

Concessions Act

Promulgated, SG No. 36/2.05.2006, effective 1.07.2006, amended and supplemented, SG No. 53/30.06.2006, effective 1.07.2006, supplemented, SG 65/11.08.2006, effective 11.08.2006, amended and supplemented, SG No. 105/22.12.2006, amended, SG No. 41/22.05.2007, SG No. 59/20.07.2007, effective 1.03.2008, amended and supplemented, SG No. 109/20.12.2007, effective 1.01.2008, supplemented, SG No. 50/30.05.2008, effective 1.03.2008, amended and supplemented, SG No. 67/29.07.2008, amended, SG No. 102/28.11.2008, supplemented, SG No. 47/23.06.2009, effective 24.09.2009, amended and supplemented, SG No. 99/15.12.2009, effective 1.01.2010, amended, SG No. 103/29.12.2009, amended and supplemented, SG No. 52/9.07.2010, amended, SG No. 54/16.07.2010, supplemented, SG No. 50/1.07.2011, effective 1.07.2011, amended, SG No. 73/20.09.2011, effective 20.10.2011, amended and supplemented, SG No. 45/15.06.2012, effective 1.09.2012, supplemented, SG No. 82/26.10.2012, SG No. 102/21.12.2012, effective 1.01.2013, amended, SG No. 15/15.02.2013, effective 1.01.2014, amended and supplemented, SG No. 24/12.03.2013, effective 12.03.2013, amended, SG No. 66/26.07.2013, effective 26.07.2013

Chapter One GENERAL PROVISIONS

Article 1. This Act regulates the terms and procedure for the granting, performance and termination of concessions.

Article 2. (1) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) A concession shall be a right to exploit a facility and/or a service of general interest, conceded by a concession granting authority to an equity company concessionaire, under the concessionaire's obligation to construct and to manage and maintain the subject of the concession or to manage the service at the concessionaire's own risk.

(2) A concession shall be granted on the basis of a long-term agreement in writing involving a particular material interest, concluded between the concession granting authority and the concessionaire.

(3) According to its object, a concession may be:

1. a public works concession;
2. a service concession;
3. an extraction concession.

Article 3. (Amended, SG No. 67/2008) (1) A works concession shall have as its object the

partial or total building of the subject of the concession and the management and maintenance of the said subject after its commissioning, with the consideration consisting in the concessionaire's right to exploit the subject of the concession or in that right and compensation on the part of the concession granting authority under Article 6.

(2) (Amended, SG No. 45/2012, effective 1.09.2012) The concessionaire's right to exploit the subject of the concession shall include the receipt of revenue from the users of the services of general interest or from third parties, and where other economic activities are performed - the right to obtain revenue from such activities.

(3) The building of the subject of the concession shall include the activities for the construction of for both the construction and design of the said subject for the period of the concession, as well as the restoration of the subject after the occurrence of a force majeure.

(4) The management and maintenance of the subject of the concession shall include the maintenance of the availability of the subject and of the services and economic activities which are performed therethrough, and the ensuring of an uninterruptibility and a level of quality of the services provided in accordance with the clauses of the concession agreement.

Article 4. (Amended, SG No. 67/2008) (1) A service concession shall have as its object the management of a service of general interest at the concessionaire's own risk, with the consideration consisting in the concessionaire's right to exploit the service or in that right and compensation on the part of the concession granting authority under Article 6.

(2) (Amended, SG No. 45/2012, effective 1.09.2012) The concessionaire's right to exploit the service of general interest shall include the receipt of revenue from the users of the services of general interest or from third parties, and where other economic activities are performed - the right to obtain revenue from such activities.

(3) (Supplemented, SG No. 45/2012, effective 1.09.2012) The management of a service of general interest shall include the maintenance of the availability of the service and the ensuring of an uninterruptibility and quality of the services provided in accordance with the clauses of the concession agreement, and where the service is provided using a facility owned by the concession granting authority - management and maintenance of the subject of the concession.

(4) A service concession may include the performance of partial building and erection works where there is a need of partial extension, partial reconstruction, partial rehabilitation or repair of the subject of the concession.

(5) In the cases under Paragraph (4), the decision to initiate the concession granting procedure and the concession agreement shall define the partial building and erection works as a consequence or an addition to the principal object of the concession.

Article 5. (1) An extraction concession shall have as its object the exploitation of natural resources by means of extraction effected on resources ensured by the concessionaire and at the concessionaire's own risk.

(2) A subsurface resources extraction concession shall be granted under the terms and according to the procedure established by the Subsurface Resources Act.

(3) This Act shall apply to the performance and termination of a subsurface resources extraction concession, save insofar as otherwise provided for in the Subsurface Resources Act.

Article 5a. (New, SG No. 65/2006) (1) A mineral water extraction concession shall have as its object the use of mineral water by means of water abstraction.

(2) The concession under Paragraph (1) shall be granted under the terms and according to the procedure established by this Act, save insofar as otherwise regulated in the Water Act.

Article 6. (Amended, SG No. 67/2008) (1) Compensation under Article 3 (1) and Article 4 (1) shall be effected through payment to the concessionaire by the concession granting authority of part of the costs of building, management and management of the subject of the concession or of management of the service of general interest.

(2) Compensation under Paragraph (1) shall not excuse the concessionaire from assuming the risk associated with the building and management of the subject and with the management of the service and shall be allowed where it is necessary to:

1. (amended, SG No. 45/2012, effective 1.09.2012) attain a socially acceptable price of the service of general interest, or

2. restore the subject of the concession after occurrence of a force majeure.

(3) Compensation for building, management and maintenance of the subject of the concession shall be due after commissioning of the said subject and shall be effected solely for the time during which the said subject is available.

(4) Compensation for management of the service shall be effected solely for the time during which the service of general interest is available.

Article 7. (1) In consideration of the right to exploit the subject of the concession as conceded, a provision may be made for an obligation by the concessionaire to pay a concession royalty to the concession granting authority.

(2) In each particular case, the amount of the concession royalty shall be determined depending on:

1. the economic benefit which the concessionaire will derive from the concession;

2. fair sharing of the economic benefit between the concession granting authority and the concessionaire;

3. (amended, SG No. 45/2012, effective 1.09.2012) the attainment of a socially acceptable price of the services provided through the subject of the concession.

(3) The procedure and time limits for payment of the concession royalty shall be determined by the concession agreement.

Article 8. The possibility to provide compensation and to pay a concession royalty shall be determined by the decision to initiate a concession granting procedure, depending on the economic effectiveness of the exploitation of the subject of the concession, as defined on the basis of:

1. the period of the concession, and
2. (amended, SG No. 67/2008) the estimated costs of building, maintenance and management of the subject or of management of the service and exploitation revenue.

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

1. taking preparatory steps;
2. conduct of a concession granting procedure;
3. conclusion of a concession agreement.

(2) The concession granting procedure shall include:

1. adoption of a decision to initiate a concession granting procedure;
2. (amended, SG No. 67/2008) conduct of an open procedure for granting a concession;
3. selection of a concessionaire.

Article 10. (Amended, SG No. 67/2008) (1) A concession shall be granted for a period of up to 35 years.

(2) In determining the specific period, the financial and economic indicators of the concession and the technical and/or technological specifics of the subject of the concession and/or of the management of the service of general interest.

(3) The period of the concession shall begin to run as from the date of entry into force of the concession agreement.

(4) (Amended, SG No. 45/2012, effective 1.09.2012) The period set by the concession agreement may be decreased or extended by no more than one third of the initially set period by resolution of the concession granting authority only in the cases referred to in Article 70, paragraphs 3 and 4.

Article 11. (Amended, SG No. 45/2012, effective 1.09.2012) The concession shall maintain an economic balance, i.e. balance between the benefits and risks under the terms and conditions

of the concession agreement.

Article 12. (1) Upon the granting and performance of the concession, the requirements of the laws regulating the activities related to the relevant subject of the concession shall be observed as well.

(2) No concession shall be granted upon any threat to national security and defence; to the environment, to human health; to protected areas, zones and sites and to public order, as well as in other cases specified by a law.

Chapter Two

CONCESSION SUBJECTS AND PARTIES

Article 13. (1) (Redesignated from Article 13, SG No. 67/2008) A concession according to the procedure established by this Act shall be granted for the following subjects of general interest:

1. facilities declared to constitute exclusive state property;
2. (amended, SG No. 67/2008) facilities, corporeal immovables or parts of corporeal immovables constituting public state property or public municipal property;
3. (amended, SG No. 67/2008) facilities, corporeal immovables or parts of corporeal immovables constituting private state property or private municipal property;
4. (amended, SG No. 67/2008) corporeal immovables or parts of corporeal immovables owned by a body governed by public law.

(2) (New, SG No. 67/2008, supplemented, SG No. 45/2012, effective 1.09.2012) In a service concession, the subject of the concession or part thereof may be owned by the concessionaire.

(3) (New, SG No. 45/2012, effective 1.09.2012) One or more accessories - either existing or to be added by the concessionaire - may be included in the subject of the concession.

Article 14. (Amended and supplemented, SG No. 67/2008, amended, SG No. 45/2012, effective 1.09.2012) The land on which the subject of the concession, including its accessories, is built or on which it is intended to be built, shall constitute a concession area and shall be part of the subject of the concession.

Article 15. (Amended and supplemented, SG No. 67/2008, amended, SG No. 45/2012, effective 1.09.2012) (1) Until the concession agreement is terminated the state, the municipality and the body governed by public law may not dispose of the subject of the concession or part thereof, including any of its accessories.

(2) Any accretions and improvements of the subject of a concession, including any of its

accessories, which are public state or municipal property, shall become property of the state, respectively of the municipality, as of their materialisation.

(3) The ownership of the accretions and improvements of the subject of the concession, including any of its accessories, which are private state or municipal property or property of a body governed by public law, shall be provided for in the concession agreement.

(4) In the cases referred to in Article 13, paragraph 2 the concession agreement shall provide for the ownership of the subject of the concession upon termination of the concession agreement.

Article 15a. (New, SG No. 45/2012, effective 1.09.2012) (1) Depending on the ownership of the subject of the concession, the types of concessions shall be:

1. state concessions - where the subject is state property;
2. municipal concessions - where the subject is municipal property;
3. public concessions - where the subject is the property of a body governed by public law;
4. joint concessions - where the subject is property of the state, of one or more municipalities and/or public-private entities.

(2) Where in a service concession the subject of concession is property of the concessionaire, the type of concession is determined depending on the entity which customarily or by force of a statutory instrument provides the service of general interest or provided such service prior to conclusion of the concession agreement.

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

(2) A legal person may not participate independently or as part of a combination in a concession granting procedure where:

1. the said person has been declared bankrupt;
2. the said person is subject to a pending liquidation procedure;
3. a manager or a member of the managing body of the said person, or in case a legal person is a member of the managing body, the representative of the said legal person in the respective managing body, has been convicted by an enforceable sentence of any property offences, any economic offences, any offences against the financial, tax or social security system (money laundering or fraud), or of official malfeasance or of bribery (corruption), as well as of any offences related to participation in a criminal organization;

4. (new, SG No. 45/2012, effective 1.09.2012) a manager or a member of the managing body, or, where a legal entity is member of the managing body - its representative in the relevant

managing body, of said person is a related party to the concession granting authority, as well as to the authority which is in charge of the concession award procedure, or to officials in executive positions in its institution or organisation;

5. (new, SG No. 45/2012, effective 1.09.2012) said person is party to an agreement with any of the persons referred to Article 21 or 22 of the Prevention and Detection of Conflict of Interest Act;

(3) A natural person may not participate independently or as part of a combination in a concession granting procedure where:

1. the said person has been convicted by an enforceable sentence of any offence covered under Item 3 of Paragraph (2);

2. the said person has been disqualified from performing commercial activity;

3. (new, SG No. 45/2012, effective 1.09.2012) said person is a related party to the concession granting authority, as well as to the authority in charge of the concession award procedure, or to officials in executive positions in its institution or organisation;

4. (new, SG No. 45/2012, effective 1.09.2012) in a contractual relationship with any of the persons referred to in Article 21 or 22 of the Prevention and Detection of Conflict of Interest Act.

(4) (Amended, SG No. 52/2010) A tenderer may be excluded from participation in a concession granting procedure where the said person:

1. is subject to pending bankruptcy proceedings;

2. incurs liabilities for public receivables to the State or to a municipality within the meaning given by Article 162 (2) of the Tax and Social-Insurance Procedure Code, as established by an effective act issued by a competent authority, except where a rescheduling or deferral of such liabilities has been admitted;

3. incurs overdue monetary liabilities to the factory and office workers employed thereby;

4. has been a concessionaire and the concession agreement has been terminated through the fault thereof;

5. is guilty of professional malpractice, of which the commission under Article 23 (3) possesses written evidence issued by a competent authority;

6. (amended, SG No. 52/2010) has failed to submit the entire information required from the tenderers in the concession granting procedure, or has provided untrue or deficient information.

(5) (Amended, SG No. 52/2010) The circumstances under Paragraph 4 the existence of which is grounds for exclusion of a tenderer shall be specified by the notice under Article 41.

(6) (New, SG No. 45/2012, effective 1.09.2012) Where the participant has indicated in the tender bid any subcontractors, the requirements referred to in paragraphs 2 and 3 and the requirements stated in the notice pursuant to paragraph 4 shall also apply to the subcontractors.

(7) (Renumbered from Paragraph 6, amended, SG No. 45/2012, effective 1.09.2012) Participants in the concession award procedure, including subcontractors, shall make a declaration as to the presence or absence of circumstances referred to in paragraphs 1 - 4. The concession agreement shall be concluded only after the tenderer selected to be the concessionaire has presented evidence to prove the declared circumstances, as provided for in the rules for implementation of the Act.

Article 17. (1) (Redesignated from Article 17, SG No. 67/2008, supplemented, SG No. 47/2009, effective 24.09.2009, SG No. 50/2011, effective 1.07.2011, amended, SG No. 45/2012, effective 1.09.2012) Unless otherwise provided for by law, the concession granting authority shall be:

1. The Council of Ministers - in respect of state concessions;
2. the municipal council - in respect of municipal concessions;
3. a body governed by public law represented by a body as stipulated in its articles of incorporation - for municipal concessions;
4. The Council of Ministers, the respective municipal council and/or the authority of the body governed by public law - for joint concessions.

(2) (New, SG No. 67/2008) In respect of any subjects owned by a body governed by public law whereof the capital is wholly owned by the State and/or a municipality, the concession granting authority shall be the competent government minister and/or municipal council.

Article 18. (Amended, SG No. 67/2008) (1) A concessionaire shall be the person whereto the concession is granted through conclusion of the concession agreement.

(2) The concession shall be granted to the tenderer in the procedure that has been selected as a concessionaire.

(3) (Amended, SG No. 45/2012, effective 1.09.2012) Where the tenderer selected to be the concessionaire is not an equity company, and where this is stated in the notice launch of the procedure or in the bid placed by the tenderer selected to be the concessionaire, the concession agreement shall be concluded with a newly-established equity company referred to as "project company" in which:

1. the tenderer selected to be the concessionaire is the sole shareholder, or
2. the participants in the amalgamation which is not a merchant own the entire capital in the proportion under their articles of association.

(4) (Amended, SG No. 45/2012, effective 1.09.2012) Where this is stated as a requirement in the decision to launch the concession award procedure, the concession agreement shall be concluded with a newly-established equity company (public-private entity) in which partners or shareholders are the tenderer selected to be the concessionaire (private partner) and the state, the municipality, the body governed by public law and/or a public enterprise (public partner). Articles 50 - 52 of the Public-Private Partnership Act, respectively, shall apply in such cases.

(5) (Amended, SG No. 45/2012, effective 1.09.2012) The Commerce Act shall apply to the project company and to the public-private entity, unless it is otherwise provided by this Act.

(6) (Repealed, SG No. 45/2012, effective 1.09.2012).

Article 18a. (New, SG No. 45/2012, effective 1.09.2012) (1) The project company, respectively the public-private entity, shall be bound by the bid placed by the tenderer selected to be the concessionaire. The tenderer selected to be the concessionaire or each of the participants in the amalgamation, where such tendered is an amalgamation, shall:

1. be obliged to provide to the project company, respectively to the public-private entity, the resources used to evidence compliance with the applicable requirements to meet the selection criteria;

2. be jointly responsible for the implementation of the concession agreement together with the project company, respectively the public-private entity.

(2) The private partner may perform one or more of the activities which are subject to the concession agreement as a subcontractor.

(3) The method of providing the resources and the private partner's involvement as subcontractor shall be indicated in the bid and shall be included in the financial and economic model attached to the tenderer's bid.

(4) Paragraphs 1 - 3 shall apply respectively to the sole proprietor of the project company and to the partners or shareholders in that company.

Chapter Three

PREPARATORY STEPS

Article 19. (1) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) The preparatory steps and the submission of a proposal to grant state concession, shall be performed by a government minister designated by a law. In the cases where there is no empowerment by a law, the preparatory steps shall be performed by:

1. (supplemented, SG No. 45/2012, effective 1.09.2012, amended, SG No. 15/2013, effective 1.01.2014) the government minister or the head of the central-government department, which is a budget authoriser by delegation, who heads the ministry or, respectively, the central-government department whereto the relevant facility has been allocated for management or who

is responsible for providing the service of general interest;

2. (amended, SG No. 15/2013, effective 1.01.2014) the government minister whose budget authoriser by sub-delegation is the central-government department whereto the relevant facility has been allocated for management;

3. the government minister who exercises the rights of state ownership in a public-enterprise merchant whereto the relevant facility has been allocated for management;

4. (amended, SG No. 66/2013, effective 26.07.2013) the Minister of Regional Development: in the rest of the cases.

(2) (Supplemented, SG No. 50/2011, effective 1.07.2011, amended, SG No. 45/2012, effective 1.09.2012) The preparatory steps and the submission of a proposal to grant a municipal concession and a concession for mineral water sources - exclusive state property, allocated gratuitously to the municipalities for management and use, under the procedure of § 133 of the transitional and final provisions of the Act to Amend and Supplement the Water Act (SG No. 61/2010), shall be performed by the respective municipality mayor.

(3) (Amended, SG No. 45/2012, effective 1.09.2012) The preparatory steps and the submission of a proposal to grant public concession, shall be performed by the person who manages the body governed by public law.

(4) (New, SG No. 45/2012, effective 1.09.2012) Unless it is otherwise provided for by law, in a joint concession the preparatory actions shall be carried out by the authority appointed by decision of one of the authorities referred to in Article 17, paragraph 1, item 4 in coordination with the other authority.

(5) (Renumbered from Paragraph 4, SG No. 45/2012, effective 1.09.2012) The authorities under Paragraphs (1) to (3) shall perform other acts as well, related to the granting and implementation of the concessions. for which they are empowered by a law or by an act of the concession granting authority.

Article 20. (Amended, SG No. 67/2008) (1) (Amended, SG No. 45/2012, effective 1.09.2012) The initiative to grant a concession may be declared by any interested person or by a decision of the respective authority under Article 19 (1) to (4).

(2) (Supplemented, SG No. 45/2012, effective 1.09.2012) The initiative of the interested person under Paragraph (1) shall be accompanied by reasons of the feasibility of the concession from the point of view of the concession granting authority, and in a public works concession, by a pre-development investigation as well or investment project.

(3) (Amended, SG No. 45/2012, effective 1.09.2012) Not later than three months after the written declaration by an interested person under Paragraph (1), the respective authority under Article 19, Paragraph (1)-(4) shall notify the said party of the results of the study of the initiative and of the decision of the said authority to refuse or to commence preparatory steps for the granting of a concession.

(4) The initiative of the interested person shall not give rise to any rights or privileges for the said party.

(5) (Repealed, SG No. 45/2012, effective 1.09.2012).

Article 21. (1) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) As part of the preparatory steps, the authority under Article 19 (1) to (4) shall ensure the drafting of a justification of the concession.

(2) (Supplemented, SG No. 67/2008, amended, SG No. 45/2012, effective 1.09.2012) The justification referred to in paragraph 1 shall provide the rationale for the proposal to grant a concession and shall define the subject of the concession, the requirements to the subject of the concession and its contents. The justification may be based on concession analyses and/or a financial model.

(3) (Supplemented, SG No. 67/2008) The documents specified by the Regulations for Application of this Act, including documents on the results of the respective procedure under Chapter Six of the Environmental Protection Act, where such has been conducted, shall be attached to any such justification.

(4) (Amended, SG No. 67/2008) The requirements for the contents of the concession justification and the procedure for its drafting and adoption shall be established by the Regulations for Application of this Act.

Article 22. (Amended, SG No. 45/2012, effective 1.09.2012) On the basis of the said justification, the authority under Article 19 (1) to (4) shall prepare drafts of:

1. a decision to initiate a concession granting procedure;
2. a notice of the conduct of a concession granting procedure;
3. a concession agreement;
4. (amended, SG No. 67/2008) bidding documents.

Chapter Four

CONCESSION GRANTING PROCEDURE

(Heading amended, SG No. 67/2008)

Article 23. (1) A concession shall be granted while observing the following principles:

1. public openness and transparency;
2. free and fair competition;

3. (amended, SG No. 52/2010) equal treatment of all tenderers in the concession granting procedure and non-discrimination;

4. (new, SG No. 45/2012, effective 1.09.2012) proportionality.

(2) The decision to initiate a concession granting procedure, the notice or the bidding documents may not include any conditions or requirements which grant an advantage to, or unjustifiably restrict the participation of, particular persons.

(3) (Amended, SG No. 52/2010) The commission responsible for conducting the concession granting procedure, hereinafter referred to as "the commission", shall not have the right to provide information whereby a particular tenderer in the procedure is discriminated or favoured.

Article 24. (Amended, SG No. 67/2008) The concessionaire shall be selected through conduct of an open procedure.

Article 25. (1) (Amended, SG No. 52/2010) When conducting a concession granting procedure, the commission shall, by a decision, exclude from participation in the procedure tenderers in respect of whom any of the circumstances under Article 16(2) and (3) has occurred. Tenderers in respect of whom any circumstance under Article 16(4) has occurred, as defined by the notice under Article 41, shall likewise be excluded from participation in the procedure.

(2) (Amended, SG No. 52/2010) The concession granting procedure shall be conducted even in cases where only a single tenderer has been admitted.

Article 26. (1) (Amended, SG No. 67/2008, supplemented, SG No. 52/2010) When selecting the tenderers admitted to participation in the concession granting procedure, the commission shall apply one or more of the following criteria:

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

(2) (Amended, SG No. 52/2010, SG No. 45/2012, effective 1.09.2012) The suitability to pursue a professional activity shall be proven by enrolment in a professional or trade register where such enrolment is required pursuant to the legislation of the state in which the tenderer is established.

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

1. (amended and supplemented, SG No. 52/2010) registered fixed capital of the tenderer and/or;

2. (amended and supplemented, SG No. 52/2010) book value and/or market value of the

tenderer's assets, which shall be certified by the annual financial statement or by the respective market valuation prepared by licensed appraisers and/or;

3. (amended, SG No. 52/2010) the tenderer's annual financial statements for the three preceding years.

(4) The criterion of technical capacity and/or professional qualification shall be proved by:

1. a declaration containing lists of contracts implemented or in the process of implementation in the past five years, having a subject identical or similar to the subject of the concession, including the basic elements of the contracts, and/or

2. a description of the technical facilities and the capabilities to ensure quality of performance of the concession agreement, and/or

3. a list of the technicians involved, including those who will be responsible for the quality of performance of the concession agreement, and/or

4. quality management or environmental protection certificates, and/or

5. documents attesting the educational and professional qualifications of the managerial staff, who will be responsible for the performance of the activities under the concession agreement, and/or

6. (amended, SG No. 52/2010) a statement of the technicians whom the tenderer can call upon for carrying out the works, whether or not they belong to the firm: applicable to a public works concession.

(5) (Amended, SG No. 67/2008, SG No. 52/2010) The criteria for selection of tenderers and the minimum levels of applicable requirements regarding their fulfilment shall be determined in accordance with the specifics of the subject of the concession and/or the management of the general interest service and shall be indicated in the notice.

(6) (Amended, SG No. 52/2010, amended and supplemented, SG No. 45/2012, effective 1.09.2012) Proving conformity to the criteria under Items 2 and 3 of Paragraph (1) may through the resources of third parties. In such cases, the tenderer must present evidence that the third party's resources will be available.

(7) (Amended, SG No. 52/2010) The tenderers that comply with the selection criteria shall be determined by a decision of the commission and may continue their participation in the procedure, while the rest of the candidates shall be excluded.

(8) (Repealed, SG No. 67/2008).

(9) (Repealed, SG No. 67/2008).

Article 27. (1) (Amended, SG No. 67/2008) Upon conduct of a concession granting

procedure, the criterion applied in the evaluation of tenders shall be the most economically advantageous tender.

(2) The most economically advantageous tender shall be identified on the basis of an integral evaluation of the tender under the criteria specified in the decision and in the notice of initiation of a concession granting procedure.

Article 28. (1) (Amended, SG No. 67/2008) The following criteria may be applied in arriving at the integral evaluation of the tender:

1. related to the object of the concession, such as:

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

(b) quality of the services provided;

(c) price of the works;

(d) price of the services provided;

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

(f) functional characteristics of the subject of the concession;

(g) time limit for completion of the works;

(h) terms for effecting of the compensation under Article 6, if such is provided for in the decision to initiate a concession granting procedure;

2. environmental protection measures, where such are required;

3. period of the concession;

4. the lowest price of the investment for works and/or the lowest price of the services provided through the subject of the concession: applicable to a public works concession;

5. the lowest price of the services provided through the subject of the concession: applicable to a service concession;

6. amount of the concession royalty, if such are provided for;

7. other, depending on the specifics of the concession.

(2) The decision to initiate a concession granting procedure, the notice under Article 41 and the methodology for evaluation of the tenders shall state the criteria and the relative weighting to be given to each such criterion. The manner of rating each of the criteria shall be specified in the

evaluation methodology, which shall constitute an integral part of the bidding documents.

(3) A tender which does not comply with the criteria and requirements for satisfying them shall not be evaluated.

Article 29. (1) Should the tender submitted by any tenderer propose a price for works or for the services provided which is more than 30 per cent lower than the average price of the rest of the tenders, the commission shall request from the said tenderer to submit a detailed justification in writing of the price so tendered, allowing reasonable time for submission of the said justification which may not be less than three working days from receipt of the request therefor.

(2) The commission may accept the justification in writing under Paragraph (1) and not exclude the tender where any of the following objective circumstances is cited, relating to:

1. an original solution as to the carrying out of the works or as to the provision of the services;

2. technical solution;

3. existence of exceptionally favourable conditions available to the tenderer;

4. economics of the carrying out of the works or of the provision of services;

5. obtaining State aid.

(3) The tender shall not be evaluated where:

1. the tenderer fails to submit the justification in writing as requested within the time limit as fixed, or

2. the commission determines that the circumstances cited in the said justification are not objective, or

3. the tenderer fails to prove the legal grounds on which State aid has been obtained within a time limit allowed by the commission.

Article 30. An open procedure shall be a concession granting procedure in which any person may submit a tender.

Article 31. (Repealed, SG No. 67/2008).

Article 32. (Repealed, SG No. 67/2008).

Article 33. (Repealed, SG No. 67/2008).

Article 34. (Repealed, SG No. 67/2008).

Article 35. (Repealed, SG No. 67/2008).

Article 36. (Repealed, SG No. 67/2008).

Article 37. (Amended, SG No. 67/2008) The procedure and time limits for organizing and conducting a concession granting procedure shall be established by the Regulations for Application of this Act.

Chapter Five

DECISION TO INITIATE CONCESSION GRANTING PROCEDURE

Article 38. (1) (Amended, SG No. 45/2012, effective 1.09.2012) As a result of the preparatory steps performed, the authority under Article 19 (1) to (4) shall submit to the concession granting authority a reasoned proposal to initiate a concession granting procedure.

(2) The justification of the concession under Article 21, the drafts under Article 22 and other documents specified by al law or by the Regulations for Application of this Act shall be attached to the proposal.

Article 39. (1) On the basis of the proposal under Article 38 (1), the concession granting authority shall adopt a decision to initiate a concession granting procedure.

(2) The decision under Paragraph (1) shall determine:

1. the object and the subject of the concession;
2. (amended, SG No. 45/2012, effective 1.09.2012) other economic activities, where such activities are envisaged;
3. (amended, SG No. 45/2012, effective 1.09.2012) the accessories - where accessories are included in the subject of the concession;
4. the maximum period of the concession;
5. the starting date of the concession;
6. (amended, SG No. 45/2012, effective 1.09.2012) the conditions for implementation of the concession, as well as any factual or legal circumstances whose occurrence or change may lead to disturbing the economic balance;
7. the basic rights and obligations under the concession agreement;
8. the conditions for subcontracting the building of the subject of the concession;

9. the conditions and/or prohibitions to lease the subject of the concession and to subcontract activities for the exploitation and maintenance of the said subject;

10. the type and amount of the performance guarantees for the obligations under the concession agreement and/or other types of security;

11. (supplemented, SG No. 67/2008) the conditions and form for payment of the concession royalty, where such are provided for, including:

(a) the amount of the lump-sum concession royalty due at the effective date of the concession agreement;

(b) the amount of the minimum annual concession royalty for the period of the concession;

(c) the maximum grace period during which the concessionaire shall be exempted from payment of the concession royalty, where such grace period is provided for;

(d) the procedure for payment of the concession royalty;

(e) (new, SG No. 67/2008) the form of concession royalty and/or the money equivalent of the said form;

12. (amended, SG No. 67/2008) the requirements related to national security and defence;

13. (new, SG No. 67/2008) the conditions for protection of the environment, of human health and of the protected areas, zones and sites;

14. (renumbered from Item 13, SG No. 67/2008) the form, amount and conditions for compensation under Article 6, where such compensation is provided for;

15. (renumbered from Item 14, SG No. 67/2008) the obligation on the part of the concessionaire to insure the subject of the concession for the period of the concession for the account of the concessionaire and in favour of the concession granting authority;

16. (repealed, renumbered from Item 15, SG No. 67/2008) other requirements related to the nature of the concession, which are not statutorily prescribed;

17. the criteria for integral evaluation of the tenders and the relative weighting of the said criteria;

18. the amount and the mode of payment of the participation guarantee for the concession granting procedure.

(3) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) The decision referred to in paragraph 1 may stipulate the requirement that the concession agreement be concluded with a project or public-private entity. Where the establishment of a public-private entity is envisaged, the decision shall state the circumstances referred to in Article 50, paragraph

3 of the Public-Private Partnership Act.

(4) (Amended, SG No. 67/2008) The decision under Paragraph (1) shall not be promulgated.

(5) The decision under Paragraph (1) may be amended or supplemented in the cases provided for by this Act.

Article 40. (1) (Amended, SG No. 67/2008, SG No. 52/2010, SG No. 45/2012, effective 1.09.2012) Within seven days after the entry into force of the decision to initiate a concession granting procedure, the authority under Article 19(1) to (4) shall approve, by a decision, the concession notice, bidding documents and draft concession agreement.

(2) (Amended, SG No. 52/2010, SG No. 45/2012, effective 1.09.2012) Following the approval of the documents under Paragraph 1, the authority under Article 19(1) to (4) shall be bound by the decision to initiate a concession granting procedure.

Chapter Six

CONDUCT OF CONCESSION GRANTING PROCEDURE

Section I

Notice of Conduct of Concession Granting Procedure

Article 41. (Amended, SG No. 67/2008, SG No. 52/2010, SG No. 45/2012, effective 1.09.2012) (1) For a public works concession the notice for the concession award procedure, hereinafter referred to as "the notice", shall contain the following:

1. information on the authority which conducts the procedure (contracting authority):

- a) name, address and mailing address;
- b) type of authority and main activity or activities;

2. information on the subject of the concession:

- a) name;
- b) type, volume and location of works;
- c) short description of works;
- d) Common Procurement Vocabulary (CPV) code;

e) in the cases referred to in Article 53, paragraph 1 - the minimum percentage of the total value of works to be performed by third parties - subcontractors;

3. legal, economic, financial and technical information regarding:

a) the circumstances referred to in Article 16, paragraphs 2 and 3, the documents and methods of verification;

b) the circumstances referred to in Article 16, paragraph 4, the existence of which requires that the commission exclude a tenderer/participant in the procedure, the documents and the manner of certifying their existence;

c) selection criteria, minimum levels of relevant requirements for compliance therewith and the documents whereby compliance therewith is certified;

4. information regarding the concession award procedure:

a) the criteria for arrival at an integral evaluation of the tenders (award criteria), and the relative weight of each of the said criteria;

b) address and deadline for receipt of tenders;

c) language in which the applications and offers have to be written;

5. additional information:

a) relation of the concession to a project and/or programme financed by European Union funds;

b) type of concession - state, municipal, public, joint;

c) type of the subject of the concession;

d) location of the subject of the concession;

e) description of or requirements to the accessories;

f) description and volume of the services of general interest which are subject of the concession;

g) amount of guarantee for participation in the procedure and conditions for the furnishing or payment of the said guarantee;

h) period of tender validity;

i) place and deadline for receipt for the bidding documents;

j) place, date and hour for opening of tenders;

k) restrictions to submitting variants in the tender;

l) date of dispatch of the notice to the State Gazette;

m) procedure and deadline for appeal of the notice approval decision;

n) other information depending on concession specifics, including the requirement that the concession agreement be concluded with a project company or a public-private entity.

(2) The notice for a service concession and for an extraction concession shall contain the information referred to in paragraph 1, where applicable to the specific concession.

Article 42. (1) (Supplemented SG No. 45/2012, effective 1.09.2012) The notice shall be completed in electronic form following the model:

1. (new, SG No. 45/2012, effective 1.09.2012) approved by Commission Regulation (EC) No. 1150/2009 of 10 November 2009 amending Regulation (EC) No 1564/2005 as regards the standard forms for the publication of notices in the framework of public procurement in accordance with Council Directives 89/665/EEC and 92/13/EEC (OJ, L 313/3, 28 November 2009) - for works concessions;

2. (new, SG No. 45/2012, effective 1.09.2012) published on the internet page of the National Concessions Register - for service concessions and for concessions for extraction of natural resources.

(2) (Amended, SG No. 67/2008, amended and supplemented, SG No. 45/2012, effective 1.09.2012) The authority under Article 19 (1) to (4) shall dispatch the electronic form containing the notice for promulgation on the Internet site of the State Gazette and for entry into the National Concessions Register within the timeframe referred to in Article 40, paragraph 1. The notice shall be promulgated and shall be entered into the National Concessions Register within five days after its dispatch.

(3) (Effective as from the date of accession of the Republic of Bulgaria to the European Union, SG No. 36/2006, amended, SG No. 67/2008, SG No. 52/2010) Simultaneously with its dispatch to the State Gazette, the notice of a public works concession of a value which exceeds the value specified by the relevant regulation of the European Commission shall also be e-mailed to the Official Journal of the European Union for publication purposes.

(4) (New, SG No. 45/2012, effective 1.09.2012) The value of the works concession shall be determined as the sum of the forecasted amount of all revenue generated by the concessionaire for the duration of the concession, as follows:

1. revenue from provision of the service of general interest;

2. revenue from other economic activities with the subject of the concession;

3. compensation paid by the concession granting authority.

Article 43. (1) (Supplemented, SG No. 52/2010, amended, SG No. 45/2012, effective 1.09.2012) Following the promulgation of the notice in the State Gazette, or the publication of the notice in the Official Journal of the European Union in the cases under Article 42(3), the authority under Article 19 (1) to (4) shall cause the publication of a notice of the concession granting procedure in the mass media and/or the posting of such a notice on the Internet.

(2) (Amended, SG No. 67/2008) The said notice shall indicate, as a minimum, the subject of the concession and the number of the notice on the Internet site of the State Gazette in which the notice was promulgated.

(3) (Amended, SG No. 67/2008) The notice may not include any information which is not contained in the notice.

Section II

Bidding Documents and Draft Concession Agreement

Article 44. (1) The bidding documents for the concession granting procedure shall contain:

1. description of the subject of the concession and the documents which identify the said subject;

2. (new, SG No. 67/2008) the documents certifying the non-existence of a circumstance for admission to participation in the procedure;

3. (new, SG No. 67/2008) the selection criteria and the documents certifying compliance with the said criteria;

4. (renumbered from Item 2 and amended, SG No. 67/2008) the conditions which the tender must meet, including technical specifications;

5. (renumbered from Item 3, SG No. 67/2008, amended, SG No. 45/2012, effective 1.09.2012) pre-development investigations or development-project designs: applicable to a public works concession, if any such designs have been developed;

6. (renumbered from Item 4, SG No. 67/2008) minimum requirements which the variants must meet and the manner of their presentation: where the notice does not restrict the possibility of submitting variants in the tender;

7. (renumbered from Item 5, SG No. 67/2008) the criteria for arrival at an integral evaluation of the tenders, the relative weighting of the said criteria and the methodology for evaluation of the tenders;

8. (renumbered from Item 6, SG No. 67/2008) a standard form of the offer and guidelines for its completion;

9. (renumbered from Item 7 and amended, SG No. 67/2008) other, depending on the subject

of the concession.

(2) (Amended SG No. 45/2012, effective 1.09.2012) The methodology under Item 7 of Article 1 shall contain precise and detailed guidelines for determining the evaluation under each criterion and for arrival at the integral evaluation of the tender.

(3) (Amended SG No. 45/2012, effective 1.09.2012) The technical specifications under Item 4 of Paragraph (1) shall be determined under the Public Procurement Act.

(4) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) The bidding documentation shall be published on the internet page of the respective authority referred to in Article 19, paragraphs 1 - 4. The authority in charge of the concession award procedure shall set the price for the bidding documentation or decide whether it should be provided free of charge. The price of the bidding documentation may not exceed the actual costs of its printing and photocopying. Upon request from an interested party the contracting entity shall be obliged to send the documentation to the requesting party, at this party's expense, and to enable this party to review the documentation on location prior to purchasing it.

(5) (New, SG No. 67/2008) The time limit for the receipt of the bidding documents shall be up to the third day prior to expiry of the time limit for submission of tenders.

Article 45. Copies of the decision to initiate the procedure, a copy of the notice and a copy of the draft concession agreement, as well as other documents specified by the Regulations for Application of this Act, shall be attached to the bidding documents.

Section III

Commission for Conduct of Concession Granting Procedure

Article 46. (1) The concession granting procedure shall be organized by the authority which performed the preparatory steps and shall be conducted by a commission appointed by:

1. the Prime Minister: applicable to state concessions, and
2. the municipality mayor: applicable to municipal concessions;
3. the authority who manages the body governed by public law: applicable to public concessions;
4. (new, SG No. 45/2012, effective 1.09.2012) an authority appointed in coordination with the concession granting authorities - for joint concessions.

(2) (Supplemented, SG No. 67/2008) The commission shall consist of a chairperson, a deputy chairperson and at least three more members.

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

(4) The commission may not comprise any person who:

1. has a material interest in the concession to be granted;

2. (amended, SG No. 52/2010) is a party related to a tenderer in the concession granting procedure or, in the cases where the tenderer is a legal person, also to a member of the management or supervisory body of the said person.

(5) (Amended, SG No. 67/2008) The chairperson, the deputy chairperson and the rest of the commission shall be obliged within three days:

1. after receipt of the order on appointment of the commission, to submit a declaration on the non-existence of a material interest in the concession to be granted;

2. after becoming aware of the circumstance that a party related thereto participates in the concession granting procedure, to submit a request for release from the composition of the commission.

(6) (Amended, SG No. 45/2012, effective 1.09.2012) If a material interest in the concession to be granted exists, if a request for release from the composition of the commission has been submitted, as well and in other cases where, due to objective reasons under Paragraph (5), a person is unable to perform the duties thereof, the respective authority under Paragraph (1) shall appoint a new member of the commission.

Article 47. (1) (Amended, SG No. 67/2008) The commission on state concessions shall be chaired by the authority that performed the preparatory steps for the granting of the concession. In the cases under Article 46 (6), a deputy minister of the respective ministry shall be appointed chairperson of the commission.

(2) At least one representative of the relevant ministry and at least one representative of the administration of the Council of Ministers and of the Ministry of Finance shall mandatorily be included as members of the commission on state concessions. At the discretion of the Prime Minister, representatives of other central-government departments and of the regional governor may also be included in the commission.

(3) The majority of the commission on state concessions, including the chairperson and the deputy chairperson, may not be formed by representatives of one and the same central-government department.

Article 48. (Amended, SG No. 67/2008) (1) The commission shall:

1. organize the acceptance and safekeeping of the tenders;

2. admit the candidates to participation in the procedure and exclude them from such participation;

3. perform the selection and determine the tenderers qualified to continue their participation

in the procedure

4. (amended, SG No. 52/2010) give clarifications and provide additional information or documents to the interested parties and tenderers;

5. make proposals for elimination of any unlawfulness in the notices, the bidding documents and the draft concession agreement;

6. examine and rank the tenders and rank the tenderers, proposing that the highest ranked tenderer be selected as a concessionaire;

7. prepare a draft decision on selection of a concessionaire or a draft decision to terminate the concession granting procedure.

(2) The decisions of the commission shall be reasoned and, together with the steps performed thereby, shall be recorded in a memorandum.

(3) (Amended, SG No. 52/2010) The commission shall notify all tenderers concerned regarding the decisions adopted under Paragraph 1(2) and (3), as well as the underlying reasons thereof.

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

(5) (Supplemented, SG No. 82/2012) The members of the commission and the consultants shall be paid remuneration under terms and according to a procedure established by the Regulations for Application of this Act, unless provided for otherwise by a legislative act.

Article 48a. (New, SG No. 52/2010) (1) The clarifications, documents and information under Article 48(1)(4) shall be delivered upon signed acknowledgement by the interested person /tenderer concerned, or a representative authorised thereof.

(2) In addition to the procedure laid down in Paragraph 1, any notification regarding the decisions under Article 48(1)(2) and (3) may be effected by e-mailing the decision to the e-mail address specified when procuring the bidding documentation, or contained in the tender itself. Where the decision has been e-mailed, it shall be considered delivered at the time of its receipt into the relevant information system, which shall be attested by a copy of the electronic entry thereof.

(3) (New, SG No. 45/2012, effective 1.09.2012) The notification procedure referred to in paragraphs 1 and 2 shall also apply in other cases defined by this Act and the rules for its implementation.

Section IV

Tenders

(Heading amended, SG No. 67/2008)

Article 49. (Amended, SG No. 67/2008) A tender for participation in an open procedure may be submitted by any person under Article 16 (1), in respect of whom any circumstance under Article 16 (2) to (4) does not apply.

Article 50. (Amended, SG No. 67/2008) (1) The time limit for receipt of tenders shall be determined in the notice under Article 41.

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

1. (amended, SG No. 45/2012, effective 1.09.2012) fifty-two days after the date of promulgation of the notice in the State Gazette: in a public works concession where the value exceeds the value specified by a regulation of the European Commission;

2. thirty-five days after the date of dispatch of the notice to the Internet site of the State Gazette: in the rest of the cases.

Article 51. (1) (Amended, SG No. 52/2010) When preparing their tender, the interested parties shall comply with the conditions stated in the bidding documents.

(2) Until expiry of the time limit for receipt of tenders, each tenderer in the procedure may amend, supplement or withdraw the tender thereof.

(3) (Amended, SG No. 52/2010) Any tenderer in a concession granting procedure shall have the right to submit only one tender.

(4) (Amended, SG No. 52/2010) Each tenderer may propose several variants within the tender thereof, except in the cases where this possibility is restricted by the notice.

(5) The commission shall examine and rank only those variants of the tenders which meet the minimum requirements announced by the bidding documents.

(6) (New, SG No. 52/2010) The commission shall not consider and evaluate the following tenders:

1. a tender submitted by a tenderer who has been excluded from participation in the concession procedure by a decision under Article 25(1) or Article 26(7);

2. a tender which has been withdrawn by the tenderer;

3. a tender with expired validity period which has not been renewed by the tenderer upon the relevant prompting thereof;

4. a tender submitted by a tenderer who has not extended the validity period of the bank guarantee for tender participation.

Article 52. (1) Each tenderer may attach a declaration to the tender, designating which part of the information contained therein is of a confidential nature.

(2) (Amended, SG No. 52/2010) Information which includes technical or business secrets of the tenderer may be confidential.

(3) The data which must be contained in the record of the registered concession in the National Concession Register may not be designated as being of a confidential nature.

(4) The information stated in the declaration under Paragraph (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) The commission and the consultants recruited shall be obliged not to disclose and not to communicate to other parties the information under Paragraph (1), except in the cases provided for in the Access to Public Information Act.

Article 53. (1) By the decision to initiate a public works concession granting procedure, the concession granting authority may pose a condition that at least 30 per cent of the total value of the works be carried out by third-party subcontractors.

(2) (Amended, SG No. 52/2010) In circumstances other than those provided in Paragraph 1, the tenderers shall be free to include in their tenders a proposal for part of the works to be subcontracted, specifying the percentage of the value of the works which is to be carried out by subcontractors.

(3) The proposal of the tenderer selected as concessionaire regarding the subcontracting of part of the works shall be included in the concession agreement.

Article 54. (1) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) In case of a public works concession the concessionaire may assign part of the works to the subcontractors indicated in the bid. Where a subcontractor stated in the bid must be replaced or the need arises to use another subcontractor, the concessionaire shall select the subcontractor following the procedure under the Public Procurement Act, and the deadline for receipt of:

1. applications for participation in the procedure may not be shorter than 37 days after the date of promulgation of the notice on the Internet site of the State Gazette;

2. the tenders may not be shorter than 40 days after the date of promulgation of the notice on the Internet site of the State Gazette or after the date of dispatch of the invitations to submit tenders.

(2) (Amended, SG No. 45/2012, effective 1.09.2012) The Public Procurement Act shall not apply in the cases where the subcontractor is a party related to the concessionaire.

(3) A list of the related persons under Paragraph (2) shall be included in the tender of the

tenderer and shall be updated after each change in the relations between the parties.

(4) (Supplemented, SG No. 45/2012, effective 1.09.2012) The lists under Paragraph (3) shall be attached to the concession agreement. Upon change of the relations between the concessionaire and the party related thereto, a supplementary agreement to the concession agreement shall be concluded according to the procedure established by Article 70, paragraph 2.

Section V Guarantees

Article 55. (1) (Amended, SG No. 52/2010) Together with their tenders, the tenderers shall submit a participation guarantee for the procedure in the form of a cash deposit or bank guarantee. Each tenderer may choose which of the two forms of guarantee shall be used.

(2) (Amended, SG No. 52/2010) The guarantee under Paragraph (1) shall secure the tenderer's participation in the concession granting procedure and the conclusion of the concession agreement by the tenderer who has been selected as a concessionaire. Where such guarantee is in the form of bank guarantee, at the moment of its issuance it must be ensured a validity guaranteeing its realization according to the requirements of this Section.

(3) (Amended, SG No. 52/2010) The guarantee shall be released by a decision of the authority that organizes the conduct of the concession granting procedure within seven days after expiry of the time limit for appeal of the concessionaire selection decision or the procedure termination decision, respectively.

(4) (Supplemented, SG No. 52/2010) The guarantees furnished by tenderers who have discontinued their participation in the procedure, by withdrawing the tender concerned prior to its validity period expiration, shall be retained or utilised, respectively.

(5) The guarantees furnished by the following tenderers shall not be released within the time limit under Paragraph 3:

1. the tenderer selected as a concessionaire;
2. (amended, SG No. 52/2010) the tenderer ranked second in the concession selection.

(6) The guarantee of the tenderer selected as the concessionaire shall be retained or, respectively, realized in the cases where the said tenderer fails to conclude the concession agreement within the time limit set, or shall be released within seven days after the conclusion of the said agreement.

(7) (Repealed, SG No. 52/2010).

Article 56. The concessionaire shall furnish guarantees and/or other security for the fulfilment of the obligations thereof under the concession agreement.

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

Chapter Seven

SELECTION OF CONCESSIONAIRE

Article 58. (1) (Amended, SG No. 67/2008) The authority which organizes the conduct of the concession granting procedure shall submit to the concession granting authority a report and a draft decision on selection of a concessionaire within a time limit determined by the order on appointment of the commission. The memorandum of the commission under Article 48 (2) shall be attached to the report.

(2) On the basis of the report and the memorandum of the commission, after an individual review of the facts and circumstances set forth therein, the concession granting authority shall adopt a decision on:

1. (amended, SG No. 67/2008) selection of the highest ranked tenderer as a concessionaire, or

2. assigning the commission to cure any non-conformities as detected, whereatfer to perform a new ranking, or

3. termination of the procedure in the cases under Items 1 to 4 of Article 60 (1).

(3) (Amended, SG No. 52/2010) The tenderers concerned shall be notified about the decision under Paragraph 2 and the reasons underlying its adoption as per the procedure set out in Article 48a. They may appeal said decision within ten days of the notification following the procedure laid down in Chapter Eleven.

(4) (Effective as from the date of accession of the Republic of Bulgaria to the European Union, SG No. 36/2006, amended, SG No. 67/2008, repealed, SG No. 52/2010, new, SG No. 45/2012, effective 1.09.2012) For joint concessions the decision referred to in paragraph 2 shall be adopted by the Council of Ministers and the respective municipal council and/or authority of the body governed by public law, unless it is otherwise provided for by law.

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

1. (amended, SG No. 67/2008) specify the conditions of the concession and the rights and obligations of the parties in accordance with the tender of the tenderer proposed as a concessionaire, which have not been defined or which have been defined within limits by the decision to initiate the concession granting procedure;

2. set a time limit for conclusion of the concession agreement, which may not be more than three months.

(2) (Amended, SG No. 67/2008, SG No. 52/2010, supplemented, SG No. 45/2012, effective

1.09.2012) Where the best-ranked tenderer fails to submit documents evidencing the circumstances referred to in Article 16, paragraphs 1 - 4 or to conclude the concession agreement within the prescribed time limit, the concession granting authority may appoint as concessionaire the tenderer who has been ranked second.

(3) In respect of state concessions, the decision of the Council of Ministers shall designate the authority which shall:

1. conclude the concession agreement and represent the concession granting authority thereunder, except in regard to the termination of the said agreement;

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

3. (new, SG No. 45/2012, effective 1.09.2012) represent the state in court cases concerning the implementation of the concession agreement.

(4) In respect of municipal and public concessions, the powers under Paragraph (3) shall be exercised by the respective authority under Article 19 (2) and (3).

(5) (New, SG No. 45/2012, effective 1.09.2012) For joint concessions the decision to select a concessionaire shall also determine the authority exercising the powers referred to in paragraph 3, unless it is otherwise provided for by law.

Chapter Eight

SUSPENSION AND TERMINATION OF CONCESSION GRANTING PROCEDURES

(Heading amended, SG No. 52/2010)

Article 59a. (New, SG No. 52/2010) (1) (Amended, SG No. 45/2012, effective 1.09.2012) Any concession granting procedure pertaining to public works shall be suspended by a reasoned decision of the concession granting authority, or the relevant authority under Article 19(1) to (4), in cases where the European Commission has notified the Republic of Bulgaria that, prior to the conclusion of a given concession agreement, a serious infringement of the European Union law was committed in the course of the concession granting procedure and where:

1. the infringement cannot be rectified without changing the conditions under which the procedure was notified, or

2. the authority concerned does not agree with the infringement allegation of the European Commission.

(2) On the same day when a decision under Paragraph 1 is adopted, the authority concerned shall refer to the Commission on Protection of Competition a request seeking to establish

unlawfulness, including on the grounds of existing discriminative requirements regarding the selection criteria or other discriminative technical, economic or financial conditions contained in the concession notice, bidding documentation or any other document concerned with the concession granting procedure, as per the procedure set out in Chapter Eleven.

(3) The Commission on Protection of Competition, within three days of the request's being referred to it, shall initiate proceedings and notify the authority concerned, as well as the administration of the Council of Ministers.

(4) In the proceedings initiated under Paragraph 3, the tenderers concerned shall, of their own motion, join as parties to the proceedings.

(5) The suspension referred to in Paragraph 1 shall be effective until the dispute is settled by an enforced judgement.

(6) The Commission on Protection of Competition or the Supreme Administrative Court, respectively, shall notify the authority concerned and the administration of the Council of Ministers about any judgement in the proceedings under Paragraph 3 within 3 days of its being ruled.

Article 60. (1) The concession granting procedure shall be terminated by a decision of the concession granting authority where:

1. (amended, SG No. 67/2008) no tenders have been submitted, or no tenderer has been admitted;

2. the contents of not a single tender are responsive to the requirements of the decision to initiate a concession granting procedure or to the conditions announced by the bidding documents;

3. the necessity to conduct the procedure is eliminated as a result of circumstances which were not foreseen and could not have been foreseen when adopting the decision to initiate the procedure;

4. violations are detected in the initiation and conduct of the procedure which cannot be eliminated without change of the terms under which the procedure has been announced;

5. (amended, SG No. 67/2008, SG No. 52/2010) the tenderer selected as a concessionaire and the tenderer ranked second successively decline to conclude a concession agreement.

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

1. modify the decision to initiate a concession granting procedure and announce a new procedure, or

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

(3) (Amended, SG No. 67/2008, SG No. 52/2010) The decision under Paragraph 1, along with the reasons underlying its adoption, shall be communicated to the tenderers concerned as per the procedure set out in Article 48a and may be appealed in accordance with the procedure laid down in Chapter Eleven within ten days after its being communicated.

(4) (Amended, SG No. 67/2008, SG No. 52/2010) Upon termination of the concession granting procedure in the cases under Items 3 and 4 of Paragraph 1, within 14 days after the entry into force of the decision under Paragraph 1, the relevant authority shall reimburse the tenderers concerned for the expenses incurred to purchase the bidding documents and shall release or return the guarantees deposited by the tenderers as per the procedure set out in Article 55(3).

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

Chapter Eight A

(New, SG No. 52/2010)

CORRECTIVE MECHANISM ADDRESSING INFRINGEMENTS COMMITTED IN CONCESSION GRANTING PROCEDURES AND ESTABLISHED BY THE EUROPEAN COMMISSION

Article 61a. (New, SG No. 52/2010) (1) Where the European Commission notifies the Permanent Representation of the Republic of Bulgaria to the European Union that, prior to the conclusion of a concession agreement for public works, a serious infringement of the European Union law in the field of public procurement was committed in the course of the concession granting procedure, the Permanent Representation shall forward the notification to the administration of the Council of Ministers, the Ministry of Foreign Affairs and the Ministry of Economy, Energy and Tourism on the day of notification receipt, or on the following business day at the latest.

(2) (Amended, SG No. 45/2012, effective 1.09.2012) On the day of notification receipt, the administration of the Council of Ministers shall send copies thereof to the relevant concession granting authority and the authority under Article 19(1) to (4).

(3) (Amended, SG No. 45/2012, effective 1.09.2012) The authority under Article 19(1) to (4) shall conduct a check regarding the reasons of the European Commission to believe that a serious infringement has been committed and, depending on the infringement:

1. within 10 days following the notification under Paragraph 2 shall:

(a) take corrective measures rectifying the infringement, or

(b) suspend the concession granting procedure by a decision pursuant to Article 59a(1);

2. within 3 days following the notification under Paragraph 2 shall submit to the concession granting authority a draft decision addressing the actions under Item 1 or the suspension of the procedure in the circumstances under Article 60(1)(4).

(4) (Amended, SG No. 45/2012, effective 1.09.2012) In the circumstances under Paragraph 3(2), the concession granting authority shall adopt the relevant decision within 7 days after the matter has been referred to the said authority by the authority under Article 19(1) to (4).

(5) No later than 14 days following the notification under Paragraph 2, the authority concerned shall notify the administration of the Council of Ministers about any actions taken under Paragraphs 3 and 4, including proceedings regarding the alleged infringement initiated by a motion brought to the Commission on Protection of Competition, and shall submit the complete information and documentation. Where the infringement stems from a statutory instrument which is not compliant with the European Union law, the notification shall refer to the statutory instrument and the authority competent to amend it.

Article 61b. (New, SG No. 52/2010) (1) On the day following the date of receipt of the information and documents under Article 61a(5), the administration of the Council of Ministers shall send its response regarding the infringement alleged by the European Commission to the Permanent Representation of the Republic of Bulgaria to the European Union, with a copy to the Ministry of Foreign Affairs and the Ministry of Economy, Energy and Tourism. The said response shall contain at least:

1. an assertion that the infringement has been rectified, or

2. information about the instrument which rules on the concession procedure suspension and/or about proceedings initiated before the Commission on Protection of Competition and, where the infringement stems from a statutory instrument, information regarding the measures taken to bring the statutory instrument in compliance with the European Union law.

(2) The relevant evidence shall be enclosed with the response under Paragraph 1.

Article 61c. (New, SG No. 52/2010) The Commission on Protection of Competition shall forward any decisions and rulings passed in proceedings under this Act to the administration of the Council of Ministers within 7 days of their announcement.

Article 61d. (New, SG No. 52/2010) Notifications under Article 61a, excluding the notification from the European Commission to the Permanent Representation of the Republic of Bulgaria to the European Union, along with any information and documents enclosed therewith, shall be delivered by electronic mail with an electronic signature affixed accordingly.

Chapter Nine

CONCESSION AGREEMENT

Section I

Conclusion of Concession Agreement

Article 62. (Amended, SG No. 52/2010) (1) The competent authority may not conclude the concession agreement before the expiration of a 14-day period commencing on the date when the tenderers concerned have been notified about the concessionaire appointment decision, unless the tenderer appointed as the concessionaire is also the only tenderer concerned.

(2) The concession agreement shall be concluded within the time limit set in the concessionaire appointment decision which commences on the date of entry into force of the said decision or of a ruling which allows provisional enforcement.

(3) The concessionaire appointment decision shall enter into force when all previous decisions in the concession granting procedure have entered into force and where the concessionaire appointment decision has not been appealed. Otherwise, the said decision shall enter into force after the dispute has been settled.

Article 63. (Amended, SG No. 67/2008) (1) The concession agreement shall be concluded without conduct of negotiations in accordance with the draft included in the bidding documents and with the tender of the highest ranked tenderer.

(2) (Amended, SG No. 52/2010) In the cases where the best-ranked tenderer declines to conclude the concession agreement, the agreement may be concluded after holding negotiations with a view to improving the proposals as per the comprehensive tender evaluation criteria. The said negotiations shall be conducted with the tenderer ranked second.

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

(2) A concession agreement for a municipal concession shall be signed in four originals. The fourth original shall be dispatched to the Municipal Council within three days after the signature of the concession agreement.

(3) (Amended, SG No. 45/2012, effective 1.09.2012) In respect of any unregulated matters in connection with the conclusion, performance and termination of the concession agreement, the provisions of the Commerce Act and of the General Part of the Obligations and Contracts Act shall apply, *mutatis mutandis*.

(4) (New, SG No. 45/2012, effective 1.09.2012) Disputes relating to the conclusion, performance and termination of concession agreements shall be resolved by competent civil court.

Section II

Content of Concession Agreement

Article 65. (1) By the concession agreement, the concession granting authority shall conceded to the concessionaire the right to exploit the subject of the concession, and the concessionaire shall undertake, at his, her or its own risk, to construct and/or to manage and maintain the said subject.

(2) The concession agreement shall contain:

1. a definition of the object of concession;
2. data on the commercial and other registrations of the concessionaire;
3. data on the authority representing the concession granting authority;
4. (amended, SG No. 45/2012, effective 1.09.2012) description of the site, including of the concession area, as well as the accessories to the subject of the concession, if any;
5. the date of entry into force of the agreement, the conditions precedent, if any, and the period of the concession;
6. the conditions, the procedure and the time limits for delivery of the subject of the concession at the commencement and at the end of the concession;
7. the conditions for implementation of the concession and the encumbrances, if any;
8. the rights and obligations of the parties, including the terms and time limits for their execution;
9. the amount, time limits and procedure for payment of the concession royalty, where such is provided for;
10. the type, amount and time limits for fulfilment of the obligations to make investments;
11. (amended, SG No. 45/2012, effective 1.09.2012) the amount and conditions for payment of the compensation referred to in Article 6, where such compensation is due;
12. the type, amount, time limits and methods for furnishing the guarantees and the security for fulfilment of the obligations under the agreement;
13. the requirements related to national security and defence, to protection of the environment, human health, protected areas, zones and sites, and of public order;
14. the terms and procedure for financing the remediation of environmental damage caused;
15. the liabilities for non-fulfilment of the obligations under the agreement;

16. (supplemented, SG No. 52/2010) the terms and procedure governing the exchange of information between the parties, including via e-mailing, as well as the exercise of control over the performance of the agreement;

17. the terms and procedure for settlement of disputes between the parties;

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

19. (new, SG No. 67/2008) the requirements regarding the condition in which the subject of the concession is delivered to the granter after expiry of the period of the concession;

20. (renumbered from Item 19, SG No. 67/2008) the applicable law;

21. (new, SG No. 45/2012, effective 1.09.2012) the rate of return for the concessionaire, as determined by the financial and economic model, as well as the procedure for its calculation, reporting and control;

22. (renumbered from Item 20, SG No. 67/2008, renumbered from Item 21, amended, SG No. 45/2012, effective 1.09.2012) other, depending on the applicable provisions of current legislation regarding the subject of the concession, the service of general interest or the other economic activities.

(3) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) In compliance with the notice the concession agreement shall state the conditions determining the economic balance and any factual or legal circumstances relating to the subject of the concession and/or the service of general interest, whose occurrence or change may lead to disturbing the balance.

(4) (New, SG No. 45/2012, effective 1.09.2012) The financial and economic model attached to the bid of the tenderer selected to be the concessionaire shall form an integral part of the concession agreement.

Section III

Performance of Concession Agreement

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

(2) The entry of the concession agreement into force may be made contingent on the fulfilment of certain conditions specified by the decision to initiate the concession granting procedure or by the effective legislation. Fulfilment of the said conditions may be bound to a time limit.

Article 67. (1) (Amended, SG No. 45/2012, effective 1.09.2012) The authority representing the concession granting authority under the concession agreement shall deliver the subject of the concession to the concessionaire within the time limit and according to the procedure established

by the concession agreement.

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

Article 67a. (New, SG No. 45/2012, effective 1.09.2012) (1) During the implementation of the concession agreement the concessionaire shall keep analytic accounts of the services provided and the other economic activities included in the right of the concessionaire to exploit the subject of the concession.

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

Article 67b. (New, SG No. 45/2012, effective 1.09.2012) During the implementation of the concession agreement the concessionaire shall have the rights of contracting entity within the meaning of the Spatial Development Act and in cases where the subject of concession and the accessories are owned by the state, of the municipality or the body governed by public law.

Article 67c. (New, SG No. 45/2012, effective 1.09.2012) (1) During the implementation of the concession agreement the performance of the obligations of each party shall be monitored and the concessionaire shall be audited.

(2) The parties to the concession agreement shall be obliged to ensure the keeping and storage of documentation and the protection of information relating to the completion of the agreement.

(3) The concessionaire shall ensure that the implementation of the concession agreement is made public.

Article 68. The authority representing the concession granting authority under the concession agreement shall submit to the National Concessions Register information in a standard form on the performance of the agreement according to a procedure established in the Regulations for Application of this Act.

Section IV

Amendment to Concession Agreement

Article 69. (1) Upon an intervening occurrence of a threat to national security and defence, to the environment, to human health; to protected area, zones and sites and to public order, the party to the concession agreement which has become aware of the said occurrence shall be obliged to notify forthwith the other party.

(2) Where the existence of a circumstance under Paragraph (1) had been established by a competent authority, the said authority shall forthwith notify the concession granting authority.

(3) The occurrence of a circumstance under Paragraph (1) may be grounds for amendment

to or termination of the concession agreement.

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

(2) Where the amendments and supplements are within the limits of the decision to initiate the concession granting procedure, of the decision on selection of a concessionaire and of the tender of the concessionaire, the supplementary agreement shall be concluded with the authority representing the concessionaire under the concession agreement.

(3) (New, SG No. 45/2012, effective 1.09.2012) The concession agreement may be amended and/or supplemented, including as regards the subject of the concession, where, due to unforeseen circumstances, it has become necessary to assign to the concessionaire the performance of additional works which are not included in the concession agreement, to modify the type or volume of works stated in the concession agreement, or to award the management of additional services of general interest, as follows:

1. when such additional works or services cannot be technically or economically separated from the subject of the concession agreement without great inconvenience to the concession granting authority or, where they are separable, they are strictly necessary for the completion of the concession agreement, and

2. the aggregate value of additional works or of additional services does not exceed 50 per cent of the value of works or services under the agreement, or

3. the aggregate value of amended works does not decrease or exceed the value of works included in the agreement by more than 50 per cent.

(4) (Renumbered from Paragraph 3, amended, SG No. 45/2012, effective 1.09.2012) In cases other than those referred to in paragraphs 2 and 3 the concession agreement may be amended or supplemented only with a view to restoring the economic balance of the concession, as set in the concession agreement, as follows:

1. upon in intervening occurrence of a threat to national security and defence; to the environment, to human health; to protected areas, zones and sites and to public order;

2. upon partial loss of the subject of the concession or in the event of objective impossibility to use it as assigned;

3. upon change of legislation;

4. (amended, SG No. 45/2012, effective 1.09.2012) upon the occurrence of any of the circumstances referred to in Article 65, paragraph 3;

5. in other cases, specified by a law.

(5) (Renumbered from Paragraph 4, SG No. 45/2012, effective 1.09.2012) Article 64 (2)

shall apply to supplementary agreement to a concession agreement on a municipal concession.

Article 71. (Amended, SG No. 45/2012, effective 1.09.2012) (1) In the cases referred to in Article 70, paragraphs 3 and 4 each of the parties may request amendments or supplements to the concession agreement. The request is sent to the other party with a motivated proposal.

(2) The proposal for amendments or supplements to the concession agreement is sent or accepted with a motivated decision of the concession granting authority.

(3) Where the parties have not reached agreement on the amendments or supplements to the concession agreement, the party which requested the amendment may file a claim for amendment or termination of the agreement.

Article 72. (1) (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) In case of transformation of the concessionaire, no later than three months after that transformation is listed in the Commercial Register the concessionaire's successor may request extension of the concession agreement therewith, after presenting evidence of absence of the circumstances referred to in Article 16, paragraphs 2 - 4, as well as of compliance with the other requirements provided for by law and with the decision to launch the concession award procedure. The procedure for filing the request shall be defined in the rules for implementation of the Act.

(2) Where no request for extension of the concession agreement is filed within the time limit under Paragraph (1), the said agreement shall be terminated ex lege.

(3) (Amended, SG No. 45/2012, effective 1.09.2012) Where the successor meets the requirements referred to in paragraph 1, the concession granting authority shall adopt a decision to extend the concession agreement with the successor within two months after the submission of the request or after the curing of the non-conformities of the said request.

(4) In case the successor does not comply with the requirements of Paragraph (1), the concession granting authority shall adopt a decision refusing the extension of the concession agreement.

(5) On the basis of the decision under Paragraph (3), the authority representing the concession granting authority under the concession agreement shall conclude an agreement on the extension of the said agreement with the successor.

(6) The agreement under Paragraph (5) may not alter the terms, rights and obligations under the concession agreement.

Section V

Termination of Concession Agreement

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

Article 74. (1) Before expiry of the period of the concession, the concession agreement shall be terminated, without any party having to give the other party a notice of termination:

1. upon the loss of the subject of the concession: as from the date of the loss;

2. (amended, SG No. 45/2012, effective 1.09.2012) upon transformation of the concessionaire's company, an agreement to extend the concession agreement with the successor has been concluded under the terms and according to the procedure established by Article 72;

3. (amended, SG No. 45/2012, effective 1.09.2012) upon dissolution of the concessionaire's company by liquidation - as of the date of dissolution;

4. (amended, SG No. 45/2012, effective 1.09.2012) in case the concessionaire becomes insolvent - as of the date of entry into force of the ruling declaring the insolvency;

5. (new, SG No. 45/2012, effective 1.09.2012) in case of a court ruling as referred to in Article 71, paragraph 3 - as of the date of entry into force of the ruling;

6. (renumbered from Item 5, SG No. 45/2012, effective 1.09.2012) on other grounds, provided for in a law or in the concession agreement: as from the date specified therein.

Article 75. (1) The concession agreement may be terminated unilaterally or by mutual consent of the parties:

1. upon intervening occurrence of any threat to national security and defence, to the environment, to human health; to protected areas, zones and sites and to public order, or

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

(2) A unilateral termination of the concession agreement on the part of the concession granting authority, as well as the making of a proposal or the acceptance of a proposal for termination by mutual consent, shall be effected by decision of the concession granting authority.

Article 76. (1) In the cases of non-performance of the concession agreement, the party not at fault may terminate it after allowing the other party suitable time limit for performance with a warning that after expiry of the said time limit it shall presume the agreement terminated. The warning shall be made in writing according to a procedure and within time limits determined in the agreement.

(2) (New, SG No. 67/2008) The concession granting authority may terminate the agreement without allowing a time limit for performance if the concessionaire fails to fulfil a condition for implementation of the concession or of a principal obligation defined by the decision to initiate the concession granting procedure.

(3) (Renumbered from Paragraph (2) and amended, SG No. 67/2008) Where the party at fault is the concessionaire, steps for termination of the concession agreement shall be taken by the authority representing the concession granting authority under the agreement, and termination

shall be effected by a decision of the concession granting authority.

Article 77. (Amended, SG No. 67/2008) The decision of the concession granting authority under Article 75 (2) and under Article 76 (2) shall authorize the authority representing the said concession granting authority upon termination of the concession.

Section Va **(New, SG No. 52/2010)** **Concession Agreement Invalidity**

Article 77a. (New, SG No. 52/2010) (1) In respect of the persons referred to in Article 95a, a concession agreement shall be invalid where it has been concluded:

1. without promulgation in the State Gazette, or
2. without publication of a notice in the Official Journal of the European Union, where applicable, or
3. without holding a concession granting procedure, or
4. under a procedure which is inadmissible pursuant to this Act, or
5. in violation of Article 62(1) or (2), combined with an infringement of this Act which has impaired the possibility for the interested person to be appointed as concessionaire, or
6. under the circumstances referred to in Article 59a(1) and, regardless of the existence of said circumstances, the concession granting procedure has not been suspended, or
7. under the circumstances of a suspended procedure, in violation of Article 59a(4).

(2) A concession agreement concluded on the basis of a provisional enforcement ruling which has entered into force shall not be considered invalid.

Section VI **Consequences of Terminating or Invalidating a Concession Agreement** **(Heading supplemented, SG No. 52/2010)**

Article 78. (1) (Supplemented, SG No. 52/2010) Upon termination or invalidation of the concession agreement, the concessionaire shall be obliged to hand over the concession subject to a commission appointed by the authority under Article 77, and in the cases of termination ex lege, by the authority representing the concessionaire under the concession agreement. A memorandum of delivery and acceptance in respect of the concession subject shall be drawn up

and signed by the members of the commission and by an authorized representative of the concessionaire.

(2) (Supplemented, SG No. 52/2010) The time limit to hand over and/or accept the concession subject shall be 30 days from the date of termination or invalidation of the concession agreement; in cases of refusal to extend the concession agreement with a legal successor, the said time limit shall be 30 days from the refusal date.

(3) (Supplemented, SG No. 52/2010) Where the concessionaire refuses to hand over the concession subject, or where the concessionaire is dissolved without a successor as established on the date of termination/invalidation of the concession agreement, the commission under Paragraph 1 shall draw up a memorandum of ascertainment on the acceptance of the concession subject. The said memorandum shall be grounds for issuance of an order on seizure of the subject by:

1. the regional governor, according to the procedure established by the State Property Act;
2. the municipality mayor, according to the procedure established by the Municipal Property Act.

(4) As of the date of acceptance of the subject, and in the cases under Paragraph (3), as of the date of seizure:

1. the subject constituting state property shall pass under the management of the respective regional governor or of another person designated by a statutory instrument, by and act of the Council of Ministers, or in the state property registration certificate;
2. the subject constituting municipal property shall pass under the management of the municipality mayor;
3. the subject owned by a body governed by public law shall pass into its possession.

(5) The composition of the commission under Paragraph (1) and the financing of the activity for safeguarding and maintenance of the subjects for the duration of the management thereof by the regional governor in the cases under Item 1 of Paragraph (4), shall be regulated by the Regulations for Application of this Act.

Article 79. (1) Within fourteen days after the date of acceptance of the subject, the authority under Article 77, and in the cases of Article 74 (1) the authority representing the concessionaire under the concession agreement, shall notify 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 subject.

(2) (Amended, SG No. 66/2013, effective 26.07.2013) Where the subject of the concession constitutes state property, the respective authority shall also notify, within the time limit under Paragraph (1), the Minister of Regional Development or the regional governor regarding the acceptance of the subject as effected, for the purpose of noting in the state property registration

certificate.

(3) (New, SG No. 52/2010) Notifications under Paragraph 1 shall also be sent when the concession agreement has been invalidated.

Article 80. (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) (1) Upon termination of the concession agreement with the expiry of the term of the concession the concessionaire shall not be entitled to compensation.

(2) In case of early termination of the concession agreement caused by an action or inaction of the concession granting authority, the concessionaire shall be entitled to compensation equal to:

1. the amount of unreimbursed expenses made by the concessionaire for investments in the subject of the concession - when the subject is property of the state, the municipality or the body governed by public law;

2. the amount corresponding to the rate of return set for the concessionaire with the financial and economic model for the entire duration of the contract minus the amount of reimbursed expenses for investments in the subject of the concession - when the subject is property of the concessionaire.

(3) In case of early termination of the concession agreement caused by an action or inaction of the concessionaire, the concession granting authority:

1. (supplemented, SG No. 102/2012, effective 1.01.2013) shall owe the concessionaire compensation amounting to the amount of unreimbursed expenses made by the concessionaire for investments in the subject of the concession, minus the amount corresponding to the rate of return set for the concessionaire with the financial and economic model for the entire duration of the contract, but no more than the market value of the investments made by the concessionaire in the subject of the concession as at the date of termination of the agreement - where the facility is property of the state, the municipality or the body governed by public law;

2. shall not owe compensation to the concessionaire when the subject of concession is its property.

(4) The reimbursement of expenses made by the concessionaire for investments shall cover the equity with the rate of return, as determined by the financial and economic model, and attracted capital with its price.

(5) In the cases referred to in paragraph 3, item 1 the concession granting authority shall not owe compensation when, as at the date of contract termination, the market value of the subject of the concession has decreased compared to the market value as at the date of conclusion of the agreement and the decrease is due to the reason which lead to terminating the concession agreement.

(6) In the cases referred to in paragraph 3, item 2 the concessionaire shall owe to the

concession granting authority a reimbursement equal to the expenses for investment in the subject of the concession recovered from its operation and obtained by the date of termination of the agreement.

(7) When the amount of the compensation due is calculated, depreciation charges and financial assets available to the concessionaire shall be taken into account.

(8) Irrespective of the compensation referred to in paragraphs 2 and 3, the concession agreement shall provide for forfeits for its early termination.

(9) The concession agreement shall determine the terms and procedure for payment of compensations and forfeits due. The compensation referred to paragraphs 2 and 3 shall be paid in equal annual instalments for the remainder of the term of the terminated agreement, unless it is otherwise provided for in the agreement.

Article 80a. (New, SG No. 52/2010) (1) Upon invalidation of the concession agreement, each party concerned shall return to the other party everything received therefrom.

(2) Upon invalidation of the concession agreement, the concessionaire shall also return to the concession granting authority any profit earned from the operation of the concession subject and/or the service of general interest.

(3) Upon invalidation of the concession agreement, the concession granting authority shall also:

1. (amended, SG No. 45/2012, effective 1.09.2012) compensate the concessionaire for any improvements and accretions made pursuant to the conditions set out in Article 80;

2. reimburse the concessionaire for any expenses pertaining to the management and maintenance of the concession subject and/or the service of general interest.

(4) In circumstances other than those provided in Paragraphs 1 - 3, relations between the parties concerned shall be settled by returning the monetary equivalence of the obtainments under the concession contract.

Chapter Ten

FINANCING OF CONCESSION ACTIVITIES

Article 81. (Supplemented, SG No. 67/2008, amended and supplemented, SG No. 99/2009, effective 1.01.2010, amended, SG No. 45/2012, effective 1.09.2012) (1) Cash revenues from concession payments for state concessions, from forfeits, guarantees, compensations and sale of bidding documentation shall be paid into the budget of the respective ministry or entity.

(2) (Amended, SG No. 24/2013, effective 12.03.2013) Where this is provided for by law, part of the cash revenues from concession payments for state concessions the respective ministry or institution shall transfer into the budgets of the municipalities where the subjects of

concessions are located, before deducting the amounts referred to in paragraph 4. Municipalities shall account for the transferred amounts as revenue from concessions.

(3) Every year the Minister of Finance shall approve the income from and expense for concession activities of ministries and institutions under the Unified Budget Classification.

(4) (Supplemented, SG No. 24/2013, effective 12.03.2013) The expense for concession activities shall be included in the budget of the Ministry of Finance and shall amount to 15 per cent of the funds referred to in paragraph 1, with the exception of the concession payments under paragraph 2.

(5) (Amended, SG No. 15/2013, effective 1.01.2014) The amounts referred to in paragraph 4 shall be spent through the budgets of the respective ministries and institutions on the basis of adjustments between these budgets and the budget of the Ministry of Finance pursuant to Article 109 or 110 of the Public Finance Act.

(6) The requirements to the reports by ministries and institutions regarding revenue generated from concessions and expenses made shall be defined with the rules for implementation of the Act.

(7) Unless it is otherwise provided for by law, the funds referred to in paragraph 2 shall be spent by the respective municipality based on a decision of the municipal council for:

1. financing the activities relating to municipal concessions;
2. implementation of measures to recover the environment from damage caused by concession activities;
3. capital expenses;
4. (new, SG No. 24/2013, effective 12.03.2013) financing of activities relating to energy efficiency of municipal projects;
5. (new, SG No. 24/2013, effective 12.03.2013) financing of municipal medical treatment establishments with municipal interest in excess of 50%;
6. (new, SG No. 24/2013, effective 12.03.2013) co-financing of operational programmes of the European Union;
7. (new, SG No. 24/2013, effective 12.03.2013) social activities, sports and culture.

Article 82. The money proceeds from concession royalties for municipal concessions shall be distributed by the Municipal Council.

Chapter Eleven

APPEAL. APPLICATION FOR CONCESSION

CONTRACT INVALIDATION. CLAIM FOR DAMAGES

(Heading amended, SG No. 41/2010)

Article 83. (Amended, SG No. 67/2008, SG No. 52/2010) (1) Any decision passed by the authorities referred to in this Act, as well as any decision of the concession procedure commission under Article 48(1)(2) and (3), shall be appealable as per the procedure set out in this Chapter. The said decisions shall be appealed to the Commission on the Protection of Competition in respect of their lawfulness, including the existence of discriminative requirements regarding the selection criteria or other discriminative technical, economic or financial conditions contained in the concession notice, bidding documentation or any other document concerned with the concession granting procedure.

(2) Only tenderers concerned may file an appeal against a concessionaire appointment decision within ten days upon the tenderer's receipt of the relevant notification regarding the decision.

(3) In circumstances other than those provided in Paragraph 2, any interested person may file an appeal within ten days upon notification regarding the relevant decision or upon being informed otherwise, but no later than the concession agreement conclusion date.

Article 84. (Amended, SG No. 52/2010) (1) Any appeal against a concessionaire appointment decision shall stay the concession granting procedure until the final settlement of the dispute.

(2) In circumstances other than those provided in Paragraph 1, the appeal shall not stay the concession granting procedure, unless an interim measure for "suspension of the concession procedure" has been requested.

Article 85. (1) (Amended, SG No. 52/2010) The appeal shall be concurrently filed with the Commission on Protection of Competition and the concession granting authority, in respect of decisions under Article 39 and Article 58(2), or with the authority in charge of holding the procedure, respectively. Within three days upon receiving the appeal, the relevant authority shall send its position on the appeal, supported by evidence where necessary, to the Commission on Protection of Competition.

(2) The appeal must be written in the Bulgarian language and must contain:

1. the designation of the authority wherewith the appeal is lodged;

2. applicable to a legal-person appellant: the designation, registered office and address of the place of management and registration data according to the legislation of the State where the appellant is established, and applicable to a natural-person appellant: the name, address and identity data thereon;

3. (amended, SG No. 67/2008) the designation and address of the authority whose act is being appealed;

4. (amended, SG No. 67/2008, SG No. 52/2010) information about the concession procedure and the decision being appealed;

5. the complaints and the request of the claimant;

6. signature of the person who lodges the appeal or of the authorized representative thereof.

(3) Evidence in the possession of the appellant and documentary proof of payment of stamp duty fixed by a rate schedule approved by the Council of Ministers shall be attached to the appeal.

(4) Until the Commission on Protection of Competition pronounces by a decision under Article 91, the authority concerned, acting on its own initiative, may eliminate the violation alleged in the appeal.

(5) If the appeal does not meet the requirements under Paragraphs (2) and (3), the President of the Commission on Protection of Competition shall notify the appellant and shall allow the said appellant three days to cure the non-conformities.

(6) The Commission on Protection of Competition shall not initiate proceedings where:

1. the appeal has been lodged after expiry of the respective time limit under Article 83;

2. the non-conformities have not been cured within the time limit under Paragraph (5);

3. documentary proof of payment of stamp duty has not been presented.

(7) In the cases under Paragraph (6), the President of the Commission on Protection of Competition shall return the appeal by an order which shall be appealable before a three-judge panel of the Supreme Administrative Court within seven days after communication.

Article 85a. (New, SG No. 52/2010) (1) Where the appeal concerns a concessionaire appointment decision, in its position under Article 85(1) the relevant authority may request provisional enforcement in respect of the concession agreement conclusion. The request shall be justified, including by enclosing the pertinent evidence.

(2) The Commission on Protection of Competition shall allow provisional enforcement of a concessionaire appointment decision by exception, where the provisional enforcement is necessary in order to safeguard citizens' lives and health or to protect highly important state or public interest, or where any delay of execution may result in a damage which is considerably harmful or hard to eliminate.

(3) Provisional enforcement shall not be allowed if the request is based on economic interest which renders disproportional effects, including economic interest pertaining to expenses which result from:

1. postponing the execution of the agreement;
2. opening a new concession procedure;
3. any change of the concessionaire under the agreement;
4. payment of damages and/or other penalties arising from the concession agreement.

Article 86. (Amended, SG No. 67/2008, SG No. 52/2010) (1) Where the appeal does not concern a concessionaire appointment decision, the Commission on Protection of Competition may impose an interim measure - suspension of the concession granting procedure - if so requested in the appeal.

(2) The Commission on Protection of Competition shall rule on the request following an evaluation of the possible effects which the imposition of the interim measure will have on all interests that might be harmed, including public interest. The evaluation shall be based on the submissions contained in the appeal, the position furnished by the relevant authority and the evidence submitted by the parties.

(3) The Commission on Protection of Competition may choose not to impose the interim measure, where the negative effects on all interests that might be harmed outweigh the benefit of imposing the interim measure..

(4) The act of passing a decision as to the imposition of an interim measure shall not be binding on the Commission on Protection of Competition with regard to the judgment on the substance of the dispute and shall not affect the other claims of the claimant.

Article 87. (1) Within three days upon receiving an appeal, or upon all non-conformities of an appeal have been rectified, the President of the Commission on Protection of Competition shall initiate proceedings and shall designate a rapporteur.

(2) (Amended, SG No. 52/2010) Where the appeal contains a request for an interim measure imposition, the Commission on Protection of Competition, meeting behind closed doors, shall pass a ruling on the request within 7 days upon the initiation of proceedings.

(3) (Amended, SG No. 52/2010) The ruling which imposes the interim measure shall be communicated to the parties and shall be appealable to a three-member panel of the Supreme Administrative Court within three days upon its being communicated.

(4) (Repealed, SG No. 52/2010).

(5) (Repealed, SG No. 52/2010).

(6) (Repealed, SG No. 52/2010).

(7) The appeal of the ruling shall not stay the proceedings before the Commission on Protection of Competition, nor the enforcement of the interim measure imposed. The court ruling

shall be final.

(8) (Repealed, SG No. 52/2010).

Article 87a. (New, SG No. 52/2010) (1) Where a concessionaire appointment decision is appealed, and the concession granting authority has requested provisional enforcement in respect of the concession agreement conclusion, the Commission on Protection of Competition, meeting behind closed doors, shall pass a ruling on the request within three days upon receipt of the request under Article 85a(1).

(2) The ruling which allows the concession agreement conclusion shall be communicated to the parties as per the procedure set out in Article 48a and shall be appealable to a three-member panel of the Supreme Administrative Court within three days upon its being communicated.

Article 87b. (New, SG No. 52/2010) (1) Where action has been brought against a concessionaire appointment decision, and no provisional enforcement thereof was allowed, the Commission on Protection of Competition shall, of its own motion, check for pending proceedings against any previous decision concerning the same procedure.

(2) The Commission on Protection of Competition shall stay proceedings initiated in respect of an appeal against a concessionaire appointment decision, where the Commission has established the existence of pending proceedings against any previous decision concerning the same procedure, until the final settlement of the dispute.

(3) After the relevant judgement on the appeals against previous decisions concerning the same procedure has entered into force, the proceedings against the concessionaire appointment decision shall be renewed without any application made by any party, or upon request of any of the parties concerned.

Article 88. (1) The rapporteur shall examine the circumstances concerning the appeal, for which the said rapporteur shall be assisted by the administration of the Commission on Protection of Competition.

(2) Oral and written evidence and expert opinions shall be admitted in the proceedings before the Commission on Protection of Competition.

(3) Upon recourse to expert opinions under Paragraph (2), the amounts due for fees of the experts shall be paid in advance by the party which requested the expert examination. Should an expert examination be ordered on the initiative of the Commission on Protection of Competition, the costs of the expert fee shall be awarded to:

1. the appellant, where the appeal is left without consideration or the proceedings are terminated;

2. the authority concerned, in the cases under Item 2 of Article 91 (1) and Item 2 of Article 91 (2) and where the appeal has been withdrawn by reason of elimination of the violation alleged therein under Article 85 (4).

(4) The parties to the proceedings, the state bodies and the officials shall be obliged to cooperate with the Commission on Protection of Competition in the discharge of the duties assigned thereto by the law.

(5) No evidence collected in the proceedings before the Commission on Protection of Competition may be disclosed if it constitutes an industrial, trade or other secret, protected by the law. Where any such evidence contains data constituting classified information, the procedure provided for in the Classified Information Protection Act shall apply.

(6) After completion of the examination, the parties shall be afforded an opportunity to familiarize themselves with the evidence collected under the case file.

(7) The parties shall be obliged to submit all evidence thereof not later than on the day before the sitting at which the appeal is to be considered.

Article 89. (1) After completion of the examination, the rapporteur shall submit the case file to the President of the Commission on Protection of Competition, who shall schedule a public sitting for consideration of the said case file.

(2) (Amended, SG No. 59/2007) The parties shall be summoned according to the procedure established by the Code of Civil Procedure. The rule of Article 56 (3) of the Code of Civil Procedure shall not apply upon the summoning.

(3) The parties may use defence by legal counsel.

Article 90. (1) (Amended, SG No. 102/2008, SG No. 54/2010, SG No. 73/2011, effective 20.10.2011) For the valid transaction of business at sittings, at least four of the members of the Commission on Protection of Competition shall have to be present thereat.

(2) (Amended, SG No. 102/2008, SG No. 54/2010, SG No. 73/2011, effective 20.10.2011) The Commission for Protection of Competition shall pass resolutions and rulings by an open vote, by a majority of 4 votes. In case the session is attended by less than 7 members, the resolution shall be passed only provided that at least 4 members of the Commission have voted for it.

(3) (Amended, SG No. 102/2008) No member of the Commission may participate in proceedings hereunder if he/she has an interest in their outcome or when there are justified doubts as to his/her impartiality. Such member of the Commission shall be challenged either on his/her own initiative or upon the parties' request.

(4) The sitting shall commence by addressing the preliminary issues regarding the validity of the procedure.

(5) (Repealed, SG No. 102/2008).

(6) The parties to the proceedings may be asked questions according to a procedure

established by the President of the Commission on Protection of Competition.

(7) When he or she determines that the circumstances concerning the appeal have been clarified, the President shall call upon the parties to give opinions.

(8) After the factual and legal aspects of the dispute are clarified, the President shall close the sitting.

Article 91. (1) The Commission on Protection of Competition, meeting behind closed doors, shall pass a ruling whereby:

1. the Commission shall leave the appeal without consideration, or

2. (amended and supplemented, SG No. 52/2010) the Commission shall revoke the unlawful decision and, furnishing mandatory instructions, shall return the case file to the relevant authority and order that the concession granting procedure be continued proceeding from the last lawful decision or step, or

3. (new, SG No. 52/2010) the Commission shall invalidate the decision concerned.

(2) (Amended, SG No. 52/2010) Where a concessionaire appointment decision is appealed, and provisional enforcement has been allowed, the Commission on Protection of Competition shall:

1. leave the appeal without consideration, or

2. ascertain the unlawfulness of the decision.

(3) (Amended, SG No. 52/2010) In the cases under Paragraph 2(2), the concession agreement shall retain its validity, as concluded, and the tenderers concerned shall have the right to seek compensation as per the procedure set out in the Administrative Procedure Code.

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

1. the designation of the issuing authority;

2. reasons;

3. operative part;

4. the authority before which the decision may be appealed, and the time limit for appeal.

(5) Any member of the Commission on Protection of Competition who disagrees with the decision shall sign the decision with a dissenting opinion which shall be attached to the decision.

Article 92. (1) The Commission on Protection of Competition shall pronounce on an appeal

within two months after initiation of the proceedings.

(2) The decision, together with the reasoning, shall be prepared and declared not later than fourteen days after pronouncement on the appeal.

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

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

(2) (Supplemented, SG No. 52/2010) The ruling under Paragraph 1 shall be communicated to the parties as per the procedure set out in Article 48a and shall be appealable to a three-member panel of the Supreme Administrative Court within fourteen days after its being communicated to the parties.

Article 94. The administrative procedure for appeal of administrative acts shall apply to any unregulated matters regarding the appeal procedure before the Commission on Protection of Competition.

Article 95. (1) (Supplemented, SG No. 52/2010) The decision of the Commission on Protection of Competition under Article 91 shall be communicated to the parties as per the procedure set out in Article 48a and shall be appealable as per the procedure laid down in Article 93(2).

(2) (Amended, SG No. 52/2010) The Supreme Administrative Court shall rule on the appeal within two months after the appeal filing date, and its judgement shall be final.

Article 95a. (New, SG No. 52/2010) (1) Invalidation of a concession agreement may be applied for by:

1. any interested person, under the circumstances provided for in Article 77a(1)(1) to (4);
2. any tenderer concerned, under the circumstances provided for in Article 77a(1)(5);
3. any interested person or tenderer concerned, respectively, depending on the stage of the concession granting procedure at the time when the notification of the European Commission was sent, under the circumstances provided for in Article 77a(1)(6) to (7);

(2) The application under Paragraph 1 shall be filed as per the procedure set out in the Code of Civil Procedure.

(3) The time limit to file an application for concession agreement invalidation shall be

maximum two months commencing from the date of agreement recordation in the National Concessions Register, or from the date of finding out about it, but no later than one year following the agreement conclusion date.

Article 95b. (New, SG No. 52/2010) (1) Any interested person may file a claim for damages incurred as a result of violations of this Act committed in the course of a concession granting procedure.

(2) Any claim under Paragraph 1 shall be filed under the conditions and as per the procedure set out in Article 203(1) , Article 204(1) , (3) and (4), and Article 205 of the Code of Administrative Procedure.

Chapter Eleven "A" **(New, SG No. 52/2010)** **ALTERNATIVE SANCTIONS**

Article 95c. (New, SG No. 52/2010) Where a concession agreement has been concluded following a provisional enforcement procedure, by the decision under Article 91(2)(2) the Commission on Protection of Competition, or the Supreme Administrative Court, respectively, shall penalise the authority concerned imposing an "alternative sanction" which amounts to 5 percent of whichever of the two is the higher estimate: the investment value for the concession period, or the profit from the operation of the concession subject and/or the service of general interest for the concession period.

Article 95d. (New, SG No. 52/2010) (1) In addition, the sanction under Article 95c shall be imposed upon the authority which concluded the concession agreement in cases where the concession granting procedure has not been infringed, but the agreement has been concluded in violation of Article 62(1) or (2).

(2) Under the circumstances provided for in Paragraph 1, the sanction shall be imposed by the decision under Article 91(1)(1), where the violation of Article 62(1) or (2) was established prior to the completion of the appeal proceedings.

(3) Where the violation of Article 62(1) or (2) was established after the completion of the appeal proceedings, the sanction shall be imposed within new proceedings initiated before the Commission on Protection of Competition as per the procedure set out in Chapter Eleven, upon application of the interested person.

Article 95e. (New, SG No. 52/2010) The sanctions stipulated under this Chapter shall be paid from the budget of the penalized authority.

Chapter Eleven "B" **(New, SG No. 50/2008, renumbered from Chapter Eleven** **"A", SG No. 52/2010)**

REPRESENTATION OF THE STATE

Article 95f. (1) (New, SG No. 50/2008, renumbered from Article 95a, amended, SG No. 52/2010) In proceedings concerning the execution of concession agreements, the State shall be represented by the authority designated by the decision of the Council of Ministers referred to in Article 59(3).

(2) (New, SG No. 52/2010) In proceedings concerning the termination of concession agreements, the State shall be represented by the authority designated pursuant to Article 77.

Chapter Twelve NATIONAL CONCESSIONS REGISTER

Article 96. (1) The Council of Ministers shall maintain a National Concessions Register, wherein data on all concessions shall be entered.

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

(3) The National Concessions Register shall be open to public inspection and shall be accessible via the Internet.

Article 97. (1) The National Concessions Register shall contain a record on each concession, containing the following data:

1. identification number of the entry;
2. type of the concession;
3. the decisions to initiate the concession granting procedure, on selection of a concessionaire, as well as all subsequent decisions regarding the concession as granted;
4. the notice under Article 41;
5. the object and the subject of the concession;
6. identification of the subject of the concession;
7. the period of the concession;
8. the date of conclusion and the date of entry into force of the concession agreement;
9. the designation, registered office, address of the place of management, representation and registrations of the concessionaire;

10. the authority which has concluded the concession agreement and representing the concession granting authority under the agreement, and the authority exercising control over the performance of the concession agreement;

11. principal contents of the concession:

(a) principal rights and obligations of the parties to the agreement;

(b) the type and amount of liability for non-fulfilment of the obligations under the agreement;

(c) grounds for early termination of the agreement and the rights of the party not at fault;

12. the date, grounds and act of termination of the concession agreement, and upon termination under Article 74, the date and grounds for termination;

13. any notes in regard to the circumstances as entered.

(2) All changes regarding the data as entered shall also be included on the record of each concession.

Article 98. The files in the archives of the National Concessions Register shall store originals of the concession agreements, of the supplementary agreements and of the annexes, as well as the following:

1. copies of the acts under Item 3 of Article 97 (1);

2. originals or duly certified copies of the documents certifying data under Article 97 (1).

Article 99. (1) (Amended, SG No. 52/2010) Within fourteen days upon conclusion of a concession agreement, the official appointed by the respective authority that represents the concession granting authority 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. an electronic form completed with the data under Article 97 (1).

(2) Within fourteen days after occurrence of any changes regarding data entered in the National Concessions Register, the respective authority shall be obliged to present to the Register:

1. the document certifying the changes in the data entered in the National Concessions Register;

2. (amended, SG No. 67/2008) an electronic form completed with the data regarding the change.

(3) Within thirty days of the due date of a concession royalty, the respective authority shall be to present to the National Concessions Register an electronic form completed with data regarding the payment.

Article 100. (1) (Amended, SG No. 52/2010) Within fourteen days upon the completion or termination of a concession granting procedure, the official appointed by the authority that organizes the conduct of the procedure shall submit to the National Concessions Register a written report on the procedure which shall contain the following information:

1. the authority which has conducted the procedure for selection of a concessionaire: designation, address;

2. type of the concession;

3. location of the subject of the concession;

4. (repealed, SG No. 67/2008);

5. description and volume of the services and/or economic activities which the concessionaire may perform in connection with the concession;

6. (repealed, SG No. 67/2008);

7. (repealed, SG No. 67/2008);

8. (amended, SG No. 67/2008) the designation and nationality of the highest ranked tenderer;

9. (repealed, SG No. 67/2008);

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

(a) works;

(b) other investments;

(c) management costs;

(d) maintenance costs;

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

12. grounds for termination of the procedure.

(2) On the basis of the reports under Paragraph (1), the Council of Ministers shall prepare a statistical report, which shall be presented, upon request, to the European Commission. Where

necessary, the reports under Paragraph (1) or the principal characteristics thereof shall be attached to the said statistical report.

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

(4) The form of the reports under Paragraphs (1) and (2) and the electronic forms under Article 99 shall be determined by the Regulations for Application of this Act . The said Regulations shall also determine any other information to be included in the reports under Paragraphs (1) and (2).

Article 101. The procedure for keeping of the National Concessions Register and for maintaining the archives thereto shall be established by the Regulations for Application of this Act .

Chapter Thirteen

CO-ORDINATION AND CONTROL

Article 102. The overall control over the implementation of this Act, including ex-post control over the conduct of concession granting procedures, shall be exercised by the National Audit Office and the Public Financial Inspection Agency, each according to their competencies.

Article 103. The authorities under Article 19 shall transmit for observations, before their submission for consideration by the concession granting authority:

1. (amended, SG No. 45/2012, effective 1.09.2012) the drafts of decisions of the Council of Ministers: to the ministries to the specialised administration of the Council of Ministers and to the Chairperson of State Agency on National Security, and the drafts of decisions to initiate a concession granting procedure, as well as the drafts of decisions to amend and/or supplement the said decisions, also to the regional governor and to the mayor of the municipality where the subject of the concession is located;

2. (amended and supplemented, SG No. 109/2007, amended SG No. 103/2009) the drafts of resolutions of the Municipal Council to initiate a concession granting procedure, as well as the drafts of resolutions to amend and/or supplement the said resolutions: to the regional governor, as well as to the Minister of Defence, the Minister of Interior, and the Chairperson of the State Agency for National Security, regarding the circumstances under Article 12 (2);

3. the drafts of decisions of the authority under Article 19 (3): to the authority which exercises the rights of ownership to the capital or which exerts, directly or indirectly, a dominant influence on the concession granting authority: applicable to public concessions.

Article 104. The regional governor shall exercise control over the resolutions of the Municipal Council to initiate a concession granting procedure, as well as over the resolutions to amend or supplement the said resolutions.

Article 105. (1) The authority which organizes control over the performance of the

concession agreement shall designate officials from the respective administration and shall appoint commissions, assigning thereof the day-to-day control over the performance of the concession agreements as concluded.

(2) (Amended SG No. 103/2009) The composition of the commissions under Paragraph (1) in respect of state concessions shall mandatorily include representatives of the respective administration, as well as representatives of the specialized administration of the Council of Ministers, of the Ministry of Finance and representatives of other central-government departments concerned with the object of the concessions controlled.

(3) The functions of the persons and the commissions under Paragraph (1), as well as the procedure for exercise of control, shall be established by the Regulations for Application of this Act.

Chapter Fourteen

ADMINISTRATIVE PENALTY PROVISIONS

Article 106. (1) Any natural or legal person that uses a facility of general interest on no legal grounds shall be liable to a fine, or a pecuniary penalty, respectively, ranging from BGN 5,000 to BGN 50,000.

(2) (Amended, SG No. 52/2010) Any official who fails to fulfil an obligation under Article 99 or 100 shall be liable to a fine ranging from BGN 1,000 to BGN 2,000.

(3) Any person who commits an action which violates a concessionaire selection procedure under this Act and the Regulations for Application thereof shall be liable to a fine ranging from BGN 1,000 to BGN 5,000, unless the act constitutes a criminal offence.

(4) Any person who violates the confidentiality requirement under Article 52 shall be liable to a fine ranging from BGN 1,000 to BGN 2,500.

(5) (New, SG No. 52/2010) Any authority that fails to fulfil an obligation under Chapter Eleven "A" shall be liable to a fine ranging from BGN 1,000 to BGN 5,000.

(6) (Renumbered from Paragraph 5, SG No. 52/2010) Where any violation under Paragraphs 1 to 4 is committed recurrently, the fine or pecuniary penalty to be imposed upon the offender shall equal the amount of the initial sanction multiplied by the ordinal number of the recurring violation.

Article 107. (1) The penalty decrees shall be issued in respect of a violation under:

1. Article 106 (1): by the authority managing the facility;
2. Article 106 (2): by the Chief Secretary of the Council of Ministers or by an official empowered thereby;

3. Article 106 (3):

(a) (supplemented, SG No. 52/2010, amended, SG No. 45/2012, effective 1.09.2012) by the authorities of the Public Financial Inspection Agency, where the violation has been committed by an authority under Article 19(1) to (4) and by an authority under Article 106(5);

(b) by the authority which has appointed the commission or by an official authorized thereby: in the rest of the cases.

(2) The written statements ascertaining the violations shall be drawn up by officials designated by the respective authority under Paragraph (1).

Article 108. The ascertainment of violations, the issuance, appeal against and enforcement of penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

Article 109. (1) Upon non-compliance with any effective decision or ruling of the Commission on Protection of Competition under this Act, or non-fulfilment of any obligation of a party to the proceedings under Article 88 (4), the Commission on Protection of Competition shall impose:

1. on legal persons and sole traders: a pecuniary penalty of BGN 5,000 or exceeding this amount but not exceeding BGN 100,000;

2. on natural persons: a fine of BGN 500 or exceeding this amount but not exceeding BGN 5,000.

(2) Written statements regarding the violations shall not be drawn up and the pecuniary penalties and fines shall be imposed by a decision of the Commission on Protection of Competition, which shall be appealable before the Supreme Administrative Court.

(3) (Supplemented, SG No. 52/2010) The pecuniary penalties, alternative sanctions, and fines imposed by enforced decisions of the Commission on Protection of Competition shall be subject to collection as per the procedure set out in the Tax and Social-Insurance Procedure Code.

SUPPLEMENTARY PROVISION

§ 1. Within the meaning given by this Act:

1. "Extraction" shall be the separation of a natural resource and the acquisition of ownership over the substance separated, including over the process waste resulting from the separation.

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

(a) holds a majority of the legal person's capital;

(b) holds blocking minority rights to the legal person's capital, or

(c) can appoint more than half of the members of the legal person's management or supervisory bodies.

3. (Repealed, SG No. 67/2008).

4. (Repealed, SG No. 67/2008).

5. (Amended, SG No. 52/2010) "Legislation of the State in which the tenderer is established" shall be:

(a) applicable to natural persons: the national law (*lex patriae*) thereof, within the meaning given by Article 48 of the Private International Law Code;

(b) applicable to legal persons: the law of the State determined according to Article 56 of the Private International Law Code;

(c) applicable to combinations which are not legal persons: the law of the State in which the said combinations are registered or instituted.

5a. (New, SG No. 52/2010) "Interested person" shall be any person who:

(a) has, or has had, any interest in the concession agreement conclusion;

(b) has incurred, or is exposed to the risk of incurring, a damage which results from an alleged violation within the concession granting procedure, and

(c) has not been definitively eliminated from the procedure, if having acquired the capacity of tenderer.

5b. (New, SG No. 52/2010) "Tenderer concerned" shall be any tenderer in respect of which the following preconditions are concurrently fulfilled:

(a) the validity period of the tenderer's tender and/or bank guarantee for participation has not expired;

(b) the tenderer has not discontinued his/her participation in the concession procedure by withdrawing the tender;

(c) the tenderer has not been definitively eliminated from the concession granting procedure based on an enforced decision.

6. "Historic price" shall be the cost of acquisition as set in the concession agreement;

7. (Amended, SG No. 67/2008, repealed, SG No. 52/2010).

8. (Repealed, SG No. 67/2008).

9. (Amended, SG No. 67/2008, SG No. 45/2012, effective 1.09.2012) "Accessory" shall mean the adjacent infrastructure within the meaning of § 5, item 31 of the supplementary provisions of the Spatial Development Act and any other independent item which ensure the smooth and normal operation of the subject of the concession or the provision of the service of general interest, as well as properties outside the subject of the concession needed to perform other economic activities, which are not necessarily physically connected to the subject of the concession;

10. (Supplemented, SG No. 52/2010) "Natural resources" shall be the mineral waters, forests, subsurface resources, biological, mineral and energy resources, including those of the continental shelf and within the exclusive economic zone.

11. (Supplemented, SG No. 47/2009, effective 24.09.2009, amended, SG No. 45/2012, effective 1.09.2012) The term "body governed by public law" shall have the meaning defined in the Public Procurement Act.

12. (Amended, SG No. 45/2012, effective 1.09.2012) "Extension of the subject of the concession" shall mean an extension of the concession area, additional works and/or additional horizontal or vertical construction work on an existing site.

13. (Amended, SG No. 41/2007) "Redevelopment of the subject of the concession" shall be a public works concession related to restoration, replacement of structural elements, basic parts, facilities or installations and the execution of new ones, whereby the bearing capacity, stability and durability of the subject of the concession or of parts thereof would be increased; redevelopment shall also be the rehabilitation of parts and elements of the road, transport, electronic-communication, energy, water-supply, sewerage, and irrigation and land-reclamation infrastructure.

14. (Amended, SG No. 52/2010, SG No. 45/2012, effective 1.09.2012) "Related parties" shall be the parties referred to in § 1, item 23a of the supplementary provisions of the Public Procurement Act.

15. "Construction work" shall be the outcome of building and civil engineering works taken as a whole, which constitutes a subject of a concession and which may be commissioned to fulfil an economic or technical function in its own right.

16. (Amended, SG No. 67/2008) "Construction" shall be the implementation, in accordance with the requirements of the concession granting authority, of:

(a) a construction work;

(b) building and erection works within the meaning given by Annex 1 to the Public Procurement Act, or

(c) activities comprehended in the building of a construction work.

17. "Merchant" shall be any person recognized as a merchant by the legislation of the State in which the said person is established.

18. "Tenderer" shall be a natural or legal person or a combination of such persons, who or which has submitted a tender.

19. (New, SG No. 67/2008, repealed, SG No. 45/2012, effective 1.09.2012).

20. (New, SG No. 67/2008) "Availability of the service of general interest" shall be the management of the service in accordance with the concession agreement.

21. (New, SG No. 67/2008) " Department" shall be any of the departments under § 2 of the Supplementary Provisions of the State Property Act.

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) (Amended, SG No. 105/2006) 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 31.03.2007 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.

§ 4a. (New, SG No. 105/2006) By 31 March 2007 relevant ministers shall submit underground resource extraction concession proposals under Article 2 of the Subsurface Resources Act in accordance with the procedure stipulated in § 4 (1) to (4) to privatized state or municipal enterprises which have performed extraction as of the signing date of the privatization contract as well as to buyers and their legal successors of individual portions of privatized state or municipal enterprises which are technologically related to the extraction of underground resources.

§ 4b. (New, SG No. 105/2006) (1) By 31 March 2007 individuals or their legal successors who had their property restored under the Act Restoring Ownership Of Nationalized Corporeal Immovables and the exploitation of those properties is per se directly related to the extraction of underground resources under Article 2 of the Subsurface Resources Act shall submit an application to the respective minister who has jurisdiction to receive concession without tender or competition under the annulled Concession Act.

(2) Individuals shall submit the Application under paragraph 1 together with the analyses under Article 8 of the annulled Regulation of Application of the Concession Act. (promulgated in SG No. 111/1995.; amended 15/1997, 39/1998, 27/2002, 13 and 101/2004, 10, 78, 83 and 96/2005; repealed, SG 54/2006).

(3) Within three months upon the submission of the Application under paragraph 1 the relevant minister who has jurisdiction shall submit to the Council of Ministers a proposal for provision of concession without tender or competition to the company whose entire capital is owned by those individuals who had their property reinstated or their legal successors provided that the type of underground resource specified in the application is not subject to prospecting and exploration permits nor is it a registered brand invention nor has it been conceded for extraction to a third party.

(4) The concession contract shall become effective as of the date it is signed.

(5) Per paragraph 1 to 3 concession shall be granted also in the cases specified in § 2 of the Transitional and Final Provisions of the Subsurface Resources Act. In those cases the concession

contract shall become effective as of 15 March 1999. For the period between the effective date and the actual date of contract conclusion the concessionaire shall pay concession payments with accrued lawful interest for delay unless they are able to provide evidence for payment of quarry charge as per the Local Taxes and Fees Act.

(6) When the reserves of the specific underground resource specified in the application under paragraph 1 are not enlisted in the National Reserves Balance applicants and respectively the individuals specified in paragraph 3 shall be issued a prospecting and exploration permit with a period of validity of 6 months after whose expiration the concession will be provided under the terms and conditions of the Subsurface Resources Act.

§ 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. A 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 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 an 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 Code of Civil Procedure (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 concession granting authority 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) In circumstances other than those provided in Articles 14 and 15, facilities of general interest within the meaning given by the Concessions Act shall be allocated to third parties only by means of a 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 Rail 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 Republic of Bulgaria Defence and Armed Forces 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) In circumstances other than those provided in Article 50, a concession for sports grounds and facilities constituting public state or public municipal property shall be granted to natural and legal persons according to the procedure established by 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.

§ 23a. (New, SG No. 45/2012, effective 1.09.2012) (1) Launched procedures for which a decision to initiate a concession award procedure was adopted prior to 1 September 2012 shall be completed in accordance with the currently valid procedure.

(2) Article 18, paragraph 3 shall not apply to concession agreements made prior to 1 September 2012 with concessionaires which are not equity companies. Such agreements shall be governed by the present Article 72, paragraph 1 and Article 74, paragraph 1, items 2 and 3.

(3) The rules for economic balance of the concession shall not apply to concession agreements made prior to 1 September 2012. Such agreements shall be governed by the present Article 70, paragraph 3.

(4) (New, SG No. 102/2012, effective 1.01.2013) The provision of Article 80, effective until 01.12.2012, shall apply to concession agreements, concluded up to 1.12.2012.

§ 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.

This Act was passed by the 40th National Assembly on the 17th day of April 2006, and the Official Seal of the National Assembly has been affixed thereto.

TRANSITIONAL AND FINAL PROVISIONS

to the Act to Amend and Supplement the Concessions Act

(SG No. 67/2008)

§ 53. Any preparatory steps commenced and any concession granting procedures initiated as at the date of entry into force of this Act shall be completed according to the hitherto effective procedure.

.....

§ 55. The effective concession agreements for coastal beaches shall be brought into conformity with the provision of Item 1 of Article 10 (4) of the Black Sea Coast Development Act within three months after the entry into force of this Act.

§ 56. The provision of Item 2 of § 54 herein, regarding sentence two of Article 8 (2) of the Black Sea Coast Development Act, shall enter into force as from the 1st day of January 2009.

Act to Amend and Supplement the Water Act

(SG No. 47/2009, effective 23.06.2009)

.....

§ 46. This Act shall become effective as of the date of its publication in State Gazette, excluding the provisions of § 26, 29, 30, 32 - 36 and 40, which shall become effective three months following the date of publication in State Gazette.

TRANSITIONAL AND FINAL PROVISIONS to the Act to Amend and Supplement
the Public-Private Partnership Act

(SG No. 45/2012, effective 1.01.2013)

.....

§ 4. (Effective 1.09.2012 - State Gazette No. 45/2012) The Concessions Act (promulgated, State Gazette No. 36/2006; amended, No. 53, 65 and 105/2006, No. 41, 59 and 109/2007, No. 50, 67 and 102/2008, No. 47, 99 and 103/2009, No. 52 and 54/2010, No. 50 and 73/2011) shall be amended and supplemented, as follows:

.....

44. In the remaining text of the Act the words "Article 19, paragraphs 1 - 3" shall be replaced by "Article 19, paragraphs 1 - 4".

.....

§ 16. This Act shall enter into force on 1 January 2013, with the exception of § 4, § 5, § 7, § 8, § 9, § 10 and § 13, which enter into force on 1 September 2012.

Final Act to amend the Law on Administration

(SG No. 82/2012)

.....

§ 16. Ministers and Ministers bring adopted respectively of their own regulations in accordance with this Act within one month of its entry into force.

TRANSITIONAL AND FINAL PROVISIONS to the 2013 State Budget of the
Republic of Bulgaria Act

(SG No. 102/2012, effective 1.01.2013)

.....

§ 77. The implementation of the present Act is assigned to the Council of Ministers.

§ 78. This Act becomes effective from the 1st of January 2013 with the exception of § 61, 68 and 73, which become effective from the date of the promulgation of the Act in the State Gazette.

TRANSITIONAL AND FINAL PROVISIONS to the Act on Amendment and Supplement
of Spatial Development Act

(SG No. 66/2013, effective 26.07.2013)

.....

§ 87. In The Concessions Act (promulgated, SG No. 36/2006, amended, SG No. 53, 65 and 105/2006, SG No. 41, 59 and 109/2007, SG No. 50, 67 and 102/2008, SG No. 47, 99 and 103/2009, SG No. 52 and 54/2010, SG No. 50 and 73/2011, SG No. 45, 82 and 102/2012, SG No. 15 and 24/2013) everywhere the words "the Minister of Regional Development and Public Works" is replaced with "Minister of Regional Development."

.....

§ 117. This Act shall enter into force on the day of its publication in the "State Gazette".