

Concessions Act

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Chapter One

GENERAL PROVISIONS

Article 1. This Act shall regulate the conditions and procedure for granting, implementation and termination of concessions.

Article 2. (1) A concession shall be defined as the right to operate a facility of public interest, made available by a grantor to a merchant (the concessionaire), in exchange for the latter's obligation to build and/or manage and maintain the facility subject to the concession at his/her own risk.

(2) A Concession shall be granted on the basis of a long-term agreement in writing involving a defined material interest, executed between the grantor and the concessionaire.

(3) According to its object, a concessions may be one of the following types:

1. Public Works Concession;
2. Service Concession;
3. Mining Concession;

Article 3. A Public Works Concession shall have as its object the implementation of a construction project (the object of the concession) and the management and maintenance of the completed facility after its becoming operational; where compensation therefor shall consist either only of the right of the concessionaire to operate the object of the concession, or of that right in addition to a payment on the part of the grantor as per Article 6.

Article 4. (1) A Service concession shall have as its object the management and maintenance of the object of the concession; where compensation therefor shall consist either only of the right of the concessionaire to operate the object of the concession, or of that right in addition to a payment on behalf of the grantor as per Article 6.

(2) A service concession may also include the execution of partial additional construction and assembly works in cases when there is a need for:

1. completion of ongoing construction, or
2. partial extension, partial reconstruction, partial rehabilitation or renovation of the object of the concession.

(3) In cases as per par. 2, both the decision to launch a procedure leading to the award of a concession and the concession agreement shall define such partial construction and assembly works as a consequence of, or addition to, the main object of the concession.

Article 5. (1) A Mining Concession shall have as its object the extraction of natural resources by means of their exploitation, effected with funds provided by the concessionaire and at the latter's own risk.

(2) A mining concession for mineral deposits shall be awarded in accordance subject to the provisions and procedures of the Subsurface Resources Act.

(3) This Act shall apply to the implementation and termination of a mining concession for mineral deposits unless otherwise provided for in the Subsurface

Resources Act.

Article 5a. (New, SG No. 65/2006) (1) The concession for the production of mineral waters has as its subject the use of mineral waters by water tapping.

(2) The concession under para 1 shall be granted following the terms and conditions of the current law in as much the Waters Act does not provide for otherwise.

Article 6. (1) Compensation as per Article 3 and Article 4 (1) shall be effected through reimbursement of the concessionaire by the grantor for part of the cost of the object of the concession.

(2) Compensation as per par. 1 shall not relieve the concessionaire of the obligation to assume the bulk of the risk pertinent to the construction and/or the management and maintenance, and shall be allowed in cases where it is necessary to:

1. Ensure a socially acceptable price of the services provided through the object of the concession, when such price is determined by an act of legislation or

2. Reconstruction of the object of the concession after the impact of an insurmountable force (force majeure).

(3) Compensation for construction or restoration of the object of the concession as per par. 2 item 2 shall be effected following commencement of its operation.

(4) Compensation for management and maintenance of the object of the concession shall be effected solely provided that the project is operational.

Article 7. (1) In exchange for the right of operation of the object of the concession, an obligation on the part of the concessionaire to make concession payments to the grantor may be provided for.

(2) In each specific case the amount of the concession payment shall be determined depending on:

1. the economic advantages, which the concessionaire would obtain from the concession;

2. fair sharing of the economic benefit between the grantor and the concessionaire;

3. Ensure a socially acceptable price of the services provided through the object of the concession, when such price is determined by an act of legislation.

(3) The procedure and deadlines for making the concession payment shall be determined by the concession agreement.

Article 8. The possibilities of providing compensation and making concession payments shall be determined in the decision to launch a concession procedure, depending on the economic efficiency of the operation of the object of the concession, as defined on the basis of:

1. the concession period and

2. the estimated costs for construction, management and maintenance, and the projected exploitation revenues.

Article 9. (1) The granting of a concession shall include:

1. taking preparatory action;

2. conduct of the concession procedure;

3. Execution of a Concession Agreement

(2) The procedure for granting concessions shall include:

1. adoption of a decision to launch a concession procedure;

2. conduct of an open procedure, restricted procedure or a competitive interview procedure for granting a concession;

3. selection of a concessionaire.

Article 10. (1) Concessions shall be granted for periods of up to 35 years, without an option for extension. The concession period shall be calculated as of the date of entry into force of the concession agreement.

(2) In determining the concession period, the financial and economic indicators of the concession, as well as the technical and/or technological specifications of the object of the concession, shall be taken into consideration.

Article 11. (1) The object of the concession may include the adjoining infrastructure and accessories, whether existing and envisioned to be built by the concessionaire.

(2) In case of a works concession, the construction and/or expansion, and/or reconstruction, and/or rehabilitation, at the concessionaire's own risk, of the object of the concession shall be a condition for the implementation of the concession.

Article 12. (1) In the process of granting and implementation of the concession, the requirements of the laws regulating the activities related to the object of the concession shall also be observed.

(2) No concessions may be granted in case of any threat to the national security and defence of the State; to the environment or human health; to protected territories, zones and sites and to public order, as well as in other cases provided for by law.

Chapter Two

OBJECTS AND AGENTS OF A CONCESSION

Article 13. Operated on concession in accordance with this Act shall be the following types of facilities of public interest:

1. a facilities declared as an exclusive state property;
2. facilities, properties or parts of properties - public state property or public municipal property, by means of which economic activity is performed;
3. facilities, properties or parts of properties - private state property or private municipal property, by means of which economic activity is performed;
4. properties or parts of properties - owned by a public law organization, by means of which economic activity is performed.

Article 14. (1) Facilities as per Article 13, items 1 and 2 shall be made available for building and operation only through a public works concession, and for operation purposes exclusively - only through a services concession or a mining concession, except in cases defined under the Public Procurement Act.

(2) Facilities as per Article 13, items 3 and 4 shall be made available for a public works concession in cases, where compensation for their construction, management and maintenance will represent the right of the concessionaire to operate them, or that right in addition to payment on the part of the grantor under Article 6.

(3) Facilities as per Article 13, items 3 and 4 may also be put up for a services concession in cases where compensation for their management and maintenance amounts to the right of the concessionaire to operate them, or to that right in addition to payment on behalf of the grantor as per Article 6.

Article 15. (1) The grantor shall retain its title of ownership over the object of the concession.

(2) In the case of public work concessions, the facility built shall become property of the grantor as of the date of its commissioning into operation under the procedure of the Spatial Development Act.

(3) Any accretions and improvements of the object of the concession, including when not taking place in fulfilment of the concession agreement, shall become property of the grantor as of the moment of their materialization.

(4) In cases of transfer of ownership over a facility or property under Article 13, items 3 and 4, granted on concession terms, the concession agreement shall remain valid in regard to the transferee.

Article 16. (1) Any natural person or legal entity or an association of such persons may participate in a concession procedure.

(2) A legal entity may not participate independently or as part of an association in a concession procedure in one or more of the following cases:

1. one that has been declared bankrupt;
2. one that is undergoing a liquidation procedure;
3. one where a manager or a member of the managing body, or in case where a member of the managing body is a legal entity - its representative to the respective managing body, has been convicted and effectively sentenced for a crime against property, or against the national economy, or against the financial, taxation or social security systems (money laundering or fraud), or for abuse of office or for bribe-taking (corruption), or for crimes involving participation in a crime ring.

(3) A natural person may not participate independently or as part of an association in a concession procedure in one or more of the following cases:

1. one that has been convicted for a crime and sentenced effectively under paragraph 2, Item 3;
2. one that has been stripped of the right to engage in economic activities.

(4) A candidate or a participant may be disqualified from a concession procedure who/which:

1. is undergoing bankruptcy proceedings;
2. has outstanding liabilities in terms of public revenue to the State or to a municipality within the meaning of Article 162 (2) of the Tax and Social Insurance Procedure Code, as established by an effective act issued by a competent authority, except here rescheduling or deferral of such liabilities has been allowed;
3. has outstanding monetary liabilities towards individuals, employed by it;
4. has been a concessionaire under a concession agreement terminated for reasons attributable to that entity;
5. has been found guilty of professional malpractice, of which the commission under Article 23, paragraph 3 has written evidence, issued by a competent body;
6. has failed to submit the entire information required from the candidates or participants in the concession procedure or has provided false or incomplete information.

(5) The conditions under Article 4 that shall be treated as grounds for disqualifying a candidate/participant from the concession procedure, shall be defined in the announcement as per Article 41.

(6) The circumstances under Paragraphs 1-4 shall be evidenced by documents and declarations under a procedure, determined by the Implementing Regulation of this Act.

Article 17. The grantor of any concession awarded under this Act shall be:

1. The Council of Ministers, for assets constituting state property; or
2. The Municipal Council, for assets constituting municipal property; or
3. a public law organization, represented by a body in accordance with its act of

establishment - in regard to facilities in its ownership.

Article 18. (1) A concessionaire shall be a participant in a concession procedure with whom the grantor has executed a concession agreement.

(2) In cases where the participant selected as a concessionaire is a legal entity or an association other than a merchant, the concession shall be granted to the newly established trade company, in which the legal person owns the whole capital and accordingly the members of the association own the whole capital in the same proportion as per their Article s of association. In such a case, the concession agreement shall be executed with the newly established trade company as the concessionaire, which shall be bound by the bid submitted by the legal person or the association, respectively.

(3) In the cases when the participant selected as a concessionaire is a natural person, the concession shall be granted to the newly established trade company in which the participant is a single owner of the capital or to a sole proprietor newly registered by him/her.

Chapter Three

PREPARATORY ACTIVITIES

Article 19. (1) The preparatory activities and forwarding of proposal for granting concession in respect of facility constituting state property, hereinafter referred to as "State Concession", shall be performed by minister appointed by force of a law. In the cases where there is no empowerment by force of a law, the preparatory activities shall be performed by the Minister:

1. who governs the ministry which manages or husbands the relevant facility;
2. whose second level spending unit is an institution which manages or husbands the relevant facility;
3. who exercises the rights of state ownership in a merchant - public company, to which the relevant facility was provided for management;
4. of Regional Development and Public Works, for all other cases.

(2) The preparatory activities and forwarding of proposals for granting of concession in respect of facility constituting municipal property, hereinafter referred to as "municipal concession", shall be performed by the respective municipal mayor.

(3) The preparatory activities and forwarding of proposal for granting concession in respect of facility owned by a public legal organization, hereinafter referred to as "public concession", shall be performed by the person, running the relevant facility.

(4) The bodies under Paragraphs 1 - 3, related to the granting and implementation of concessions for which they are authorized by a law or by an act of the grantor.

Article 20. The preparatory activities for granting a concession shall begin upon the initiative of the respective body under Article 19 (1) - (3) and be performed under the procedure, prescribed by the Implementing Regulation of this Act.

Article 21. The preparatory activities shall include the drafting by the body under Article 19 (1) - (3) of a justification of the concession. Such justification must be based, as a minimum, of a legal due diligence study, a financial and economic due diligence study, a technical and environmental analyse

(2) The justification under Paragraph (1) shall provide the rationale for the proposal for granting a concession and determine the characteristics of the object of the concession and its main content.

(3) Enclosed with such justification shall be the supporting documents as defined by

the Regulation on the Implementation of this Act, including the results of the respective procedure as per Chapter Six of the Environment Protection Act.

(4) The requirements to the contents of the concession justification and of the analyses and procedure for their preparation and adoption, shall be determined by the Regulation on the Implementation of this Act.

Article 22. Based on the said justification, the competent body under Article 19 (1) - (3), shall prepare drafts for:

1. a decision for the launch of a concession procedure;
2. an announcement of the conduct of a concession procedure;
3. a concession agreement;
4. bidding documentation, in case of an open or restrictive bidding procedure, or a descriptive document, in case of a procedure involving a competitive interview.

Chapter Four

THE PROCEDURE OF GRANTING A CONCESSION

Article 23. (1) A concession shall be granted in keeping with the following principles:

1. openness and transparency;
2. free and fair competition;
3. equal treatment of, and non-discrimination against, any candidates or participants in the concession procedure;

(2) The decision for the launch of a concession procedure, the announcement thereof and the documentation for participation in the concession procedure may not include conditions or requirements which give an unfair advantage to, or restrict without a valid reason the participation of, certain entities.

(3) The commission for conducting the procedure for granting a concession (hereinafter: "the Commission") shall have no right to provide information which discriminates against or favours certain candidates or participants in the procedure.

Article 24. (1) The concessionaire may be determined by means of:

1. an open procedure;
2. a restricted procedure;
3. a competitive interview procedure;
4. an electronic auction, as a supplementary procedure to the open or restricted procedure.

(2) In the selection of a procedure the following factors shall be taken into consideration:

1. the specifics of the object of the concession and the economic activities performed through it;
2. the estimated number of candidates;
3. the volume and complexity of the documentation for conducting the concession procedure;
4. the expected volume and complexity of bids.

(3) The conducting of competitive interview procedure shall be allowed in cases where the conditions as per Article 32, par. 3 are in evidence.

Article 25. (1) The commission shall disqualify from participation in the procedure, by adopting a decision to that effect, any candidates/participants in respect of which any of the circumstances as per Article 16, pars. 2 through 4, are found to apply. Also

disqualified from participation in the procedure shall be candidates or participants in respect of which a circumstance as per Article 16 par. 4 applies, which has been defined by force of the announcement as per Article 41.

(2) The concession procedure shall be conducted also in cases when only one candidate or participant has been admitted for participation.

Article 26. (1) The commission shall carry out the selection of the candidates or participants that have been admitted to participate in the concession bidding procedure in accordance with the following criteria:

1. suitability to pursue the professional activity;
2. economic and financial standing;
3. technical capability and/or professional qualification.

(2) The criterion of suitability to pursue the professional activity shall be evidenced by:

1. recordation on a professional and trade register in accordance with the legislation in the State of domicile of the applicant, and/or
2. prior experience in the performance of activities identical or similar to those that can be performed through the object of the concession, as well as possession of licences or permits for performance of the relevant activities in accordance with the legislation in the state of domicile of the applicant.

(3) The criterion of economic and financial standing shall be evidenced by:

1. registered fixed capital of the candidate;
2. residual and/or market value of the candidate's assets, which shall be certified by the annual financial report or by the respective market value, prepared by registered assessor;
3. candidate's annual financial reports for the 3 preceding years.

(4) The criterion of capability and/or professional qualification shall be evidenced by:

1. declaration containing lists of contracts implemented or in the process of implementation over the past 5 years, having a subject identical or similar to the object of the concession, including the basic elements of the contracts, and/or
2. a description of technical facilities and the quality assurance capabilities in respect of the implementation of the concession agreement, and/or
3. list of persons with technical competences, including those who will be responsible for the quality of the implementation of the concession agreement, and/or
4. quality management or environment protection certificates, and/or
5. documents, certifying the educational and professional qualifications of the managerial staff, who will be responsible for the implementation of activities under the concession agreement, and/or
6. in case of a public works concession, data regarding technical manpower, whether their own or hired, who will participate in the process of implementation of construction works.

(5) The selection criteria for candidates shall be determined in compliance with the specificity of the object of the concession and the economic activities it performs and shall be stated in the concession announcement.

(6) An opportunity may be envisaged in the decision to open a concession procedure, for proving conformity to the criteria under Paragraph (1), items 2 and 3, to be

made using capabilities of third parties. In such cases the candidate must submit evidence that it will have the capabilities of a third party at its disposal. In such cases the candidate must submit evidence that it will have the capabilities of a third party at its disposal.

(7) The candidates that comply with the selection criteria shall be determined by a decision of the Commission and shall continue their participation in the procedure, while the rest of the candidates shall be eliminated.

(8) In a restricted procedure or a competitive interview procedure the concession announcement may limit the number of candidates who, after the selection, respectively interview, shall be invited to tender their bids. In those cases the announcement shall indicate the objective and non-discriminatory criteria that shall apply, as well as the minimum number of candidates to be invited.

(9) In the cases under paragraph (8), the minimum number of candidates, invited to submit offers, shall be five - in the restricted procedure and three - in the competitive interview. If a smaller number of candidates participates in the procedure, the commission is obliged to invite all candidates, complying with the criteria stated in the announcement.

Article 27. (1) In cases of an open procedure, a restricted procedure and a competitive interview procedure, the assessment criterion for offers shall be the economically most beneficial offers.

(2) The economically most feasible bid shall be identified on the basis of a comprehensive assessment of bids in accordance with criteria specified in the decision and in the announcement of the launch of the procedure leading to the award of the concession.

Article 28. (1) The following criteria shall be used in the comprehensive assessment of the bid:

1. relevant to the concession object, such as:
 - a) quality of construction works and/or management and maintenance of the object of the concession;
 - b) quality of services provided;
 - c) price of construction works;
 - d) price of services provided;
 - e) technical advantages, including technical facilities and necessary equipment;
 - f) functional characteristics of the concession object;
 - g) deadline for completion of construction works;
 - h) terms for effecting compensation under Article 6 - if such is provided for in the decision for launch of the concession procedure;
2. environment protection measures, where required;
3. period of the concession;
4. the lowest price of the construction investment and/or the lowest price of the services provided through the object of the concession - in the case of a public works concession;
5. the lowest price of the services provided through the object of the concession - in the case of a service concession;
6. the amount of the concession payment, if envisaged;
7. others depending on the specifics of the concession.

(2) The decision to launch the procedure leading to the award of the concession, the

concession announcement as per Article 41 and the methodology for assessment of the bids shall state the criteria and the relative weighting of each. The method of rating each of the criteria shall be specified in the assessment methodology that shall constitute an integral part of the bidding documentation.

(3) A bid that does not comply with the assessment criteria and requirements for satisfying them shall be disregarded.

Article 29. (1) Should the bid submitted by any participant contain an asking price for works or for the services offered, which is lower by over 30 percent than the average asking price of the remaining bids, the Commission shall instruct that participant to submit, within a reasonable time limit but not less than three business days following receipt of such instruction, a detailed written justification of the price offered.

(2) The Commission may accept the written justification as per par. 1 and not disqualify the bid in cases where any of the following objective circumstances is cited therein:

1. an innovative solution for performing the works or providing the services;
2. technical solution;
3. existence of extremely favourable conditions for the respective participant;
4. cost-effectiveness in the performance of the works or the provision of services;
5. receipt of state aid.

(3) The bid shall be disregarded in cases where:

1. the participant fails to submit the required written justification within the prescribed time limit; or
2. the Commission has judged that the circumstances cited in the said justification are not objective; or
3. the participant has failed to prove within the time limit prescribed by the Commission the legal grounds for the state aid received.

Article 30. An "open procedure" is a concession procedure in which any person may submit an offer.

Article 31. (1) A "restricted procedure" shall mean one where only a bidder that has received an invitation following an screening is allowed to submit an offer.

(2) The restricted procedure for award of a concession shall be conducted in two stages:

1. admission and selection under the procedure of Article s 25 and 26;
2. submission of offers by the candidates invited after the initial screening.

Article 32. (1) A "competitive interview procedure" shall mean the procedure leading to the award of a concession where a bid may only be submitted by a candidate invited after interviews have been conducted with the candidates admitted to that procedure.

(2) The competitive interview procedure shall be conducted in three successive stages:

1. admission and selection under the procedure of Article s 25 and 26;
2. conducting interviews with the candidates, which received invitations to continue their participation in the procedure after the screening, aimed at discussing those bids which are found to satisfy the criteria and requirements stated in the announcement as per Article 41 or in the descriptive document.
3. submission of offers by the candidates who made suitable proposals and were

invited.

(3) The competitive interview procedure may be conducted only for a public works concession in particularly complex cases where, due to objective reasons, any of the following circumstances cannot be determined:

1. the technical specifications satisfying the objectives and/or parameters of the concession relating to the design and calculation methods related to the design and construction, to the execution of construction works and/or to materials used;

2. the legal and/or financial framework of the concession.

(4) The circumstances as per par. 3 shall be stated in the concession announcement and/or in the descriptive document.

(5) The conducting of interviews with admitted candidates shall be held in successive rounds, during which the Commission shall discuss separately with each candidate the solutions proposed by it.

(6) As a result of the interviews thus conducted, the Commission shall prepare the bidding documentation. Where necessary, prior to approval of the documentation, the Commission may propose to the grantor to supplement the decision to launch the bidding procedure prior to sending out the invitations to the selected candidates to submit their bids.

(7) In the cases under paragraph (6), the grantor shall be entitled to adopt a decision for supplementing the decision to launch the procedure. Such decision shall be promulgated in State Gazette. Following promulgation of the decision, the Commission shall propose, and the body as per Article 19 pars. 1-3 shall approve the bidding documentation.

(8) The Commission shall send invitations to the candidates to submit their bids who have proposed suitable solutions and shall supply to them the bidding documentation.

(9) The bid of a participant in a competitive interview must comply with the requirements and conditions of the concession as determined in the bidding documentation.

(10) The participant, having submitted the economically most beneficial offer, may be obligated to specify its parameters in writing. Such specifications shall not alter the main parameters of the offer.

(11) By force of the decision to launch the bidding procedure, a compensation may be set for candidates who had submitted written proposals that were discussed and given high ratings.

Article 33. (1) An "electronic auction" may be conducted in the case of an open procedure or a restricted procedure when the technical specifications of the concession can be established with precision and when the decision for launch of the concession procedure provides that, after initial assessment of the tenders, the selection of a concessionaire shall be done by means of electronic auction. The electronic auction shall be specified also in the announcement of the concession procedure.

(2) The electronic auction shall be conducted after the initial assessment of tenders of the participants on the basis of the criteria as per Article 28 par. 1, in compliance with the assessment methodology, and may be conducted in a number of successive phases (rounds).

(3) Electronic auction shall not be used in such a way as to prevent, restrict or distort competition or to change the object of the concession, as defined in the published

announcement and in the technical specifications.

(4) For granting of a public works concession that includes in its scope intellectual activities such as the design of construction projects, may not be done by means of electronic auction.

Article 34. (1) The assessment criteria for results of the electronic auction shall be:

1. the price:

a) for works concessions: the lowest price offered for the construction;

b) for service concessions: on the lowest price offered for services provided by the concessionaire to third persons;

c) for mining concessions: the highest concession payment offered;

2. the economically most beneficial offer; in these cases the prices offered and the criteria specified in the evaluation methodology shall be assessed.

(2) Criteria as per Par. 1, Item. 2 may be:

1. the technical features whose values shall be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;

2. any limits on the values which may be submitted as they result from the specifications relating to the subject of concession;

3. the information which will be made available to the bidders in the course of the electronic auction and within the time-limit for its submission;

4. the relevant information concerning the electronic auction process;

5. the bidding conditions, including the minimum bidding increment;

6. the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

Article 35. (1) All bidders who have admissible bids complying with the indicators set in the assessment methodology shall be invited simultaneously by electronic means to participate in the electronic auction; the invitation shall contain the initial assessment results. The bidders shall submit:

1. new prices - for the price criterion;

2. new prices and new values of indicators - where the economically most beneficial offer is the criterion.

(2) The invitation under Paragraph 1 shall contain:

1. the entire information concerning individual connection to the electronic equipment being used;

2. the date and time of the start of the electronic auction;

3. duration of each of the rounds of the auction;

4. conditions and terms for closure of the electronic auction.

(3) The electronic auction shall not start earlier than two business days after the date on which the invitations as per Paragraph (1) were sent out.

(4) Where the criterion for evaluation of the results of the electronic auction would be the economically most beneficial offer, the invitation shall contain the mathematical formula, which will be used in the electronic auction for the purposes of automatic re-rating based on the new prices and/or values submitted. The formula shall contain the weighting of all criteria, which shall determine the economically most beneficial offer, as indicated in the notice or in the specifications of the participation documentation and for such purpose all ranges shall be reduced in advance to the value specified.

(5) Where the notice does not pose any restrictions on the submission of variants of the bid, a separate mathematical formula shall be provided for each variant.

(6) During each round of an electronic auction, the Commission shall instantaneously communicate to all bidders sufficient information to enable them to ascertain their relative rankings at any moment. The Commission may also communicate information concerning other prices or values submitted, provided that this is allowed in the specifications. The Commission may also at any time announce the number of participants at each phase of the electronic auction.

(7) In cases as per par. 6, the Commission may in no way disclose the identities of the bidders at any phase of an electronic auction.

Article 36. (1) The commission shall terminate the electronic auction:

1. on the date and at the time fixed in advance in the invitation for the auction; or
2. upon expiry of a pre-set time limit following the end of receipt of new prices or values meeting the requirements of the minimum bidding increment; or
3. following completion of all rounds of the electronic auction as determined in the invitation for participation therein.

(2) The ranking of participants shall be done automatically by electronic means.

Article 37. The conditions, procedure and time limits for organizing and conducting the procedures leading to the award of a concession shall be regulated by the Rules and Regulations on the Implementation of this Act.

Chapter Five

DECISION FOR LAUNCH OF A CONCESSION PROCEDURE

Article 38. (1) As a result of the completed preparatory activities, the body as per Article 19 (1)- (3) shall submit to the grantor a reasoned proposal to launch a concession procedure.

(2) The justification of the concession under Article 21, the draft documentation under Article 22 and other documents determined by special law or by the Regulation on the Implementation of this Act, shall be attached to the proposal.

Article 39. (1) On the basis of the proposal as per Article 38 par. 1, the grantor shall adopt a decision for launching a procedure leading to the award of a concession.

(2) The decision as per par. 1 shall determine:

1. the object of, and the facility, over which the concession is to be awarded;
2. the business activities which may be performed through the object of the concession;
3. in the cases of Article 11 (1) - the infrastructure and accessories belonging to the object of the concession;
4. the maximum period of the concession;
5. starting date of the concession;
6. the conditions for implementation of the concession;
7. the basic rights and obligations as per the concession agreement;
8. the conditions for assigning the construction of the object of the concession to sub-contractors;
9. the conditions and/or prohibitions for renting out of the object of the concession and assigning activities concerning its operation and maintenance to sub-contractors;
10. type and amount of the performance guarantees for the obligations under the concession agreement and/or other types of security;

11. the conditions for making the concession payments, where envisaged, incl.:
 - a) the amount of the single concession payment due on the effective date of the concession agreement;
 - b) the amount of the minimum annual concession payment for the concession period;
 - c) the maximum grace period during which the concessionaire shall be exempted from concession payment, where such a grace period is provided for;
 - d) the procedure for making concession payments;
12. requirements related to national security and defense, protection of the environment, human health, protected areas, zones and sites, and of public order;
13. the form, amount and conditions for compensation under Article 6, where such compensation is provided for;
14. the obligation on the part of the concessionaire to insure for the period of the concession to his/her account and in favour of the grantor the object of concession;
15. other requirements related to the nature of the concession, which have not been prescribed by law or regulation;
16. the procedure for granting a concession, including an electronic auction - where such is provided for in the case of an open or a restricted procedure;
17. the criteria for comprehensive evaluation of the offers and their relative weighting;
18. the amount and the method of payment of the guarantee for participation in the concession procedure.

(3) In case of a competitive interview procedure, the proposed solution may not contain some of the elements under paragraph (2), related to those under Article 32 (3).

(4) The decision under paragraph (1) shall be published in State Gazette.

(5) The decision under par. 1 may be amended or repealed in cases provided for by this Act.

Article 40. (1) Within 7 days from the entry into force of the decision for launching a concession procedure, the body as per Article 19 pars. 1-3 shall approve, by issuing an order, the announcement of the procedure, the documentation for participation in both an open and a restricted procedure, resp. the descriptive document for the competitive interview procedure, and a draft concession agreement, and shall forward the announcement for promulgation in State Gazette, and for entry into the National Concessions Register.

(2) By virtue of issuing the order, the body as per Article 19 pars. 1-3 shall be bound by the decision for the launch of a concession procedure.

Chapter Six

CONDUCTING OF THE CONCESSION PROCEDURE

Section I

Announcement of a concession procedure

Article 41. The announcement of the planned conducting of a concession procedure, hereinafter referred to as "the announcement", shall contain the following data:

1. The object of the concession;
2. The body responsible for conducting the procedure leading to the award of a concession: name, address, fax, e-mail address and contact person;

3. Type of the object of the concession;
4. Location of the object of the concession;
5. individual description of the object of the concession;
6. Description of construction works and amount of construction investments, in case of a works concession;
7. Description and scope of services and/or business activities, which the concessionaire may perform through the object of the concession;
8. The percentage of the total amount of construction that has to be executed by subcontractors - in the cases provided for in Article 53 par. 1;
9. Type of the concession procedure;
10. Form and amount of the guarantee for participation in the procedure and the conditions for its submission (payment);
11. Period of validity of the bids;
12. Place of receipt, price, and method of payment for the bidding documentation;
13. 13. deadline for receiving the documentation for participation in the concession procedure;
14. In case of a restricted procedure and a competitive interview procedure - place and time limit for receiving applications for participation in the procedure;
15. Place and deadline for submission of offers;
16. Place and date for opening of the offers;
17. Language in which the applications and/or bids must be written;
18. The circumstances as per Article 16 pars. 2 and 3 and the documents providing evidence of their existence;
19. The circumstances as per Article 16 par. 4 which shall cause the Commission to disqualify a candidate or participant in the procedure and the way of providing evidence of their existence;
20. Selection criteria and the documents evidencing compliance therewith;
21. Restrictions to submitting variants in the bids;
22. The criteria used in the comprehensive assessment of the offers and the relative weighting of each of the criteria;
23. the procedure and terms for termination of the electronic auction - where one is envisaged;
24. Date of forwarding of the announcement to State Gazette;
25. Procedures and deadline for appeal against the order for confirmation of the announcement;
26. Others, depending on the specifics of the object of the concession and the business activities performed through it.

Article 42. (1) The announcement shall be completed in electronic form.

(2) The body as per Article 19, pars. 1-3 shall forward the electronic form containing the announcement to the electronic address of State Gazette for promulgation, and to the National Concessions Register for recordation. The announcement shall be promulgated within 5 days from the date of being forwarded, and shall be recorded in the National Concessions Register within 3 days from the date of its promulgation.

(3) (Effective as of the date of accession of the Republic of Bulgaria to the European Union) Simultaneously with being forwarded to State Gazette for promulgation, the announcement of a works concession of a value defined as per the Rules and Regulations

on the Implementation of this Act, shall also be forwarded electronically to the of the European Commission.

Article 43. (1) Following promulgation of the announcement in State Gazette, the body as per Article 19 (1)- (3) shall have notices of the concession procedure published in the mass media and/or on the Internet.

(2) The said notices shall indicate at least the object of the concession and the date and issue of State Gazette where the notice was published.

(3) The notice shall not include information that is not contained in the decision for the launch of the concession procedure and in the announcement.

Section II

Documentation for participation in the concession procedure
and draft concession agreement

Article 44. (1) The documentation for participation in the concession procedure shall contain:

1. description of the object of the concession and the documents define its individual features;

2. the conditions that the offer must meet, including technical specifications, and the specification for the electronic auction, in cases where such is provided for;

3. investment projects, if any, - for public works concessions;

4. minimum requirements which the variants should meet and the method of their presentation - in cases where the announcement did not restrict the opportunity to submit variants in the bid;

5. the indicators to be used in the comprehensive evaluation of the offer, their relative weight and the methodology for assessment of the offers;

6. standard form of the offer and guidelines for its preparation;

7. others, depending on the object of the concession and the stipulated procedure.

(2) The methods as per Article 1, item 5 shall contain precise and detailed guidelines for grading the bid in accordance with each criterion and for determining of the comprehensive assessment of the bid.

(3) The technical specifications under paragraph (1), item 2 shall be determined by the Public Procurement Act.

(4) The Commission may declare part of the documentation for participation in the procedure to be confidential. In such cases the candidates and the participants in the procedure are obliged to submit a declaration according to a standard form, attached to the documentation, whereby they undertake not to disclose confidential data.

Article 45. Attached to the documentation for participation in the concession procedure shall be copies of the decision for the launch of the procedure, a copy of the announcement and a copy of the draft concession agreement, as well as other documents prescribed by the Regulation on the Implementation of this Act.

Section III

Commission for Conducting the Concession Procedure

Article 46. (1) The procedure for granting a concession shall be conducted by a Commission appointed by:

1. the Prime Minister, with regard to state concessions, and

2. the mayor of the municipality - with regard to municipal concessions;

3. the managing body for the public legal organization - for public concessions.

(2) The Commission shall include a chairperson, a deputy-chair and at least three members.

(3) The Commission shall adopt its decisions by a majority of its members.

(4) The Commission shall not comprise members who:

1. have a material interest in the concession to be awarded;
2. are related persons to a candidate or a participant in the concession procedure or, in cases where the candidate or the participant is a legal entity, also to a member of its management or supervisory body.

(5) The chairperson, deputy chair and the members of the Commission are obliged within 3 days:

1. from the date of receipt of the order for appointment of the Commission, a declaration of absence of material interest on their part in the concession to be awarded;
2. from becoming aware that a related person participates in the concession procedure, to resign as a member of the Commission.

(6) In case of material interest in the concession to be granted; in case of a submitted resignation as a member of the commission, as well and in other cases where, due to objective reasons under paragraph (5), a person cannot perform his/her duties, the respective body under paragraph (1) shall appoint a replacement.

Article 47. (1) A commission on state concessions shall be chaired by the cabinet minister, who performed the preparatory activities for granting the concession. In the cases under Article 46 (6), a deputy minister from the respective ministry shall be appointed chairman of the commission.

(2) At least one representative of the administration of the relevant ministry and at least one representative of the Council of Ministers and the Ministry of Finance shall obligatorily be included as members of the Commission for state concessions. By the decision of the Prime Minister, representatives of other institutions and the regional governor may also be included in the commission.

(3) The majority of the Commission for state concession, including its chairperson or deputy chair, shall not represent the same administration.

Article 48. (1) The Commission shall:

1. organize the acceptance and safekeeping of applications for participation and the offers;
2. admit candidates or participants for participation in the procedure or disqualify them therefrom;
3. perform the selection and identify the candidates which shall be entitled to continue their participation in the procedure;
4. conduct the interviews with the candidates who were allowed to continue their participation in the competitive interview;
5. determine the candidates to be sent an invitation to submit an offer in the cases of a restricted procedure or a competitive interview;
6. provide clarifications and additional information or documents;
7. make proposals for correction of legal non-conformities in the announcements, documentation for participation and the draft concession agreement;
8. consider and evaluate offers, rate the candidates by merit and nominate the participant, rated first, for selection as the concessionaire;
9. conduct electronic auctions, where such are envisaged, including determine the

content of the invitations;

10. prepare a draft decision for the selection of a concessionaire or a draft decision for termination of the concession procedure.

(2) The decisions of the Commission shall be supported with proper arguments and, along with all of its actions, shall be recorded in a protocol. In case of an electronic auction, the said protocol shall also reflect the ranking as per Article 36 par. 2.

(3) The commission shall inform all the candidates/participants in the procedure about the activities performed and the decisions adopted.

(4) The commission may invite as consultants employees or outside experts. The provisions of Article 46 (4)- (6) shall also apply to the consultants.

(5) The members of the commission and the consultants shall receive payment in accordance with the conditions and procedures as per the Rules and Regulations on the Implementation of this Act.

Section IV

Applications and Offers

Article 49. (1) An application to participate in a restricted procedure and a competitive interview procedure, and a bid for participation in an open procedure may be submitted by any party meeting the conditions as per Article 16, par. 1, about whom the circumstances as per Article 16 pars 2 through 4 do not apply.

(2) An offer for participation in a restricted procedure, competitive interview or in an electronic auction may be submitted by a candidate which has received an invitation following the selection for a restricted procedure, following discussions in the case of a competitive interview, or following a pre-evaluation of its offer in the case of an electronic auction.

Article 50. (1) The time limit for receiving applications and offers shall be determined in the announcement under Article 41.

(2) The deadlines for submission of applications may not be shorter than:

1. fifty-two days from the date of publication of the announcement in State Gazette, in case of a public works concession where the value of planned investment for construction of the object of the concession is above that, defined in the Regulation on the Implementation of this Act;

2. thirty-five days from the date of publication of the announcement in State Gazette - for all other cases.

(3) The deadlines for receipt of bids shall be determined with regard to the date of publication of the announcement in State Gazette in the case of an open procedure, or with regard to the date of forwarding of the invitation to submit offers in the case of a restricted procedure and a competitive interview, and may not be shorter than:

1. fifty-two days in case of a public works concession where the value of planned investment for construction of the object of the concession is above that defined in the Regulation on the Implementation of this Act;

2. thirty-five days - for all other cases.

Article 51. (1) In preparing the offer, each candidate shall comply with the conditions stated in the documentation for participation.

(2) Until expiry of the time limit for receipt of bids, each candidate under the procedure may amend, supplement or withdraw his/her bid.

(3) Any candidate in a procedure for granting a concession shall be entitled to

submit only one offer.

(4) A candidate may propose several variants within the bid, except in cases where the possibility for doing so is restricted by virtue of the concession announcement.

(5) The Commission shall consider and rank only variants of the bids meeting the minimum requirements laid down in the documentation for participation.

Article 52. (1) Each participant may attach a declaration to his/her bid designating which part of the information contained therein is confidential.

(2) Any information including technical or trade secrets of the candidate may be confidential.

(3) The data which must be contained in a concession dossier registered with the National Concession Register, may not be declared as confidential.

(4) The information stated in the declaration as per par. 1 shall remain confidential even after its inclusion in the concession agreement, whether until its termination or for a period determined by the concessionaire.

(5) Neither the commission, nor the outside consultants may disclose or communicate to third parties the information under paragraph (1), except in cases provided for in the Access to Public Information Act.

Article 53 (1) By its resolution to launch a procedure for granting a public works concession, the grantor may impose the condition that at least 30 percent of the total value of construction is performed by third parties - sub-contractors.

(2) Outside the cases under paragraph (1) the candidates may freely propose in their offers assignment of part of the construction to sub-contractors, specifying the percentage of construction works, which shall be performed by them.

(3) The proposal of the participant, selected as concessionaire in regard to hiring sub-contractors for performing a part of the construction, shall be included into the concession agreement.

Article 54. (1) In the cases under Article 53, the concessionaire shall determine the sub-contractors under the procedure of the Public Procurement Act, except for the deadline of receipt of:

1. applications for participation in the procedure, which may not be less than 37 days of the date, on which the announcement was published in State Gazette;

2. the offers, which may not be less than 40 days of the date, on which the announcement was published in State Gazette or of the date, on which the invitations to submit offers were sent out.

(2) The provision of Paragraph (1) shall not apply in the cases, when the sub-contractor is a person, related to the concessionaire.

(3) A list of the related persons under paragraph (2) shall be included into the offer of the participant and be updated after each change in the relationship between the parties.

(4) The lists under paragraph 3 shall apply to the concession agreement. In the event of change of the relationship between the concessionaire and the persons, related to it, a supplementary agreement to the concession agreement will be executed under the procedure of Article 70.

Section V

Securities

Article 55. (1) Together with their offers, the candidates shall submit a guarantee

for participation in the concession procedure in the form of a cash deposit or a bank guarantee. The form of the security shall be selected by the candidates themselves.

(2) The security under paragraph 1 shall secure the participation of the candidate in the concession procedure and the conclusion of the concession agreement by the participant who has been selected as a concessionaire. In case when such security is in the form of bank guarantee, at the moment of its issuance the issuing body must ensure its validity in such a way as would allow for said bank guarantee to be cashed in accordance with the requirements of this section.

(3) The security shall be released by an order of the body organizing the concession procedure within 7 days from expiry of the deadline for appeal against the decision for selecting a concessionaire, respectively the decision for termination of the procedure.

(4) The securities of candidates who have discontinued their participation in the concession procedure shall be retained or, respectively, cashed.

(5) The securities provided by the following entities shall not be released by the deadline as per Article 3:

1. the participant selected as concessionaire;
2. a participant appealing against the decision for selection of a concessionaire.

(6) The security provided by a participant selected as the concessionaire, shall be retained, resp. drawn upon, in cases where said participant fails to execute the concession agreement within the set time limit, or shall be released within 7 days from the date of execution thereof.

(7) The security of a participant who appeals against the decision for selection of a concessionaire shall be retained, respectively cashed, in the cases where the appeal has been overruled as groundless by an effective court decision. In any other cases, the security shall be released within 7 days following entry into force of a decision concerning the appeal.

Article 56. The concessionaire shall provide guarantees and or other performance bonds for the due fulfilment of its obligations under the concession agreement.

Article 57. The guarantees and security shall be determined by the decision to launch a concession procedure.

Chapter Seven

SELECTION OF A CONCESSIONAIRE

Article 58. (1) The body, which organizes the conduct of the concession procedure, shall submit to the grantor a report and a draft resolution for selection of a concessionaire within a deadline, determined by the order for appointment of the commission and in the cases of electronic auction - within two weeks of its completion. The protocol of the commission under Article 48 (2) shall be attached to the report.

(2) Based on the report and the protocol of the commission, following individual review of the facts and circumstances described therein, the grantor shall adopt a decision on:

1. selection of concessionaire of the participant, rated first, or
2. charging the commission to remedy irregularities established and subsequently to perform a new rating, or
3. termination of the procedure in the cases under Article 60 (1), items 1-4

(3) The decision shall be published in State Gazette and may be appealed against within 10 days of its publication under the procedure of Chapter eleven.

(4) (Effective as of the date of accession of the Republic of Bulgaria to the European Union) In the cases of a public works concession, where the value of planned investment for construction of the object of the concession is above that defined in the Regulation on the Implementation of this Act, in parallel to its forwarding to State Gazette, the decision shall also be forwarded via electronic means to the European Commission.

Article 59. (1) The decision for selection of a concessionaire shall:

1. specify the main parameters of the concession in accordance with the offer of the participant, nominated as concessionaire, which have not been defined, or were defined as a range of values in the decision for launch of the concession procedure;

2. prescribe a deadline for execution of the concession agreement, which shall not exceed three months.

(2) The grantor may select as concessionaire the participant, rated second on the condition that the participant rated first fails to execute the concession agreement within the term prescribed.

(3) In regard to state concessions, the decision of the Council of Ministers shall determine the body, which would:

1. execute the concession agreement and represent the grantor in it, except in regard to its termination;

2. organize control of the performance of the concession agreement.

(4) In regard to municipal and public concessions, the power under Paragraph (3) shall be exercised by the respective body under Article 19 (2) and (3).

Chapter Eight

TERMINATION OF THE CONCESSION PROCEDURE

Article 60. (1) The concession procedure shall be terminated by decision of the grantor, when:

1. no applications or offers were received, or no candidate have been admitted;

2. the contents of none of the offers meet the requirements of the decision to launch a concession procedure or the conditions, announced by the documentation for participation;

3. the reason for conducting the procedure is no longer relevant as a result of circumstances, which were not and could not have been foreseen when adopting the decision for the launch of the procedure;

4. violations are established in the course of launch and conduct of the procedure, which are incapable of being corrected without changing the terms, under which the procedure was announced;

5. the participants rated first and second decline one after the other to enter into a concession agreement.

(2) The decision to terminate the procedure may also:

1. change the decision for launch of the concession procedure and to announce another procedure, or

2. announce a new procedure under the terms of the one terminated.

(3) The decision under paragraph (1) shall be published in State Gazette.

(4) In the event of termination of the concession procedure in the cases under Paragraph (1), Items 3 and 4, the respective body shall refund to the candidates or participants the expenses, incurred by them for acquiring the documentation for participation, within 14 days of the publication of the decision under Paragraph 1 and

shall release or return the guarantees, posted by them under the procedure of Article 55 (3).

Article 61. A new concession procedure may be launched for the same facility after the procedure originally announced has been terminated and the termination decision has entered into force.

Chapter Nine

CONCESSION AGREEMENT

Section I

Execution of a Concession Agreement

Article 62. (1) The concession agreement shall be executed after expiry of the appeal deadline under Article 58 (3), if no claim has been lodged or if in any claim lodged no request for imposing a temporary measure had been made.

(2) If a claim had been lodged, requesting imposition of a temporary measure, the term for executing the concession agreement shall start running:

1. from the effective date of the Ruling of the Commission for Protection of Competition to reject the request for imposing a temporary measure;
2. from the date of expiry of the deadline for posting the security under Article 86 (3) - if no security had been provided;
3. from the effective date of the Ruling of the Commission for Protection of Competition to leave the claim without action - in the cases, when security was posted.

Article 63. (1) In the process of execution of the concession agreement the participant, selected as concessionaire, shall be bound by the proposals, made by means of its offer and of the draft concession agreement.

(2) In the cases under Article 59 (2) the concession agreement shall be executed with the participant, rated second, under the terms of the first and within the same period of time, which shall start running upon receipt of the written invitation.

Article 64. (1) The concession agreement shall be executed in writing in at least three originals - one for each of the parties and one for the National Register of Concessions. The attachments to the concession agreement shall be developed in as many copies, as are the originals of the agreement.

(2) A concession agreement in regard to a municipal concession shall be signed in 4 originals. The fourth original shall be delivered to the Municipal Council within 3 days of signing the concession agreement.

(3) As regards any issues, related to the execution, performance and termination of the concession agreement, the provisions of Part Three of the Commerce Act and of the General Provisions of the Obligations and Contracts Act shall respectively apply.

Section II

Content of the Concession Agreement

Article 65. (1) By means of the concession agreement the grantor shall entitle the concessionaire to operate the concessioned facility, while the concessionaire shall undertake, at its own risk, to build and/or manage and maintain it.

(2) The concession agreement shall contain:

1. definition of the object of concession;
2. data on the commercial and other registrations of the concessionaire;
3. data regarding the body, representing the grantor;
4. description of the facility and in the cases under Article 11 (1), also a description

of the adjacent infrastructure and/or appurtenances;

5. the date of entry into force of the agreement, the conditions precedent, if any and the period of the concession;

6. the conditions, procedure and terms for transferring the facility at the start and at the end of the concession;

7. the conditions for running the concession and the burdens, if any;

8. the rights and obligations of the parties, including the terms and deadlines for fulfilling them;

9. the amount, terms and procedure of making the concession payment, if one would be envisaged;

10. the type, amount and deadlines for performance of the obligations for making investments;

11. the form, amount and conditions for compensation under Article 6, where such compensation is provided for;

12. the type, amount, deadlines and methods for providing the guarantees and the security for performance of the obligations under the agreement;

13. requirements related to national security and defense, protection of the environment, human health, protected areas, zones and sites, and of public order;

14. the terms and conditions for financing the remedying of environmental damages caused;

15. liabilities for non-performance of obligations under the agreement;

16. terms and procedure for exercising control over the implementation of the agreement;

17. terms and procedure for settling disputes between the parties;

18. the terms and procedure for early termination of the agreement;

19. the applicable law;

20. other.

(3) The concession agreement on a public works concession shall also include:

1. individualized description of the territory, upon which the concession facility is to be built or expanded except in the cases, when in order to determine the territory for expansion, it would be required to adopt a detailed spatial development plan or to amend an existing one;

2. the facility and sub-facilities, which are to be built and/or re-constructed, and/or rehabilitated at the concessionaire's risk;

3. the obligations of the grantor, related to ensuring or providing to the concessionaire on the territory for building or expansion of the concession facility, as well as for making investments of public funds, related to the subject of the concession, or for its usage in accordance to its purpose.

4. requirements in regard to the status, in which the facility in concession is to be returned to the grantor after expiry of the period of the concession.

Section III

Implementation of the Concession Agreement

Article 66. (1) The concession agreement shall enter into force as of the date of its signing by the parties, except in the cases under Paragraph (2).

(2) Entry of the concession agreement into force may be made contingent on the fulfilment of certain conditions, prescribed by the decision for launch of the concession

procedure or by applicable legislation. Fulfilment of the conditions may be linked to a deadline

Article 67. (1) The body, representing the grantor under the concession agreement, shall transfer the object of the concession or the territory for its construction to the concessionaire within a term and under the procedure, determined by the concession agreement.

(2) Where the object of the concession is governed by a regional governor, the transfer shall take place with the consent of the latter.

Article 68. The body, representing the grantor under the concession agreement, shall submit to the National Concessions Register information in standard form on the implementation of the agreement under a procedure, determined in the Regulation on the Implementation of this Act.

Section IV

Amendments to the Concession Agreement

Article 69. (1) In case of subsequent emergence of any threat to the national security and defence of the State; to the environment or human health; to protected territories, zones and sites and to public order, the party to the concession agreement, which has become aware of it, must immediately notify the other party.

(2) Where the existence of a circumstance under paragraph (1) had been established by a competent body, it shall immediately notify the grantor.

(3) The emergence of a circumstance under paragraph (1) may serve as grounds for amendment or termination of the concession agreement.

Article 70. (1) The concession agreement may be amended and/or supplemented by a supplementary agreement.

(2) If the amendments and supplements are within the framework of the decision to launch the concession procedure, of the decision for selection of a concessionaire and of the latter's offer, the supplementary agreement shall be executed with the body, which represents the concessionaire in the concession agreement.

(3) Beyond the cases under paragraph 2, a supplementary agreement may be executed following a reasoned decision of the grantor:

1. in case of subsequent emergence of any threat to the national security and defence of the State; to the environment or human health; to protected territories, zones and sites and to public order;

2. in case of partial loss of the object of the concession or in the event of objective impossibility to use it according to its purpose;

3. in case of change in legislation;

4. in case of emergence of circumstances, expressly indicated in the decision to launch a concession procedure, which lead to a change of the factual or of the legal situation in regard to the object of the concession or of the economic activity, performed through it;

5. in other cases, determined by law.

(4) The provision of Article 64 (2) shall be applicable to agreement supplementary to concession agreement on municipal concessions.

Article 71. (1) Where after the execution of the concession agreement changes occur in the circumstances under Article 65 (2) item 2, the concessionaire shall be obliged to advise thereof, within 7 days, the body representing the grantor in the

concession agreement.

(2) In the cases under paragraph (1), as well as of change of the body, representing the grantor in this concession agreement, the parties shall execute a supplementary agreement to reflect the changes occurred.

Article 72. (1) In the event of death of a concessionaire - natural person or of winding down of a concessionaire - legal person, having a legal successor, within three month of recording into the commercial register of the legal successor, the same shall be entitled to request an extension of the concession agreement with him/her, after submitting evidence of being a merchant, of absence of the circumstances under Article 16 (2)- (4), as well as of being in compliance with the other requirements, determined by law and by the decision for launching a concession procedure. The procedure for submission of such request shall be determined by the Regulation on the Implementation of this Act

(2) Where no request for extension of the concession agreement had been filed by the deadline under paragraph (1), it shall be terminated by right

(3) The grantor may adopt a decision to extend the concession agreement with the legal successor within 2 months of filing of the request or of correction of any irregularities thereto.

(4) In case the legal successor does not meet the requirements of paragraph (1), the grantor shall take a decision to abandon the extension of the agreement.

(5) Based on the decision under paragraph (3) the body, which represents the grantor under the concession agreement, shall execute an agreement for its extension with the legal successor.

(6) The agreement under paragraph (5) shall not alter the terms, rights and obligations under the concession agreement,

Section V

Termination of the Concession Agreement

Article 73. The concession agreement shall expire upon expiry of the concession period.

Article 74. (1) Before the expiry of the period the concession the concession agreement shall be terminated, without any party being required to serve a notice:

1. in case of loss of the object of the concession - from the date of loss;
2. in the event of death of the natural person or winding down of the concessionaire - legal person with a legal successor - as of the date of death, respectively of the winding down, unless an agreement has been executed to extend the concession agreement with the legal successor under the terms and the procedure of Article 72;
3. in the event of death of the natural person or winding down of the concessionaire - legal person without a legal successor - as of the date of death, respectively of the winding down;
4. in case of an effective decision for declaring the concessionaire bankrupt - as of the date of entry into force of the decision;
5. on other grounds, provided for by law or in the concession agreement - as of the date, indicated therein.

(2) In case of termination of the agreement in the cases under paragraph (1), item 4, the State, respectively the municipality shall enjoy the rights of privileged creditor.

Article 75. (1) The concession agreement may be terminated unilaterally or by

mutual agreement between the parties:

1. in case of subsequent emergence of any threat to the national security and defence of the State; to the environment or human health; to protected territories, zones and sites and to public order, or

2. under conditions, provided for in a law or in the concession agreement.

(2) Unilateral termination of the concession agreement on the part of the grantor, as well as the making of a proposal or the acceptance of a proposal for termination by mutual consent, shall take place by decision of the grantor.

Article 76. (1) In the event of non-performance of the concession agreement, the compliant party may terminate it, after setting an appropriate deadline for resuming compliance and warning that after expiry of such deadline it shall consider the agreement terminated. The warning shall be served in written form under procedure and terms, determined in the agreement.

(2) Where the party at fault is the concessionaire, actions towards termination of the concession agreement shall be taken after a decision of the grantor.

Article 77. Decisions of the grantor under Article 75 (2) and Article 76 (2) shall authorize the body, which is to take the action for termination of the concession.

Section VI

Consequences of Termination of the Concession Agreement

Article 78. (1) In the event of termination of the concession agreement, the concessionaire shall be obliged to transfer the facility under concession to a commission, appointed by the body under Article 77 and in the cases of termination by right - by the body, which represents the concessionaire under the concession agreement. A protocol of the transfer and acceptance of the facility shall be prepared, to be signed by the members of the commission and by an authorized representative of the concessionaire.

(2) The term of the transfer and/or acceptance of the facility under concession shall be 30 days after the date of termination of the concession agreement and in cases of rejection to extend the concession agreement with a legal successor - from the date of rejection.

(3) In case the concessionaire refuses to transfer the facility, as well as in case by the date of termination of the concession agreement, the concessionaire is terminated without a legal successor, the commission under paragraph (1) shall draw up a protocol of ascertainment for the acceptance of the facility. The protocol shall serve as grounds of issuance of an order for confiscation of the facility by:

1. by the regional governor, under the procedure of the State Property Act;

2. by the mayor of the municipality, under the procedure of the Municipal Property Act.

(4) As of the date of acceptance of the facility, and in the cases under paragraph (3) - as of the date of confiscation:

1. the facility - in state ownership, shall pass under the management of the respective regional governor or of another person, designated by a regulatory act, by and act of the Council of Ministers or in the state ownership act;

2. the facility - in municipal ownership, shall pass under the management of the mayor of municipality;

3. the facility - property of a public legal organization, shall pass into its possession.

(5) The composition of the commission under paragraph (1) and the mode of

financing of the activity of safeguarding and maintenance of the facilities during the period of their management by the regional governor in the cases under paragraph (4) Item 1, shall be prescribed by the Regulation on the implementation of this Act.

Article 79. (1) Within 14 days of the date of acceptance of the facility the body under Article 77 and in the cases of Article 74 (1) - the body, which represents the concessionaire under the concession agreement, shall inform the concessionaire and submit information to the National Concessions Register regarding the legal grounds, the date of termination of the agreement and the date of acceptance of the facility.

(2) Where the facility under concession is in state ownership, the respective body shall notify, within the deadline under paragraph (1) also the Minister of Regional Development and Public Works or the regional governor regarding the acceptance of the facility, with the view of reflecting the fact in the State Ownership Act.

Article 80 (1) In the event of early termination of the concession the concessionaire shall be entitled to compensation for the improvement and accretions, made in accordance with the concession agreement, in the amount of their historic prices, after deduction of the respective depreciations, the annual amount of which may not be less than the amount of depreciations, accepted for tax purposes, for the period of the concession.

(2) The provisions of Paragraph (1) shall not apply, if the concession agreement was terminated unilaterally by the concessionaire or through his/her fault.

Chapter Ten

FINANCING OF ACTIVITIES UNDER CONCESSIONS

Article 81. (1) Unless provided for otherwise by law, monetary revenue from concession payments for state concessions and from guarantees and compensations, shall be distributed as follows:

1. eighty-five percent as revenue to the national budget;
2. fifteen percent as revenue to the budget of the Ministry of Finance, for covering the costs of concessions.

(2) The procedure for collection, spending and accounting of the funds under paragraph (1), item 2, as well as the requirements in regard to the reports of the Ministries of the expenditures, made by them, shall be prescribed by the Regulation on the Implementation of this Act.

(3) The Minister of finance shall approve on an annual basis the expenditure for concession activities of the Ministries, as per the Single Budget Classification.

Article 82. Monetary revenue from concession payments for municipal concessions shall be distributed by the municipal council.

Chapter Eleven

APPEALS

Article 83. (1) Any decision, action or omission to act by a body, of the commission or of an official in the concession procedure, shall be subject to appeal as regards its legal conformity before the Commission for Protection of Competition.

(2) Appeals may be lodged by any interested party within 10 days of the publication of the decision in State Gazette, respectively of the notification of the decision or the action.

(3) Where no notification was made, the interested party may lodge the appeal under paragraph (1) within 10 days of:

1. the date of becoming aware, but not later than the expiry of the 10-days' term for appealing the decision for selection of a concessionaire or

2. the date, on which the deadline for performing a legally required action or an action requested by the candidates or the participants, expired or

3. expiry of the term for issuance of the respective act.

(4) An appeal shall not halt the concession procedure, unless a temporary measure is imposed.

Article 84. Each interested party may file a claim for establishment of invalidity of a concession agreement, as well as a claim for compensation for damages, suffered as a result of violation of the law in the course of conduct of a concession procedure, according to the order of the Code of Civil Procedure.

Article 85. (1) The claim shall be submitted to the Commission for Protection of Competition, with copy to the grantor, for a decision according to Article 39 and Article 58 (2), respectively - to the body organizing the conduct of the procedure.

(2) The claim must be written in Bulgarian and contain:

1. the name of the body, to which it is addressed;

2. in case the claimant is a legal person: the name, seat and management address and data on the registration in accordance with the laws of the state of its establishment, and in case the claimant is a natural person - the name, address and data regarding his/her identity;

3. the name and address of the body, the decision, action or omission to act of which are being appealed against;

4. data regarding the procedure and the decision, action or omission to act, which are being appealed against;

5. the complaints and request of the claimant;

6. signature of the person, filing the claim, or of its authorized representative;

(3) Evidence available to the claimant and a document of payment of stamp duty, according to tariff, approved by the Council of Ministers, shall be attached to the claim.

(4) Until the Ruling of the Commission for Protection of Competition according to Article 91 is delivered, the respective body may remedy on its own the violation, alleged in the claim.

(5) In case the claim does not meet the requirements under paragraphs (2) and (3), the chairman of the Commission for Protection of Competition shall advise the claimant and set a 3-days' deadline for correction of the shortcomings.

(6) The Commission for Protection of Competition shall not initiate proceedings, in case:

1. the claim was filed after expiry of the respective deadline under Article 83;

2. the irregularities were not corrected by the deadline under paragraph (5);

3. no document of payment of stamp duty was submitted.

(7) In the cases under paragraph (6) the chairman of the Commission for Protection of Competition shall return the claim with an order, which shall be subject to appeal before a three-member panel of the Supreme Administrative Court within 7 days of communicating it.

Article 86. (1) Upon a reasoned request of the claimant, the Commission for Protection of Competition may impose a temporary measure - halting the concession procedure. When ruling on the request, the Commission shall evaluate the unfavourable

consequences of the delay of the procedure and the possibility of serious impairment of the public interest or of the interests of the parties.

(2) The request under paragraph (1) shall be made simultaneously with submitting the request.

(3) In order for a temporary measure to be imposed, the claimant shall be obliged to post security in an amount, determined by the Commission for Protection of Competition, but not more than BGN 500,000, in the form of a cash deposit to the account of the Commission for Protection of Competition or of a bank guarantee in its favour.

Article 87. (1) Within 3 days of receipt of the claim or of correction of the irregularities, according to it, the chairman of the Commission for Protection of Competition shall initiate proceedings and appoint a rapporteur.

(2) Within 7 days of initiation of the proceedings, the Commission for Protection of Competition shall deliver in a closed session a ruling on the request for imposing a temporary measure and in parallel to granting it, shall also determine the amount of security.

(3) The ruling to grant the temporary measure shall be communicated to the claimant. The ruling, whereby the request to impose a temporary measure is rejected, shall be communicated to both parties.

(4) The security shall be paid in by the claimant within 5 days of the communication. The temporary measure shall be considered imposed as of the date of posting the security until completion of the procedure of appeal by an effective decision.

(5) The Commission for Protection of Competition shall notify the respondent of the temporary measure imposed in the day of imposing it.

(6) The ruling, whereby the Commission for Protection of Competition shall deliver in regard to the request for imposing a temporary measure shall be subject to appeal before a before a three-member panel of the Supreme Administrative Court within 7 days of the communication of the rejection under paragraph (3) and of the measure, imposed under paragraph (5).

(7) The appeal of a ruling shall not suspend the procedure before the Commission for Protection of Competition and the enforcement of the temporary measure imposed. The court ruling shall be final.

(8) The security shall be subject to refund by order of the chairman of the Commission for Protection of Competition within 7 days of entry into force of the decision, whereby the claim under Article 83 was upheld. In the event the claim is rejected, the security posted shall be transferred as revenue to the national budget.

Article 88. (1) The rapporteur shall examine the evidence in support of the claim, for which he/she will be supported by the administration of the Commission for Protection of Competition.

(2) Verbal and written evidence and expert opinions shall be admitted in the procedure before the Commission for Protection of Competition.

(3) When using the expert opinions under paragraph (2), the amounts for remuneration of the experts shall be paid in advance by the party, having requested the expert opinion. When ordering an expert opinion upon the initiative of the Commission for Protection of Competition, the costs of the experts' remuneration shall be at the expense of:

1. the claimant - if the claim was left without action and proceedings were

terminated;

2. the respective body - in the cases under Article 91 (1) item 2 and paragraph (2) item 2 and when the claim had been withdrawn, because the violation, alleged therein, was corrected in accordance with Article 85 (4).

(4) The parties to the proceedings, the state bodies and officials shall be obliged to render assistance to the Commission for Protection of Competition in the course of discharge of its lawful duties.

(5) Any evidence collected in the proceedings before the Commission for Protection of Competition, shall not be disclosed, in case they represent a production, commercial or other secret, protected by the law. If they contain data, representing classified information, the procedure, prescribed by the Protection of Classified Information Act shall apply.

(6) Upon completion of the examination, the parties shall be offered an opportunity to familiarize themselves with the evidence, collected in the file.

(7) the parties must submit all of their evidence not later than the day before the meeting for review of the claim.

Article 89. (1) Upon completion of the examination, the rapporteur shall submit the file to the chairman of the Commission for Protection of Competition, who shall schedule an open meeting for its review.

(2) The parties shall be subpoenaed under the procedure of the Code of Civil Procedure. The rule of Article 41 (5) of the Code of Civil Procedure shall not apply in the course of summoning.

(3) The parties may employ attorney services.

Article 90. (1) The sessions shall be considered regularly convened, if at least five of the Commission for Protection of Competition members are present.

(2) The Commission for Protection of Competition shall adopt decisions by open vote and a majority of four votes. If less than seven members are participating in the meeting and a majority of four votes can not be achieved, it shall be accepted that the claim was left without action or that the request to impose a temporary measure was rejected.

(3) A Commission for Protection of Competition member shall be obliged to ask to be struck off the list, if any of the following grounds exist:

1. if he/she had been an authorized representative of any of the parties;

2. if he/she had been in employment or civil legal relationship with any of the parties;

3. if due to other circumstances he/she could be regarded as biased or interested, directly or indirectly in the outcome of the proceedings.

(4) The meeting shall start by resolving the preliminary issues of whether the procedure is a regular one.

(5) In case of existence of any of the grounds under paragraph (3), the parties may challenge a Commission for Protection of Competition member.

(6) The parties to the proceedings may be asked questions in the order, determined by the chairman of the Commission for Protection of Competition.

(7) When he deems that the circumstances in regard to the claim have been clarified, the chairman shall offer the opportunity to the parties to state opinions.

(8) After clarifying the dispute from the factual and the legal side, the chairman shall

close the meeting.

Article 91. (1) At a closed meeting the Commission for Protection of Competition shall deliver a ruling, whereby:

1. leave the claim without action or
2. the legally non-conforming decision or the ruling will be reversed or a legally non-conforming action, or respectively, omission to act will be established and will return the file with mandatory instructions to the body for continuing the concession procedure from the last legally conforming decision or action onward.

(2) If the decision to select a concessionaire has been challenged and no temporary measure was imposed, the Commission for Protection of Competition shall:

1. leave the claim without action or
2. establish the legal non-conformity of the decision.

(3) In the cases under paragraph (2) item 2, the concession agreement executed shall remain valid and the interested parties would be entitled to seek compensation under the procedure of the Code of Civil Procedure.

(4) The decision of the Commission for Protection of Competition shall be in writing and contain:

1. the name of the issuing body;
2. reasons;
3. dispositive part;
4. the body, before which and the deadline, by which the decision may be appealed against.

(5) Any Commission for Protection of Competition member, who disagrees with a ruling, shall sign it with a reservation, attached to the ruling.

Article 92. (1) The Commission for Protection of Competition shall rule in regard to the appeal within two months of initiation of the proceedings.

(2) The decision, together with the motives, shall be prepared and announced not later than 14 days of ruling on the claim.

Article 93. (1) The Commission for Protection of Competition shall terminate the proceedings by a ruling:

1. when the claim is inadmissible;
2. when the claimant - natural person, has died or the legal person has been wound down without a legal successor;
3. if the claim is withdrawn.

(2) The ruling under paragraph (1) shall be subject to appeal before a three-member panel of the Supreme Administrative Court within 14 days of communicating it to the parties.

Article 94. As regards any unregulated issues in regard to the procedure of appeal before the Commission for Protection of Competition, the administrative procedure for appeal against administrative acts shall apply.

Article 95. (1) The Rulings of the Commission for Protection of Competition under Article 91 shall be subject to appeal under the procedure of Article 93 (2).

(2) The ruling of the Supreme Administrative Court shall be final.

Chapter Twelve

NATIONAL CONCESSIONS REGISTER

Article 96 (1) The Council of Ministers shall maintain a National Concessions

Register, where data on all concessions shall be recorded.

(2) A public archive shall be kept with the National Concessions Register, where files on all concessions granted shall be stored.

(3) The National Concessions Register shall be public and access to it via Internet shall be ensured.

Article 97 (1) The National Concessions Register shall contain a file for each concession, containing:

1. identification number of the registration;
2. type of the concession;
3. the decisions to launch the concession procedure, for selection of q concessionaire, as well as all subsequent decisions regarding the concession granted;
4. the announcement as per Article 41:
5. the object of, and the facility, over which the concession is to be awarded;
6. individual description of the object of the concession;
7. the period of the concession;
8. the date of execution and the date of entry into force of the concession agreement;
9. the name, corporate seat, management address, representation and registrations of the concessionaire;
10. the body, having executed the concession agreement and representing the grantor under the agreement and the body exercising control over the implementation of the concession agreement;
11. main content of the concession:
 - a) principal rights and obligations of the parties to the contract;
 - b) the type and scope of liability for non-performance of the duties under the agreement;
 - c) reasons for early termination of the agreement and the rights of the compliant party;
12. the date, legal grounds and the act of termination of the concession agreement and in case of termination under Article 74 - the date and the grounds of termination;
13. any notes in regard to the circumstances recorded.

(2) The file of each concession shall also include any changes to the data registered.

Article 98. Originals of the concession agreements, of the supplementary agreements and of the attachments thereto shall be stored in the dossiers of the archive of the National Concessions Register.

1. copies of the acts under Article 97 (1), item 3;
2. originals or duly certified copies of the documents, evidencing data under Article 97 (1).

Article 99. (1) Within 14 days of execution of the concession agreement the respective body, representing the grantor in the legal relationship under the concession agreement, shall be obliged to submit to the National Concessions Register:

1. the concession agreement and the other documents under Article 98;
2. electronic form, completed with the data under Article 97 (1).

(2) Within 14 days of occurrence of changes in the data, registered in the National Concessions Register, the respective body shall be obliged to submit to the register:

1. the document, evidencing the changes in the data, recorded in the National Concessions Register;

2. electronic form, complete with the data from item 1.

(3) The respective body shall be obliged, within 30 days of the due date of the concession payment, to submit to the National Concessions Register the electronic form, completed with data regarding the payment.

Article 100. (1) Within 14 days of the conclusion or termination of a concession procedure the body, organizing the conduct of the procedure, shall submit to the National Concessions Register a written report of the procedure, containing the following information:

1. the body, having conducted the procedure for selection of a concessionaire: name, address;

2. type of the concession;

3. Location of the object of the concession;

4. individual description of the object of the concession;

5. Description and scope of services and/or business activities, which the concessionaire may perform in connection with the object of the concession;

6. the type of procedure and the circumstances, which justify its application;

7. the names and nationalities of candidates, admitted to participation in a restricted procedure and a competitive interview procedure, as well as the reasons for admitting them;

8. the name and nationality of the candidate, rated first, and the reasons for it;

9. the names and nationalities of the other candidates in the procedure and the reasons for their evaluation;

10. the value of the obligations of the concessionaire for:

a) construction;

b) other investments;

c) management costs;

d) maintenance costs;

11. date of completion, respectively termination, of the procedure;

12. reasons for termination of the procedure.

(2) Based on the reports under paragraph (1), the Council of Ministers shall draw up a statistical report, which shall be made available, upon request, to the European Commission. If required, the reports under paragraph (1) or their basic elements shall be attached to the statistical report.

(3) The reports under paragraphs (1) and (2) shall be public.

(4) The forms of the reports under paragraphs (1) and (2) and the electronic forms under Article 99 shall be prescribed by the Regulation on the Implementation of this Act. The Regulation shall also prescribe any other information to be included in the reports under paragraphs (1) and (2).

Article 101. The procedure for keeping the National Concessions Register and for maintaining the archive thereof, shall be determined by the Regulation on the Implementation of this Act.

Chapter Thirteen

CO-ORDINATION AND CONTROL

Article 102. The overall control over implementation of the Act, including posterior control over the conduct of concession procedures, shall be performed by the National Audit Office and the State Financial Inspectorate Agency, according to their

competencies.

Article 103. The bodies under Article 19 shall make available for comments, before their submission for review by the grantor:

1. drafts of decisions of the Council of Ministers - to the line ministries and the specialized administration of the Council of Ministers, and the drafts of decisions for launch of concession procedures, as well as the drafts of decisions for amending and/or supplementing them - also to the regional governor and to the mayor of the municipality of the location of the concession;

2. the drafts of decisions by municipal councils for launch of concession procedures, as well as the drafts of decisions for amending and/or supplementing them - to the regional governor, as well as to the Minister of Defence, Minister of Interior and the Minister of Environment and Water, in regard to the circumstances under Article 12 (2);

3. the drafts of decisions of the body under Article 19 (3) - to the body, which exercises the rights of ownership over the capital or which exercises, directly or indirectly, a dominating influence on the grantor - for public concessions.

Article 104 The regional governor shall exercise control over the decisions of the municipal council for launch of concession procedures, as well as over the decision to amend or supplement the same.

Article 105 (1) The body, which performs control in the concession agreement, shall designate officials from the respective administration and appoint commissions, which will be assigned the day-to-day control over the concession agreements executed.

(2) The composition of the commissions under paragraph (1) in regard to state concessions must include representatives of the respective administration, as well as representatives of the specialized administration of the Council of Ministers, of the Ministry of Finance, Ministry of Environment and Water and representatives of other agencies, relevant to the object of the concessions controlled.

(3) The functions of the persons and commissions under paragraph (1), as well as the procedure for exercising control, shall be prescribed by the Regulation of this Act.

Chapter Fourteen

ADMINISTRATIVE SANCTION PROVISIONS

Article 106. (1) Any natural or legal person, using a facility of public interest without being legally entitled, shall be punishable by a fine, respectively a property sanction from BGN 5,000 to 50,000.

(2) Anyone failing to fulfil an obligation under Article 99 or 100, shall be punishable by a fine from BGN 1000 to 2000.

(3) Whoever commits a deed, whereby a procedure for selection of a concessionaire under this Act and under the Regulation on its Implementation may be violated, shall be punishable by a fine from BGN 1000 to 5000, unless the deed constitutes a crime.

(4) Any person which violates the confidentiality requirement under Article 52, shall be punishable by a fine from BGN 1000 to 2500.

(5) In the event of repeat offence under paragraphs 1-4 a fine, respectively a property sanction, shall be imposed on the perpetrator in the amount imposed originally, multiplied by the serial number of the respective violation.

Article 107. (1) Penal ordinances shall be issued in regard of violations under:

1. Article 106 (1) - by the body, running the facility;

2. Article 106 (2) - by the chief secretary of the Council of Ministers of by an

official, authorized by it.

3. Paragraph 3 of Article 106:

a) by the bodies of the State Financial Inspectorate Agency - in the cases, when committed by a body under Article 19 (1)- (3), and

b) by the body, appointing the commission or an official, authorized by it - in the other cases.

(2) The acts of establishment of violations shall be drawn up by officials, designated by the respective body under paragraph (1).

Article 108. Establishment of violations, issuance, appeal against and enforcement of penal ordinances, shall take place under the procedure of the Administrative Violations and Sanctions Act.

Article 109 (1) In the event of failure to comply with an effective decision or ruling of the Commission for Protection of Competition under this Act or of the obligation of a party to the proceedings under Article 88 (4), the Commission for Protection of Competition shall impose:

1. on legal persons and sole proprietors a property sanction from BGN 5000 to 100,000;

2. on natural persons a fine from BGN 500 to 5000.

(2) Acts regarding the violations shall not be drawn up and the property sanctions and fines shall be imposed by decision of the Commission for Protection of Competition, which may be appealed before the Supreme Administrative Court.

(3) Property sanctions and fined under effective decisions of the Commission for Protection of Competition shall be collected under the procedure of the Tax and Social Insurance Procedure Code.

SUPPLEMENTARY PROVISIONS

§ 1. Within the meaning of this Act:

1. "Mining" shall denote the extraction of natural resources and acquisition of title of ownership over the substance extracted, including over the technological waste from extraction.

2. "Dominating influence" shall be the influence of a certain person over the legal person, when the former:

a) possesses the majority stake in the capital of the legal person;

b) possesses a blocking quota in the capital of the legal person, or

c) is capable of appointing more than half of the managing or control bodies of the legal person.

3. "Operation" shall denote provision of services to third parties and/or performance of other economic activities using the facility under concession, in exchange for receiving revenue from such activities.

4. "Electronic auction" shall be a repetitive standard process, which involves an electronic device for providing new lower prices and/or new values for some of the indicators, part of the comprehensive evaluation of the offers, following the initial evaluation of the offers, which enables their rating by applying automatic evaluation methods.

5. "Legislation of the state, in which the candidate or the participant is established" shall denote:

a) for natural persons - their homeland law, within the meaning of Article 48 of the

Code of International Private Law;

b) for legal persons - the law of the state, determined in accordance with Article 56 of the Code of International Private Law;

c) for groups, which are not legal persons - the law of the state of their registration of establishment.

6. "Historic price" is the price of acquisition, determined in the concession agreement;

7. "Candidate" shall denote a natural or legal person or a group of such persons, which has acquired documentation for participation in a concession procedure and is interested:

a) to submit an offer for an open procedure, or

b) in receiving an invitation to submit an offer during participation in a restricted procedure or a competitive interview procedure.

8. "Adjacent infrastructure" shall denote elements of the technical infrastructure under item 31 of § 5 of the Supplementary Provisions of the Spatial Development Act, which serve the facility under concession and are intended to ensure unimpeded and/or comprehensive performance of its functions.

9. "Accessory" is the land, on which the facility under concession is or is expected to be built, the territory adjacent to the facility under concession, related to the economic activity performed through it, as well as any autonomous object, which ensures unimpeded and normal functioning of the facility, without necessarily being connected to it.

10. "Natural resources" shall denote mineral waters, forests, subsurface resources and biological, mineral and energy resources of the continental shelf and of the exclusive economic zone.

11. "Public legal organization" shall denote:

a) a legal person, meeting any of the following conditions:

aa) more than half of its revenue for the preceding year was financed from the state budget, the budgets of the Bulgarian National Bank, the public social security of the National Health Insurance Fund, from municipal budgets or by an assignor under Article 7 (1) of the Public Procurement Act;

bb) more than half of the members of its managing or control bodies are designated by an assignor under Article 7 (1) of the Public Procurement Act;

cc) is under managerial control by an assignor under Article 7 (1) of the Public Procurement Act; Managerial control shall be present, where a certain person is able in any way to exercise a dominating influence over the activity of another person.

b) a group between a person under letter "a", the state and a municipality.

12. "Expansion of the object of the concession" shall denote and expansion of the territory of the object of the concession and/or extension or heightening of an existing built-up project.

13. "Re-construction of the object of the concession" shall denote a public works concession, related to restoration, replacement of structural elements, basic parts, equipment or installations and the construction of new such, whereby the carrying capacity, stability or durability of the object of the concession or of parts thereof would be increased; re-construction is also the rehabilitation of parts and elements of the road, transportation, telecommunications, energy, water supply, sewerage and irrigation

infrastructures.

14. "Related person" shall denote any person, in regard to which a candidate or a participant in a concession procedure may exercise directly or indirectly dominating influence or a person, which is able to exercise control over the candidate or a participant, or which jointly with the latter is under the dominating influence of another party through ownership, financial interest or norms, which it respects.

15. "Construction project" shall be the outcome of parallel conduct of surface and high-rise construction, which is the object of a concession and which may be commissioned into operation for performing a separate economic or technical function.

16. "Construction" shall denote the implementation or design and implementation, in compliance with the requirements of the grantor, of:

a) a construction project;

b) construction and assembly works within the meaning of Appendix No.1 to the Public Procurement Act , or

c) activities of building a construction project.

17. "Merchant" shall denote any party, recognized as a merchant by the laws of the country, in which it is established.

18. "Participant" shall denote a natural or a legal person or a group of such, having submitted an offer.

TRANSITIONAL AND CONCLUDING PROVISIONS

§ 2. This Act shall supersede the Concessions Act (published, SG, No. 92/1995; Decision No.2 of the Constitutional Court of 1996 - No. 16/1996; amended and supplemented, No. 44/1996, No. 61 and 123/1997, No. 93/1998, No. 23, 56, 64 and 67/1999, No. 12, 64 and 97/2000, No. 28 and 63/2002 and No. 24 and 80/2004).

§ 3. Where on the date of entry into force of this Act a decision of the Council of Ministers under Article 7 (1) of the repealed Concessions Act, or a decision of a municipal council under the repealed by § 16 item 3 Article 71 (1) of the Municipal Property Act, the procedure shall be finalized under the existing order.

§ 4. (1) In the cases under § 17a of the Transitional and Concluding Provisions of the Privatisation and Post-Privatisation Control Act, the respective ministers shall introduce by 30.10.2006 proposals to grant concessions to companies, which had submitted after their privatisation, but not later than 30.09.2003, applications to state bodies. In cases when a company has been transformed under the procedure of Chapter XVI of the Commerce Act after its privatisation, or its enterprise has been transferred under the procedure of Article 15 of the Commerce Act, the concession shall be granted to the legal successor of the company or to the transferee of the enterprise. The concession shall be granted without tender or competition under the procedure of the repealed Concessions Act.

(2) (New, SG No. 53/2006) Entitled to rights under para 1 shall be companies and their legal successors who were previously entitled to rights but had filed an application with a state authority after the expiry of the deadline under para 17a, second sentence of the Transitional and Final Provisions of the Privatisation and Post-privatisation Control Act but not later than 30 June 2004.

(3) (Previous Paragraph 2, SG No. 53/2006) When submitting a proposal to grant a concession under paragraph (2), the respective minister may decline to apply the analyses under Article 6 (3) of the repealed Concessions Act. By his/her proposal the minister

shall justify the conditions and the main rights and obligations under the concession proposed.

(4) (Previous Paragraph 3, SG No. 53/2006) The concession shall be provided under the terms and the procedure of § 17a (2) of the TCP of the Privatisation and Post-Privatisation Control Act and in compliance with the following supplementary conditions:

1. payment on the part of the concessionaire of the lawful interest in regard to the concession payment due for the period from the transfer of ownership under the privatisation contract until the execution of the concession agreement;

2. determining the amount of the concession payment depending on the basis of an approved methodology or of an independent expert appraisal, guaranteeing a market level of the concession payment."

§ 5. In Article 89 of the Higher Education Act (promulgated SG, No. 112/1995; amended SG, No.28/1996, SG, No.56/1997, amended and supplemented SG, No.57/1997; amended SG, No.58/1997; SG, No.60 and 113/1999, SG, No. 54/2000, SG, No. 22/2001, SG, No. 40 and 53/2002, SG, No. 48 and 70/2004, SG, No.77, 83 and 103/2005, SG, No.30/2006), paragraph (3) shall be amended to read:

"(3) Differentiated parts of the real properties under paragraph (2) may be granted on lease terms under the terms and procedure of the State Ownership Act."

§ 6. The following amendments and supplements shall be introduced into the Waters Act (promulgated in, SG, No. 67/1999; amended, SG, No. 81/2000, SG, No.34, 41 and 108/2001, SG, No. 47, 74 and 91/2002, SG, No. 42, 69, 84 and 107/2003, SG, No. 6 and 70 of 2004 and No. 18, 77 and 94/2005, SG, No. 29 and 30/2006):

1. Item 3, Article 10 (1) shall be amended as follows:

"3. the Minister of Economy and Energy - for irrigation systems and projects".

2. Paragraphs (3) and (4) of Article 20 shall be repealed.

3. Paragraphs (4) and (4) of Article 21 shall be repealed.

"(4) The justification of the concession under Article 21 of the Concessions Act in regard to mineral waters -n public municipal; property, shall be developed in accordance with methodological instructions, approved by the Ministry of Environment and Water, for preparing justification for granting concessions in regard to mineral waters.

(5) The proposal of the mayor of the municipality under Article 38 (1) of the Concessions Act shall be coordinated with the Minister of Environment and Water, in regard to the parameters of the concession and the terms for providing security and monitoring of mineral waters."

4. Item 3 of Article 40 shall be repealed.

5. Article 47 shall be amended as follows:

"Article 47. (1) Concessions for extraction of mineral waters - exclusive state property, shall be provided under the conditions and the procedure of the Concessions Act.

(2) Concessions for extraction of mineral waters shall be granted, when water usage has a commercial purpose and is intended for:

1. bottling of natural mineral water and/or carbonated and other beverages, the composition of which includes mineral water;

2. extraction of valuable substances;

3. extraction of hydro-geo-thermal power.

(3) Concessions for extraction of mineral waters shall also be granted, taking into account the needs of medical establishments for hospital care and the overall water usage for drinking and supply.

(4) When granting concessions for extraction of mineral waters - exclusive state property, a portion of the concession payment - at least 30% - determined by the decision of the Council of Ministers for launch of a concession procedure, shall be transferred by the concessionaire to the municipality, on the territory of which the concession right is being established".

6. A new Article 47a shall be introduced:

Article 47a. Public works or services concessions in regard to aquaculture systems and installations and those connected to water facilities, as well as in regard to hydro-technical, hydro-power, irrigation, water-supply and sewerage systems shall be granted under the terms and procedure of the Concessions Act".

7. Item 2, Article 49 (3) shall be amended as follows:

"2. concession".

8. Item 2, Article 63 (1) shall be amended as follows:

"2. water usage and/or usage must be requested in regard to private water facilities or a project under concession;"

9. Article 95 shall be amended as follows:

"Article 95. When a concession procedure is launched in regard to a general purpose water supply system, the preparatory works must be conducted in coordination and the proposals under Article 38 (1) of the Concessions Act shall be made simultaneously by the competent ministers, if different".

10. In Article 96a:

a) paragraph (1) shall be amended as follows:

"(1) Concessions in regard to water supply systems and installations, which are in state or in mixed state-municipal ownership and belong to one and the same technological system or have a single system of management on the territory of more than one municipality, shall be granted by the Council of Ministers under the procedure of the Concessions Act.";

b) paragraph (9) shall be amended as follows:

"(9) Representatives of the municipalities under paragraph (7) shall participate in the preparation of the draft of the concession agreement."

11. Article 98 shall be amended as follows:

"Article 98. When granting a concession for extraction of mineral waters - exclusive state property and public municipal property, the regional governors and the mayors of municipalities shall take the measures required for implementation of the concession, based on their competencies."

12. Article 100 shall be repealed.

13. In Article 101 (1) the phrase "the decision of the Council of Ministers for granting a concession" shall be replaced by "the decision of the Council of Ministers for launching a concession procedure".

14. Article 102 shall be repealed.

15. In letter "b" of item 1 of Article 151 (2) after the phrase "concession for" "extraction of mineral" shall be added.

16. Item 2, Article 182 (1) shall be amended as follows:

"2. the cabinet ministers under Article 10 (1), items 1, 2 and 3, who enter into the concession agreement;"

17. Article 195 (2) shall be repealed:

§ 7. Article 16 of the Forestry Act (published in SG, No. 125/1997; amended, Nos. 79 and 133 of 1998, No. 26/1999, Nos. 29 and 78/2000, Nos. 77, 79 and 99/2002, Nos. 16 and 107 of 2003, Nos. 72 and 105/2005, Nos. 29 and 30/2006) shall be amended as follows:

"Article 16. (1) Establishment of the right of use and rights of way over forests and land of the forest stock - private state property, of an area in excess of 10 ha, shall be effected by the Council of Ministers upon proposal by the Minister of Agriculture and Forestry, and for areas under 10 ha - by the Minister of Agriculture and Forestry upon proposal by the Head of the National Forestry Directorate. The proposals shall be coordinated with the Minister of Environment and Water. The right of use shall be established for a period not exceeding 30 years.

(2) The establishment of easements for implementation of technical infrastructure projects over forests and lands of the state forest stock - in public state property, shall be effected by the Council of Ministers upon proposal by the Minister of Agriculture and Forestry for the period of operation of the infrastructure project.

(3) Free right of use under paragraph (1) may be established by the Council of Ministers upon proposal by the Minister of Agriculture and Forestry only in regard to projects, directly related to national security and defense, or for other particularly important state needs.

(4) Free right of use under paragraph (1) may be established by the Council of Ministers upon proposal by the Minister of Agriculture and Forestry and the Minister of Education and Science to state schools, research institutes and legal persons, funded by the national budget, which conduct training or research activities, related to management, usage, organization and protection of forests.

(5) Right of use in regard to forests and lands from the forest stock may be established for:

1. conduct of activities, related to prospecting and researching natural resources under the terms of the Subsurface Resources Act;

2. positioning of movable objects, which are not permanently connected to the terrain, for performance of commercial and other service activities;

3. performance of activities, related to long-term and short-term recreation, physical culture, sports and tourism, for which no building-up within the meaning of Article 12 (1) of the Spatial Development Act is required.

(6) Right of way over forests and lands of the forest stock may be established for:

1. laying of telephone, telegraph, radio-communication and other lines;

2. subsurface water mains with a cross section of up to 1500 mm, sewers, cables and other technical infrastructure elements.

(7) By decision of the municipal council, rights of way and rights of use may be established over areas of the state forest stock.

(8) The owner shall reserve its ownership over the timber from the areas made available."

§ 8. The following supplements shall be introduced into the Civil Procedure Code (promulgated in Izvestia, No.12/1952; amended and supplemented, No. 92/1952,

No.89/1953, No. 90/1955, No.90/1956, No.90/1958, No. 50 and 90/1961; amended, No. 99/1961; amended and supplemented, SG, No. 1/1963, No. 23/1968, No. 27/1973, No. 89/1976, No. 36/1979, No. 28/1983, No.41/1985, No. 27/1986, No. 55/1987, No. 60/1988, No. 38/1989, No. 31/1990, No.62/1991, No.55/1992, No. 61 and 93/1993, No. 87/1995, No. No. 12, 26, 37, 44 and 104/1996, No.No. 43, 55 and 124/1997, No. 21, 59, 70 and 73/1998, No.64 and 103/1999, No.No. 36, 85 and 92/2000, No. 25/2001, No. 105 and 113/2002, No.No. 58 and 84/2003, No. 28 and 36/2004 and No.No. 38, 42, 43, 79 and 86, 99, 105/2005, No. 17/2006):

1. Paragraph (5) shall be introduced into Article 18:

"(5) As regards proceedings, related to performance or termination of concession agreements, the state shall be represented by a cabinet minister, designated by the decision of the Council of Ministers under Article 58 (2) of the Concessions Act".

2. A new letter "n" shall be introduced into Article 237:

"n) concession agreements in regard to the liabilities, contained therein, for concession payments, and liabilities to transfer the object of concession."

3. In Article 242 (2), after the phrase "letters "f" to "h", the phrase "and letter "n"" shall be added.

4. In Article 243:

a) a new paragraph (2) shall be introduced:

"(2) The writ of execution under Article 237, letter "n" shall be issued on the basis of:

1. a request on the par of the body, representing the grantor under the concession agreement;
2. a certified transcript of the agreement executed, and
3. written invitation to the concessionaire for voluntary payment of the receivable of for transfer of the object of concession with a realistic date of acceptance".

b) the present paragraph (2) shall become paragraph (3)".

§ 9. The following amendments shall be introduced into (published, SG, No. 94/1972; amended and supplemented, No. 30/1990, No. 16/1997, No. 85/1998, No. 12/2000, No. 34 and 111 of 2001, Nos. 52 and 70/2004, Nos. 88 and 102/2005, No. 30/2006) the Civil Aviation Act:

1. In Article 43b:

a) paragraph (2) shall be amended as follows:

"(2) The Minister of transport shall perform the preparatory activities for granting a concession of public use civilian airports, execute the concession agreements and exercise control over their implementation".

b) in paragraph (3) the phrase "under Article 7 (1) of the Concessions Act" shall be replaced by "for launch of a concession procedure".

c) paragraphs (5) - (10) shall be repealed.

2. In Article 122c (1), Item 3 of Paragraph (3) and Paragraph (5) the phrase "under Article 7 of the Concessions Act" shall be replaced by "for opening a concession procedure"

§ 10. In Article 7 (2) of the State Gazette Act (published in SG, No. 89/1995; amended, No. 92/1995; amended, No. 123/1997, No. 56/1999, No. 1/2000, No. 97/2001, No. 9/2003, No. 42/2003 and 31/2005) after the phrase "Public Procurement Act" the phrase "and for granting concessions under the Concessions Act" shall be added.

§ 11. In the State Property Act (published in SG, No. 44/1996; amended, No. 104/1996, Nos. 55, 61 and 117/1997, No. 93 and 124/1998, No. 67/1999, Nos. 9, 12, 26 and 57/2000, No. 1/2001; Decision No. 7 of the Constitutional Court of 2001 - No. 38/2001; amended, No. 45/2002, No. 63/2003, Nos. 24 and 93/2004 and No. 32/2005, Nos. 17 and 30 /2006) the following amendments and supplements shall be made:

1. Article 2 (2) shall be amended as follows:

"(2) Public state ownership shall be:

1. the facilities under Article 18 (1) of the Constitution of the Republic of Bulgaria, designated by law as being in exclusive state ownership;

2. the facilities and properties, designated by law or by an act of the Council of Ministers as being in public state ownership;

3. the movable properties, designated by law or by an act of the Council of Ministers as being in public state ownership;

4. properties, made available to agencies for discharging their duties;

5. properties of national importance, intended for meeting public needs of national importance by shared use, determined by the Council of Ministers".

2. Article 7 (2) shall be repealed:

3. Article 15a shall be repealed.

4. In Article 16:

a) paragraphs (1) and (2) shall be amended as follows:

"(1) Properties - in public state ownership, shall be used only according to purpose and may not be provided to third parties, except in the cases under paragraph (2) and Article 16a.

(2) Separate properties or parts of properties - in public state ownership, may be granted on lease terms under the procedure of Article 19 (1) for a term of up to 5 years, on condition they are used according to their purpose and the performance of activities, for which they have been provided for management, shall not be impeded."

b) paragraphs (3) and (4) shall be repealed.

5. A new Article 16a shall be introduced:

"Article 16a. (1) Outside the cases under Article 14 and 15, facilities of public interest within the meaning of the Concessions Act shall be provided to third parties only by means of concession.

(2) If a procedure for granting a facility of public interest on concession terms ended without signing a concession agreement, the Council of Ministers may assign the management of the facility to a state-owned company, created under the procedure of Article 62 (3) of the Commerce Act, or to a state-owned single-person commercial company.

(3) In exchange for the management functions, assigned under paragraph (2), the state-owned enterprises and sole proprietor commercial companies, shall be obliged to maintain the facility and shall be entitled to operate it, and receive revenue from providing services to third parties and/or from engaging in other activities involving the facility.

(4) The persons under paragraph (3) may grant on lease terms parts of the facility of public interest, the management of which was assigned to them, under the conditions of Art 16 (2).

(5) The right of management under paragraph (2) shall be limited by a term, until

granting a concession for the facility under the procedure of the Concessions Act.

6. Article 84 shall be amended as follows:

"Article 84. Anyone violating a prohibition under Article 16 (1), shall be punishable by a fine from BGN 500 to BGN 2,000."

§ 12. The following amendments shall be made to the Railway Transportation Act (published, SG, No. 97/2000; amended, Nos. 47 and 96/2002 and Nos. 70 and 115/2004, Nos. 77 and 88/2005):

1. Article 3 (4) shall be amended as follows:

"(4) Railway infrastructure facilities of economic importance, which are not directly related to the systems for traffic management and safety, may be granted on lease terms under the procedure of the State Ownership Act, provided traffic safety would not be threatened".

2. Article 25 (2) shall be repealed.

§ 13. In Article 11 of the Local Taxes and Fees Act (published, SG, No. 117/1997; amended, Nos. 71, 83, 105 and 153/1998, No. 103/1999, Nos. 34 and 102/2000, No. 109/2001, Nos. 28, 45, 56 and 119/2002, Nos. 84 and 112/2003 and Nos. 6, 18, 36, 70 and 106/2004, Nos. 87, 94, 100, 103 and 105/2005, No. 30/2006) the following amendments and supplements shall be made:

1. The second sentence of paragraph (3) shall be deleted.

2. A new paragraph (4) shall be introduced:

"(4) In cases of concession, the tax liable person shall be the concessionaire".

§ 14. At the end of item 2 of Article 136 of the Obligations and Contracts Act (published in SG, No. 275/1950; amended, Izvestiya, No. 2/1950; amended and supplemented, No. 69/1951, No. 92/1952; SG, No. 85/1963, No. 27/1973, No. 16/1977, No. 28/1982, No. 30/1990, Nos. 12 and 56/1993, Nos. 83 and 104/1996, Nos. 83 and 103/1999, No. 34/2000, No. 19/2003 and Nos. 42 and 43/2005) a comma shall be placed and the following added: "as well as receivables, resulting from concession payments, interest and penalties under concession agreements;"

§ 15. The following amendments shall be introduced to the Maritime Space, Inland Waterways and Ports of the Republic of Bulgaria Act (published, SG, No. 12/2000; amended and supplemented, No. 111/2001, No. 24 and 70/2004, No. 11/2005; Decision No 5 of the Constitutional Court of 2005 - No. 45/2005, Nos. 87, 88, 94, 102 and 104/2005, No. 30/2006):

1. In Article 115 (2) item 3 shall be repealed.

2. Article 116a shall be amended as follows:

"Article 116a. (1) in addition to the port services under Article 116, public transportation ports may also provide ancillary services.

(2) The activities under paragraph (1) may be performed on condition they do not or would not hamper provision of port services.

(3) Ancillary services in public transportation ports of national importance may be conducted by a person, having obtained a concession for a facility under Article 117c (1). In such cases, the conduct of ancillary activities shall be regarded as an object supplementary in regard to the object of the concession agreement.

(4) Except in the cases under paragraph (3), ancillary activities may also be performed by a person, having obtained a concession under the terms and procedure of the Concessions Act.

(5) Ancillary services in public transportation ports of regional importance shall be conducted by the owner or by persons under contract with it.

3. In Article 117c Paragraphs (1) and (2) shall be amended as follows:

"(1) A concession shall be provided in regard to one or more terminals of a public transportation port of national importance with object rendering a port service under Article 116 (3) item 2.

(2) Depending on the object, the concession under paragraph (1) may be a public works and a services concession".

4. In Article 117d:

a) paragraph (2) shall be amended as follows:

"(2) The Minister of transport shall perform the preparatory activities for granting concessions on terminals of public transportation ports of national importance, execute the concession agreements and exercise control over their implementation".

b) paragraph (3) shall be repealed.

5. Articles 117e and 117f shall be repealed."

§ 16. The following amendments shall be introduced into the Municipal Property Act (published, SG, No. 44/1996; amended and supplemented, No. 104/1996, No. 55/1997, No. 22 and 93/1998, Nos. 23, 56, 64, 67, 69 and 96/1999, No. 26/2000, No.34/2001, No. 120/2002 and No. 101/2004, Nos. 29 and 30/2006):

1. In Article 9 (3) the phrase "under Article 69" shall be replaced by "provided on concession terms".

2. In Article 54 (2) the phrase "for management" shall be replaced by "of enterprises".

3. Chapter Eight, containing Article 67 - 75a, shall be repealed.

4. In § 9 of the Transitional and Concluding Provisions Paragraph (1) shall be repealed.

5. In § 46 of the Transitional and Concluding Provisions of the Act Amending and Supplementing the Municipal Property Act (SG No. 96/1999) paragraph (5) shall be repealed.

§ 17. In Article 14 of the Defence and Armed Forces of the Republic of Bulgaria Act (published in SG, No. 112/1995; amended and supplemented in No. 67 and 122/1997, Nos. 70, 93, 152 and 153/1998, Nos. 12, 67 and 69/1999, Nos. 49 and 64/2000, Nos. 25 and 34/2001, Nos. 1, 40, 45 and 119/2002, Nos. 50, 86, 95 and 112/2003, No. 93 and 111/2004 and Nos. 27, 38, 76, 88, 102 and 105/2005, No. 30 /2006), paragraph (2) Shall be amended as follows:

"(2) Properties - in public state ownership - may not be subject to the agreements under paragraph (1)".

§ 18. In the Privatisation and Post-Privatisation Control Act (published, SG, No. 28/2002; amended, No. 78/2002, No. 20, 31 and Judgment No. 5 of the Constitutional Court of the Republic of Bulgaria - SG No. 39/2003, Nos. 46 and 84/2003, Nos. 55 and 115/2004, No. 28, 39, 88, 94, 103 and 105/2005,) the following amendments and supplements shall be made:

1. Article 36 shall be amended as follows:

"Article 36. (1) Commercial companies, where the state holds shares or stock, in a situation of declared privatisation procedure, and which use facilities - in public state ownership, shall be granted concessions by right in regard to the facilities used, except in

the cases under Article 38.

(2) The respective ministers under Article 19 (1) of the Concessions Act, within three months of declaring the respective companies in privatisation, shall perform the respective actions and submit to the Council of Ministers a proposal for adopting a decision for nomination of the concessionaire of the company, declared in privatisation. The Council of Ministers shall adopt the decision not later than two months of submission of the proposal.

(3) In the course of preparation of legal due diligence analyses and privatisation valuations, any concession rights granted and principal obligations under concessions shall be taken into account, including any concession payment and the required investments, if such have been specified.

(4) The Privatisation Agency shall adopt a decision on the selection of a privatisation method after taking the decision under paragraph (2).

(5) The concession agreement shall enter into force as of the date of transfer of the ownership under the privatisation contract.

(6) Commercial companies with 50 percent or higher municipal participation, in a situation of declared privatisation procedure, shall receive by right concessions in regard to the facilities used - in public municipal ownership.

(7) In the cases under paragraph (6) the mayor of the municipality, shall perform the respective actions and submit to the municipal council a proposal for adopting a decision for nomination of the concessionaire of the company, declared in privatisation. The municipal council shall adopt a decision for determining a privatisation method after taking the decision for selection of a concessionaire".

2. Article 37 shall be amended as follows:

"Article 37. (1) In the event of privatisation of a differentiated part of the property of a commercial company with over 50 percent state participation, which is technologically directly related to a facility - in public state ownership - the concession shall be granted to the buyer of the differentiated part under the privatisation contract.

(2) The respective minister under Article 19 (1) of the Concessions Act shall perform the activities required and submit to the Council of Ministers a proposal to adopt a decision for selection as concessionaire of the buyer of the differentiated part within three months of the decision under Article 3 (3), items 1 or 3.

(3) The terms and conditions of the decision to grant a concession must be included in the privatisation valuation and the information memorandum for the differentiated part and shall be taken into account when deciding on the method.

(4) The privatisation contract shall be executed under the deferral clause that the concession agreement shall be executed.

(5) In the event of privatisation of a differentiated part of the property of a commercial company with over 50 percent municipal participation, which is technologically directly related to a facility - in public municipal ownership - the concession shall be granted to the buyer of the differentiated part under the privatisation contract.

(6) In the cases under paragraph (5) the mayor of the municipality, shall perform the respective actions and submit to the municipal council a proposal for adopting a decision for nomination of the concessionaire of the differentiated part within three months of the decision under Article 3 (3), item 2.

3. A new Article 37a shall be introduced:

"Article 37a. In the cases under Article 36 and 37 a services concession or a mining concession may be granted. The decision for selecting the concessionaire shall contain the elements under Article 39 (2), items 1-15 and Article 59 (3) and of the Concessions Act."

4. Article 38 shall be amended as follows:

"Article 38. In the cases, when commercial companies under Article 36 (1) use port terminals of public transportation ports of national importance or public use civilian airports, a concession may be granted only under the procedure of the Concessions Act".

§ 19. The following amendments shall be introduced into the Road Act (published in SG, No. 26/2000; amended, No. 88/2000, No. 111/2001, Nos. 47 and 118/2002, Nos. 9 and 112/2003, Nos. 6 and 14/2004, Nos. 88 and 104/2005, No. 30/ 2006):

1. Article 11 shall be amended as follows:

"Article 11. (1) Concessions in regard to national and municipal roads or in regard to individual sections thereof shall be granted under the terms and procedure of the Concessions Act.

(2) The preparatory activities for granting a concession over national and municipal roads or in regard to individual sections thereof, the execution of concession agreements and the exercise of control over them shall be performed by the Minister of Regional Development and Public Works".

2. Articles 12 and 13 shall be repealed.

3. In Article 14 paragraph (1) shall be amended as follows:

"(1) The territory of the concession shall encompass a specific national road or a section thereof and the corresponding areas under Article 5".

4. Articles 15 - 17 shall be repealed.

§ 20. The following amendments and supplements shall be introduced to the Physical Education and Sports Act (published in SG, No. 58/1996; Judgment No. 8 of the Constitutional Court of 1997 - No. 53/1997; No. 124/1998, No. 51 and 81/1999, No. 53/2000; corrected, No. 55/2000; amended, No. 64/2000, No. 75/2002; Judgment No. 6 of the Constitutional Court of 2002 - No. 95/2002; amended, No. 120/2002, No. 96/2004, Nos. 88 and 103/2005, No. 30/2006):

1. Article 50 shall be amended as follows:

"Article 50. (1) Sports grounds and facilities - property of the state or of the municipalities, shall be used for the purposes of physical education and sports and any related support and auxiliary activities.

(2) Sports grounds and facilities - in public state and public municipal property, shall be used for the needs of school, graduate students' and army sports, as well as for training and competition activities.

(3) The state and the municipalities shall make available in whole or in part at no charge for specified periods of time sports and tourist facilities and installations to kindergartens, general education, secondary, special, vocational and higher schools and to after-school bodies for fulfilment of the mandatory training programs and of out-of-class, out-of-school, facultative and optional classes of physical education, sports and tourism, as well as for training and competition activities of students and graduate students under terms and procedure, determined by the respective bodies.

(4) Sports grounds and facilities - property of the state, the municipalities and the

schools shall also be used by school and university sports clubs for implementing the programs for development of physical education, sports, recreation and tourism of students and graduate students.

(5) Municipal councils shall prescribe the order, under which sports and tourist sites and facilities - in municipal ownership, shall be used by citizens for accomplishment of physical education and sports goals".

2. A new Article 50a shall be introduced:

"Article 50a. (1) Outside the cases under Article 50, the sports grounds and facilities - in public state or public municipal ownership, shall be provided to natural and legal persons by means of concessions under the procedure of the Concessions Act.

(2) In the cases under paragraph (1), the concessionaire shall be obliged to make available the facility under concession for usage for or free of charge to other natural and legal persons for training or competition activities."

§ 21. In Article 61 (3) of the Subsurface Resources Act (published in SG, No. 23/1999, amended, No. 28/2000, No. 108/2001, No. 47/2002, No. 86/2003, Nos. 28 and 94/2005, No. 30/2006), a second sentence shall be introduced, reading: "A portion of the concession payment, but not more than 30 percent, to be determined in the decision to grant a concession, shall be transferred to the budgets of the municipalities, where the concessioned area is located".

§ 22. The Council of Ministers shall adopt a Regulation for the Implementation of this Act by 1.07.2006.

§ 23. This Act shall enter into force as of 1.07.2006, except for Article 42 (3) and Article 58 (4), which shall enter into effect as of the date of accession of the Republic of Bulgaria to the European Union.

§ 24. (1) Implementation of this Act shall be assigned to the Council of Ministers and to municipal councils.

(2) Methodological guidance on the implementation of this Act shall be provided by a directorate in the administration of the Council of Ministers, designated by order of the Prime Minister.

(3) The Regulation on the Implementation of this Act may also prescribe other functions for the directorate under paragraph (2), related to the implementation of this Act.