017]

#### **Section 119. Application of the Nomenclature of Construction Work**

If the CPV data of the nomenclature of constructions work referred to in Annex 1 to this Law differ from the data referred to in the NACE nomenclature which is specified in Commission Regulation (EC) No 29/2002 of 19 December 2001 amending Council Regulation (EEC) No 3037/90 on the statistical classification of economic activities in the European Community, the relevant CVP nomenclature shall be applied.

[20 April 2017]

#### **Section 120. Procedures for the Execution of the Decision on the Prohibition to Hold the Office of a Public Official**

[5 December 2019 / See Paragraph 33 of Transitional Provisions]

#### **Section 121. Statistical Surveys**

The public partner or the representative of the public partner shall, each year by 1 April, submit statistical surveys to the Procurement Monitoring Bureau in accordance with the procedures stipulated by the Cabinet. The Cabinet shall determine the content of the statistical surveys.

[20 April 2017 / See Paragraph 31 of Transitional Provisions]

#### **Section 122. Electronic Invoices**

The public partner or its representative shall accept the electronic invoice conforming to the laws and regulations regarding the applicable standard for an electronic invoice and the specifications for the use of its key elements and the procedures for its handling, and, if it is provided for in the public-private partnership contract, shall include additional elements according to the abovementioned laws and regulations. The Cabinet shall determine the applicable standard for an electronic invoice and the specifications for the use of its key elements and the procedures for its handling.

[21 February 2019 / See Paragraph 32 of Transitional Provisions]

## **Chapter XXVI Administrative Offences in the Field of Granting Concessions and Competence within the Administrative Offence Proceedings**

[5 December 2019 / The Chapter shall come into force on 1 July 2020. See Paragraph 33 of Transitional Provisions]

#### **Section 123. Unlawful Conclusion of a Concession Contract**

(1) For conclusion of a concession contract or for performance of any other transaction which corresponds to the nature of a concession contract, unless the concession procedure laid down in this Law or other procedures for the contract awarding laid down in this Law which had to be applied are applied, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(2) For conclusion of a concession contract if inappropriately selected concession procedure or other procedures for the contract awarding laid down in this Law have been applied, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(3) For conclusion of a concession contract if the notice specified in this Law has not been published on the website of the Procurement Monitoring Bureau and in the Official Journal of the European Union, provided that it should have been published on both websites upon commencement of the concession procedure, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(4) For the activities referred to in Paragraph one, two, or three of this Section if the contract price of the concluded concession contract or of other transaction performed is EUR 145 000 or more, a fine from seventy to four hundred units of fine and a prohibition to exercise rights - a prohibition to hold offices, for the time period from one to two years, the duties of which include taking of decisions in the field of public procurements and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts - shall be imposed.

[5 December 2019 / Numbering of the Section is amended by the Law of 30 April 2020 / Section shall come into force on 1 July 2020. See Paragraphs 33 and 34 of Transitional Provisions]

#### **Section 124. Failure to Comply with the Provisions for the Prevention of a Conflict of Interests**

(1) For the failure to ensure the signing of the certification specified in this Law on non-existence of such conditions because of which it could be regarded that the person preparing the concession procedure documents,

members of the concession procedure commission, the secretary of the concession procedure commission, or experts of the concession procedure commission are interested in the selection or activity of the particular tenderer, or are related to the particular candidate or tenderer, a warning or a fine from fourteen to seventy units of fine shall be imposed.

(2) For the failure to comply with the prohibition specified in this Law in respect of the officials and employees of the public partner or representative of the public partner who are preparing the concession procedure documents, members of the concession procedure commission, the secretary of the concession procedure commission, and experts of the concession procedure commission to represent the interests of a tenderer, and also the prohibition to be related with a tenderer, a fine from fourteen to one hundred and forty units of fine shall be imposed.

*[5 December 2019; 30 April 2022; 5 May 2022]*

#### **Section 125. Failure to Comply with the Provisions for the Exclusion of Tenderers, Requirements for Their Selection and Requirements of Technical Specifications**

(1) For the failure to comply with the provisions for the exclusion of tenderers laid down in this Law if the tenderer has been unjustifiably excluded or has not been unjustifiably excluded from the participation in the concession procedure or another contract awarding procedure and it has affected the decision on the results of tenderer selection or the decision on awarding the contract, a fine from fourteen to seventy units of fine shall be imposed.

(2) For the failure to comply with the requirements for the selection of tenderers or the requirements of technical specifications laid down in the concession procedure documents if the application or tender of the tenderer has been unjustifiably rejected or unjustifiably recognised as non-complying with the requirements laid down in the concession procedure documents and it has affected the decision on the results of tenderer selection or the decision on awarding the contract, a fine from fourteen to seventy units of fine shall be imposed.

*[5 December 2019 / Numbering of the Section is amended by the Law of 30 April 2020 / Section shall come into force on 1 July 2020. See Paragraphs 33 and 34 of Transitional Provisions]*

#### **Section 126. Failure to Comply with the Provisions for the Conclusion and Amendment of a Concession Contract.**

(1) For conclusion of a concession contract if the waiting period specified in this Law has not been complied with, however it should have been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(2) For conclusion of a concession contract if the prohibition specified in this Law to conclude a procurement contract after the Procurement Monitoring Bureau has received a submission on violation of the concession procedure has not been complied with or if the prohibition specified by the submission examination commission of the Procurement Monitoring Bureau to conclude the relevant concession contract has not been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(3) For conclusion of a concession contract if the provisions provided for in the concession procedure documents are not included or different provisions are included therein, and if such possibility has not been provided for in the concession procedure documents in accordance with the requirements or this Law or other provisions for amending a concession contract provided for in this Law have not been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(4) For making amendments to a concession contract if the provisions for amending a concession contract provided for in this Law have not been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(5) For the activities referred to in Paragraph one, two, three, or four of this Section if the contract price of the concluded concession contract or amendments is EUR 145 000 or more, a fine from seventy to four hundred units of fine and a prohibition to exercise rights - a prohibition to hold such offices, for the time period from one to two years, the duties of which include taking of decisions in the field of public procurements and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts - shall be imposed.

*[5 December 2019 / Numbering of the Section is amended by the Law of 30 April 2020 / Section shall come into force on 1 July 2020. See Paragraphs 33 and 34 of Transitional Provisions]*

#### **Section 127. Provision of the Concession Procedure Documents and Information**

(1) For the failure to comply with the provisions provided for in this Law during preparation of applications or tenders in respect of ensuring the accessibility of concession procedure documents, the issue of concession procedure documents, or the provision of additional information, a warning or a fine from fourteen to seventy units of fine shall be imposed.

(2) For the failure to comply with the procedures by which tenderers are to be informed of the results of the concession procedure or another contract awarding procedure, a warning or a fine from fourteen to seventy units of fine shall be imposed.

(3) For the failure to comply with the requirements in respect of issue of the minutes of the concession procedure commission or the requirements for the preparation, publishing, or issue of the final report, a warning or a fine from fourteen to seventy units of fine shall be imposed.

(4) For the failure to submit a statistical report within the time period specified in this Law or for the submission of incomplete report, a warning or a fine from fourteen to seventy units of fine shall be imposed.

[5 December 2019 / Numbering of the Section is amended by the Law of 30 April 2020 / Section shall come into force on 1 July 2020. See Paragraphs 33 and 34 of Transitional Provisions]

### **Section 128. Competence within the Administrative Offence Proceedings**

Administrative offence proceedings for the offences referred to in Sections 123, 124, 125, 126, and 127 of this Law shall be conducted by the Procurement Monitoring Bureau.

[5 December 2019; 30 April 2020 / Section shall come into force on 1 July 2020. See Paragraphs 33 and 34 of Transitional Provisions]

### **Section 129. Procedures for the Execution of the Decision on the Prohibition to Hold Offices**

(1) Within one working day after the decision in an administrative offence case has been communicated to the person on whom a prohibition to exercise the rights - a prohibition to hold offices the duties of which include taking of the decisions in the field of public procurements and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts has been imposed, the Procurement Monitoring Bureau shall inform all the authorities known to the Procurement Monitoring Bureau in which the relevant person holds the relevant offices, and also the higher authorities of such authorities (except for the case when there is no higher authority or the Cabinet is the higher authority) or owners or holders of capital shares, if the relevant authority is a capital company, of the decision taken.

(2) Within three working days after receipt of the information on the fact that the decision has entered into effect in the administrative offence case in which a prohibition to exercise the rights - the prohibition to hold such offices the duties of which include taking the decisions in the field of public procurements and public-private partnership or conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts - has been imposed, the Procurement Monitoring Bureau shall send the relevant information to the authorities referred to in Paragraph one of this Section, and also publish the given name, surname, personal identity number (if none, the date of birth and country) of the person held administratively liable and the time period for the execution of the penalty in the publication management system. The abovementioned information shall be available in the publication management system for the users registered therein for the performance of the duties specified in the law until the day when the enforcement of the penalty ends.

(3) The authority in which the person on whom a prohibition to exercise the rights - a prohibition to hold offices the duties of which include taking of the decisions in the field of public procurement and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts has been imposed, holds such offices, has an obligation to ensure that after entering into effect of the decision in the administrative offence case the relevant person does not hold such offices, does not take the decisions, and does not conclude the contracts.

[5 December 2019; 30 April 2020; 5 May 2022]

## **Transitional Provisions**

1. With the coming into force of this Law, the Concessions Law (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 2000, No. 4; 2003, No. 2) is repealed.

2. The provisions of the Public Procurement Law shall be applied in the public-private partnership procedures that, in accordance with the provisions of the Public Procurement Law, have been initiated prior to coming into force of this Law.

3. If, in accordance with the procedures laid down in the Concessions Law, the Cabinet or the council of the relevant local government has taken the decision on the transfer of concession resources for concession and has approved the conditions for granting concession, the provisions of the Concessions Law shall be applied to further activities.

4. The Cabinet shall take the decision referred to in Section 16, Paragraph six of this Law if in case of institutional

partnership it is foreseen that the joint stock companies referred to in Section 17, Paragraph one of the Law on the Completion of the Privatisation of the State and Local Government Property and the Use of Privatisation Certificates will no longer own 100 per cent of the capital shares in the capital companies referred to in Section 17, Paragraph two of the same Law or will no longer have the decisive influence over the capital companies referred to in Paragraph three (within the meaning of the Group of Companies Law).

5. The Cabinet shall, by 1 October 2009, determine the monitoring authority in accordance with Section 8, Paragraph four of this Law.

6. In accordance with Section 11 of this Law, the Cabinet shall, by 1 October 2009, approve the regulatory enactment governing the activity of the monitoring authority and the procedures for financing the activity of the monitoring authority.

7. The Cabinet shall, by 1 September 2009, submit amendments to other laws that are required as regards the adoption of this Law to the *Saeima*.

8. The Cabinet shall, by 1 October 2009, issue the regulations referred to in Section 9, Paragraph four, Section 12, Paragraph three, Section 14, Paragraph two, Section 15, Paragraph three, Section 20, Paragraph one, and Section 69, Paragraph two of this Law.

9. The effective entries of the Concession Contract Register shall be included in the new Contract Register without changing the scope of the information and not requesting re-registration.

10. The Enterprise Register shall make an entry on the termination of the concession in the Concession Contract Register if the validity period of the contract for the concession has expired on the day of coming into force of this Law.

11. The provisions for the exclusion of a tenderer referred to in Section 37, Paragraph one, Clauses 2 and 3 of this Law that came into force on 7 September 2010 shall be applied to a tenderer or the person on whose capacities the tenderer relies upon to certify that the qualification thereof conforms to the requirements specified in the invitation to participate in the concession procedure or the concession procedure documents, if the relevant violation has been committed or continues after 6 September 2010.

[25 August 2010]

12. The condition of Section 37, Paragraph one, Clause 5 of this Law that came into force on 7 September 2010 shall be applied also to the concession procedures which were announced until 6 September 2010 unless the tenderer has been excluded from participation in the concession procedure until 6 September 2010.

[25 August 2010]

13. Amendment to Section 20, Paragraph one, Section 53.<sup>1</sup>, and Section 29, Paragraph two, Clause 3 of this Law governing a voluntary notice on the results of the concession procedure, and also Section 31.<sup>2</sup>, Paragraph two shall come into force on 1 October 2010.

[25 August 2010]

14. The Cabinet shall, by 1 October 2010, issue the new regulations referred to in Section 20, Paragraph one.

[25 August 2010]

15. The new wording of Section 31 of this Law that came into force on 7 September 2010 shall not be applied if the complaint on the appeal of the decision taken by the complaint examination commission of the Procurement Monitoring Bureau has been submitted to the court until 6 September 2010.

[25 August 2010]

16. The application referred to in Section 31.<sup>1</sup>, Paragraph one of this Law may be submitted if the right to conclude a concession contract has arisen after 6 September 2010.

[25 August 2010]

17. The examination of cases regarding the recovery of losses under the court proceedings, the examination of which has been commenced, but has not been finished by 6 September 2010, shall be completed in accordance with those laws and regulations which were in force prior to 6 September 2010.

[25 August 2010]

18. [20 April 2017]

19. Amendments to Section 37, Paragraph one, Clause 5 and Paragraph four, Clause 2 of this Law by which the number and word "LVL 100" is replaced with the number and word "EUR 150" shall come into force on 1 January 2014.

[19 September 2013]

20. If the financial and economic calculations are submitted until 31 December 2013, the competent authorities shall indicate in the opinions referred to in Section 15, Paragraph one of this Law information from the financial and economic calculation, which include sums in lats in sums in euros making the recalculation in accordance with the principles of rounding laid down in Section 6 of the Law on the Procedure for Introduction of Euro.

[19 September 2013]

21. The concession procedures referred to in Section 17, Paragraph one of this Law that have been announced until 31 December 2013 shall be completed, including contested or appealed, in accordance with the provisions of this Law which were in force on the day when the relevant concession procedure was announced by complying with the conditions referred to in Paragraphs 22, 23, and 24 of these Transitional Provisions.

[19 September 2013]

22. Amendment to Section 37, Paragraph one, Clause 5 of this Law, which comes into force on 1 January 2014 and replaces the number and word "100 lats" with the number and word "EUR 150", shall be applied to an applicant and other persons referred to in Section 37, Paragraph one, Clause 8 of this Law, if the existence of tax debts is verified for a day after 31 December 2013, regardless of the provisions included in the notice on the invitation to participate in a concession procedure or in the documents of the concession procedure.

[19 September 2013]

23. If in the tender on the basis of which a contract is concluded after 31 December 2013 sums of money are indicated in lats, the public partner shall express the relevant information to be included in the contract in euros in accordance with the principles of rounding laid down in Section 6 of the Law on the Procedure for Introduction of Euro.

[19 September 2013]

24. In publishing a notice after 31 December 2013, the public partner shall recalculate the sum indicated in lats in euros in accordance with the principles of rounding laid down in Section 6 of the Law on the Procedure for Introduction of Euro and shall indicate the relevant information in the notice in euros.

[19 September 2013]

25. A public-private partner is entitled to amend a public-private partnership contract in order to convert the sums laid down therein to euros in accordance with Section 4, Paragraph two of the Law on the Procedure for Introduction of Euro.

[19 September 2013]

26. The concession procedures commenced before 1 May 2017 shall be completed, including contested or appealed, in accordance with the provisions of the Law which were in force on the day when the relevant concession procedure was announced, except for the provisions included in Section 38, Paragraph three and Section 53, Paragraphs one and two of this Law.

[20 April 2017]

27. The Cabinet shall, by 10 May 2017, issue the regulations referred to in Section 13.<sup>1</sup>, Section 19, Paragraph three, Section 29.<sup>2</sup>, Paragraph seven, Section 37, Paragraphs eight and thirteen, and Section 121 of this Law.

[20 April 2017]

28. The Cabinet shall, by 10 May 2017, issue the regulations corresponding to Section 20, Paragraph one (the new wording) of this Law.

[20 April 2017]

29. [30 April 2020]

30. Section 19, Paragraph one of this Law shall be applied:

1) to the concession procedures implemented by central purchasing bodies the estimated contract price of which is equal to or exceeds the threshold of contract price stipulated by the Cabinet - from 1 May 2017;

2) to the concession procedures the estimated contract price of which is equal to or exceeds the threshold of

contract price stipulated by the Cabinet - from 1 October 2017;

3) to the concession procedures the estimated contract price of which is less than the threshold of contract price stipulated by the Cabinet - from 1 April 2018.

*[20 April 2017]*

31. The statistical surveys regarding concession contracts specified in Section 121 of this Law shall be submitted starting from 2018, and 2017 shall be the first reporting year.

*[20 April 2017]*

32. Institutions of direct administration shall apply Section 62, Clause 27.<sup>1</sup> and Section 122 of this Law to payment of such public-private partnership contracts for which the public-private partnership was commenced on 18 April 2019, the other contracting authorities - from 18 April 2020.

*[21 February 2019]*

33. Amendments to Section 1, Clause 37 of this Law (regarding the prohibition to exercise rights), to Section 24 regarding the new wording of Paragraph one thereof, and also regarding the deletion of Section 120, and Chapter XXVI of this Law shall come into force concurrently with the Law on Administrative Liability.

*[5 December 2019]*

34. Amendments to Chapter XXVI of this Law regarding change of the numbering of Sections and clarification of references shall come into force concurrently with the Law on Administrative Liability.

*[30 April 2020]*

35. If a concession procedure has been announced or the decision on the initiation of the concession procedure when the concession procedure is not to be announced has been taken until 31 December 2022, the concession procedure shall be completed, including contested or appealed, in accordance with the provisions of this Law which were in force on the date of announcement of the concession procedure or the decision on the initiation of the concession procedure.

*[5 May 2022]*

36. The public partner or the representative of the public partner shall make an entry in the Contract Register for a concession contract concluded starting from 1 January 2023 and also for the existing public-private partnership contracts.

*[5 May 2022]*

37. The Enterprise Register shall, by 1 December 2022, transfer to the Procurement Monitoring Bureau the entries in the Contract Register together with the registration files and documents submitted to the Enterprise Register in accordance with the procedures laid down by this Law for such public-private partnership contracts which have been entered in the Contract Register until 30 October 2022 and for which no entry on termination has been made in the Contract Register until 30 October 2022. The Procurement Monitoring Bureau shall include the abovementioned information in the Contract Register by 31 December 2022.

*[5 May 2022]*

38. For the public-private partnership contracts in effect, concluded in accordance with the provisions of the Law on Concessions, the Procurement Monitoring Bureau shall include the information at its disposal in the entry of the Contract Register, and the public partner or the representative of the public partner shall, not later than within five working days after performance of the contracts referred to in this Paragraph, supplement the entry in the Contract Register with the information referred to in Section 62.<sup>1</sup>, Paragraph two, Clauses 1, 2, 3, and 5 of this Law.

*[5 May 2022]*

## **Informative Reference to Directives of the European Union**

*[20 April 2017; 21 February 2019]*

This Law contains norms arising from:

1) Council Directive 89/665/EEC 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;

2) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts;

3) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;

4) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts;

5) Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement.

This Law shall come into force on 1 October 2009.

This Law has been adopted by the *Saeima* on 18 June 2009.

President V. Zatlers

Rīga, 9 July 2009.

Law on Public-Private Partnership  
**Annex 1**

[20 April 2017]

<b>Nomenclature of Construction Work</b>					
<b>Classification of Economic Activities in the European Union (NACE)</b>					<b>CPV code</b>
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and construction work, restoration and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: 1) demolition of buildings and other structures; 2) clearing of building sites; 3) earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.; 4) site preparation for mining: overburden removal and other development and preparation of mineral properties and sites. This class also includes: 1) building site drainage; 2) drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: 1) drilling of production oil or gas wells, see 11.20; 2) water well drilling, see 45.25; 3) shaft sinking, see 45.25; 4) oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil	This class includes: 1) construction of all types of buildings	45210000 Excluding:

			engineering works	<p>construction and civil engineering constructions;</p> <p>2) bridges, including those for elevated highways, viaducts, tunnels and subways;</p> <p>3) long-distance pipelines, communication and power lines;</p> <p>4) urban pipelines, urban communication and power lines;</p> <p>5) ancillary urban work;</p> <p>6) assembly and erection of prefabricated constructions on the site.</p> <p>This class excludes:</p> <p>1) service activities incidental to oil and gas extraction, see 11.20;</p> <p>2) erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28;</p> <p>3) construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23;</p> <p>4) building installation, see 45.3;</p> <p>5) building completion, see 45.4;</p> <p>6) architectural and engineering activities, see 74.20;</p> <p>7) project management for construction, see 74.20.</p>	<p>45213316</p> <p>45220000</p> <p>45231000</p> <p>45232000</p>
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <p>1) erection of roofs;</p> <p>2) roof covering;</p> <p>3) waterproofing.</p>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <p>1) construction of highways, streets, roads and other vehicular and pedestrian ways;</p> <p>2) construction of railways;</p> <p>3) construction of airfield runways;</p> <p>4) construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations;</p> <p>5) painting of markings on road surfaces and car parks.</p> <p>This class excludes preliminary earth moving, see 45.11</p>	<p>45212212 and DA03</p> <p>45230000</p> <p>Excluding:</p> <p>45231000</p> <p>45232000</p> <p>45234115</p>
		45.24	Construction of water projects	<p>This class includes:</p> <p>1) construction of waterways, harbour and river works, pleasure ports (marinas), locks, etc.;</p> <p>2) dams and dykes;</p> <p>3) dredging;</p> <p>4) subsurface work.</p>	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <p>1) construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment;</p> <p>2) construction of foundations, including pile driving;</p> <p>3) water well drilling and construction, shaft sinking;</p> <p>4) assembly of non-self-manufactured steel elements;</p> <p>5) steel bending;</p>	<p>45250000</p> <p>45262000</p>

				6) bricklaying and stone setting; 7) scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms; 8) erection of chimneys and industrial ovens. This class excludes renting of scaffolds without erection and dismantling, see 71.32	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes installation in buildings or other construction projects of: 1) electrical wiring and fittings; 2) telecommunications systems; 3) electrical heating systems; 4) residential antennae; 5) fire alarms; 6) burglar alarm systems; 7) lifts and escalators; 8) lightning conductors, etc.	45213316 45310000 Excluding: 45316000
		45.32	Insulation work activities	This class includes installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes waterproofing, see 45.22	45320000
		45.33	Plumbing	This class includes installation in buildings or other construction projects of: 1) plumbing and sanitary equipment; 2) gas fittings; 3) heating, ventilation, refrigeration or air-conditioning equipment and ducts; 4) sprinkler systems. This class excludes installation of electrical heating systems, see 45.31	45330000
		45.34	Other building installation	This class includes: 1) installation of illumination and signalling systems for roads, railways, airports and harbours; 2) installation in buildings or other construction projects of fittings and fixtures not elsewhere classified	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
		45.42	Joinery installation	This class includes: 1) installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials; 2) interior completion (ceilings, wooden wall coverings, movable partitions, etc.). This class excludes laying of parquet and other wood floor coverings, see 45.43	45420000
		45.43	Floor and wall coverings	This class includes laying, tiling, hanging or fitting in buildings or other construction projects of: 1) ceramic, concrete or cut stone floor or wall tiles; 2) parquet and other wood floor coverings carpets and linoleum floor coverings (including of rubber or plastic); 3) terrazzo, marble, granite or slate floor or wall	45430000

				coverings; 4) wallpaper.	
		45.44	Painting and glazing	This class includes: 1) interior and exterior painting of buildings; 2) painting of civil engineering structures; 3) installation (glass, mirrors, etc.). This class excludes installation of windows, see 45.42	45440000
		45.45	Other building completion	This class includes: 1) installation of private swimming pools; 2) steam cleaning, sand blasting and similar activities for building exteriors; 3) other building completion and finishing work not elsewhere classified. This class excludes interior cleaning of buildings and other structures, see 74.70	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes renting of construction or demolition machinery and equipment without operators, see 71.32	45500000

Law on Public-Private Partnership  
**Annex 2**

[20 April 2017]

<b>Social and Other Special Services Referred to in Section 17, Paragraph Seven of this Law</b>		
No.	Description	CPV code
1.	Health, social and related services	75200000-8, 75231200-6, 75231240-8, 79611000-0, 79622000-0 (supply services of domestic help personnel), 79624000-4 (supply services of nursing personnel), 79625000-1 (supply services of medical personnel), from 85000000-9 to 85323000-9, 85143000-3, 98133100-5, 98133000-4, 98200000-5, 98500000-8 (private households with employed persons), from 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)
2.	Administrative, social, educational, health care and cultural services	85321000-5, 85322000-2, 75000000-6 (administration, defence and social security 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 organisation 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)
3.	Compulsory social security services	75300000-9
4.	Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1
5.	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services	98000000-3, 98120000-0, 98132000-7, 98133110-8 and 98130000-3
6.	Religious services	98131000-0
7.	Hotel and restaurant services	From 55100000-1 to 55410000-7, from 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), 55523100-3 (school-meal services)
8.	Legal services	From 79100000-5 to 79140000-7, 75231100-5
9.	Other administrative services and government services	From 75100000-7 to 75120000-3, 75123000-4, from 75125000-8 to 75131000-3
10.	Provision of services to the community	From 75200000-8 to 75231000-4
11.	Prison related services, public security and rescue services, provided that they are not excluded in accordance with Section 3, Paragraph one, Clause 9 of this Law.	From 75231210-9 to 75231230-5, from 75240000-0 to 75252000-7, 79430000-7, 98113100-9
12.	Investigation and security services	From 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)
13.	International services	98900000-2 (services provided by extra-territorial organisations and bodies) and 98910000-5 (services specific to international organisations and bodies)
14.	Postal 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)
15.	Miscellaneous services	50116510-9 (tyre-remoulding services), 71550000-8 (blacksmith services)

## International Conventions in Social and Environmental Fields

1. Forced Labour Convention, 1930 (ILO Convention No. 29).
2. Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention No. 87).
3. Right to Organise and Collective Bargaining Convention, 1949 (ILO Convention No. 98).
4. Equal Remuneration Convention, 1951 (ILO Convention No. 100).
5. Abolition of Forced Labour Convention, 1957 (ILO Convention No. 105).
6. Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111).
7. Minimum Age Convention, 1973 (ILO Convention No. 138).
8. Vienna Convention for the Protection of the Ozone Layer, 1985, and its Montreal Protocol on Substances that Deplete the Ozone Layer, 1987.
9. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989 (Basel Convention).
10. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (PIC Convention), 10 September 1989, and its three regional protocols.
11. Worst Forms of Child Labour Convention, 1999 (ILO Convention No. 182).

12. Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants (Stockholm Convention).

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<sup>1</sup> The Parliament of the Republic of Latvia

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