

Concessions Act

Publication - SG No. 36/2.05.2006 in force as of 01.07.2006

Last Amendment - SG No. 13/16.02.2016, in force as of 15.04.2016

Chapter One

GENERAL PROVISIONS

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

Article 2. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) A concession shall be a right to exploit a facility and/or a service of general interest, conceded by a grantor to a commercial company having capital - 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 grantor and the concessionaire.

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

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

Article 3. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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 grantor under Article 6.

(2) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The right of the concessionaire to operate the object of the concession includes the income obtained by him from the users of the services of public interest or by third parties, and when other commercial activities are carried out- the right to obtain income from the respective 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 there through, 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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 grantor under Article 6.

(2) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The right of the concessionaire to operate the service of public interest includes the income obtained by him from the users of the services of public interest or from third parties, and when other commercial activities are carried out- the right to obtain income from the respective activities.

(3) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The management of a service of public interest includes the maintenance of the service availability and the provision of continuity and level of quality of the services in conformity with the clauses of the concession contract, and in the cases when the service is performed with an object- property of the concession grantor, it also includes management and maintenance of the object 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) Compensation under Article 3 (1) and Article 4 (1) shall be effected through payment to the concessionaire by the grantor 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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 grantor.

(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 grantor and the concessionaire;

3. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The period specified in the concession agreement may be reduced or extended with no more than one third of the initially specified period and after a decision of the concession grantor only in the cases under art.70, para. 3 and 4.

Article 11. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) An economic balance which is the balance between the benefits and the risks under the conditions of the concluded concession agreement is maintained during the concession.

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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) In a service concession, the subject of the concession or part thereof may be owned by the concessionaire.

(3) (*New - SG No. 45/2012, in force as of 01.09.2012*) One or more accessories- existing or ones which are to be built by the concessionaire may be included in the object of concession.

Article 14. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The land where the object of concession is built or which is designated for building of the object of the concession, including its accessories, is a concessionary area and is part of the object of the concession.

Article 15. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) The state, the municipality and the public law organization may not dispose of the whole or part of the concession object, including of its accessories until the concession agreement is terminated.

(2) The accretions and the improvements made on an object of concession, including on its accessories, which are public state or municipal property, become a state property, respectively municipality property as from the moment of their initiation.

(3) The ownership of the accretions and the improvements made on an object of concession, including on its accessories, which are private state or municipal property or a public law organization property is settled by the concession agreement.

(4) In the cases under art.13, para.2 the concession agreement settles the ownership of the object of the concession after the termination of the concession agreement.

Article 15a. (*New - SG No. 45/2012, in force as of 01.09.2012*) (1) According to the ownership of the object of concession, the concessions are:

- 1.state concessions- when the object is a state property;
- 2.municipal concessions- when the object is a municipal property;
- 3.public concessions- when the object is a public law organization property;

4. joint concessions- when the object is a state property, property of one or more municipalities and/or public law organizations.

(2) When, upon a service concession, the object of the concession is a concessionaire property, the type of concession is specified on the basis of the authority which, usually or by virtue of a normative act, provides the service of public interest or has provided it prior the conclusion of the concession agreement.

Article 16. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* (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, in force as of 01.09.2012)* one where a manager or a member of the managing body, and in case where a member of the managing body is a legal entity- its representative to the respective managing body, is connected with the concession grantor, as well as with the body that organizes the conduct of the award of concession procedure, or with officials occupying leading positions in its jurisdiction or organization;

5. *(New - SG No. 45/2012, in force as of 01.09.2012)* one that has a valid contract with an entity under art.21 or 22 of the Conflict of Interest Prevention and Ascertainment 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, in force as of 01.09.2012)* entity, connected with the concession grantor as well as with the body that organizes the conduct of the award of concession procedure or with officials occupying leading positions in its jurisdiction or organization;

4. *(New - SG No. 45/2012, in force as of 01.09.2012)* in contractual relationship with an entity under art.21 or 22 of the Conflict of Interest Prevention and Ascertainment Act;

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

(5) *(Last Amendment, SG No. 52/2010)* The circumstances under Article 4 whereof the existence is grounds for exclusion of tenderer shall be specified by the notice under Article 41.

(6) *(New - SG No. 45/2012, in force as of 01.09.2012)* In case the participant has listed a subcontractor in its offer, the requirements of para.2 and 3 and the requirements under para.4 listed in the notification are applied with reference to the subcontractors.

(7) *(Former Par. (6), Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* Upon participation in an award of concession procedure, the participants, including the subcontractors, certify the presence or the absence of the circumstances under para.1-4 with declarations. The concession contract is concluded only after the participant nominated to be a concessionaire submits evidence for certification of the declared circumstances, as specified by the regulation for implementation of the law.

Article 17. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* (1) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* Unless provided otherwise by an act, a concession grantor is:

1. The Council of Ministers- with reference to the state concessions;
2. The Municipal Council- with reference to the municipal concessions;
3. public law organization represented by a body in accordance with its articles of association- with reference to the public concessions;
4. The Council of Ministers, the respective Municipal Council and/or the body of the public law organization- with reference to 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 grantor shall be the competent government minister and/or municipal council.

Article 18. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) When the participant nominated to be a concessionaire is not a trade company, as well as when this is specified in the notification for initiation of the procedure or in the participant nominated to be a concessionaire's offer, the concession agreement is concluded with the newly established trade company, referred to as "project company" in which:

1. the participant, nominated to be a concessionaire is a sole owner of the capital, or
2. the participants in the association which is not a merchant own the whole capital in the same proportion as per the articles of association.

(4) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) In the cases where this is specified as a condition by the decision for initiation of award of concession procedure, the concession agreement is concluded with the newly established trade company (public-private partnership) in which partners or shareholders are the participant nominated to be a concessionaire (private partner) and the state, the municipality, the public law organization and/or the public enterprise (public partner). In these cases art. 50- 52 of the Public-private Partnership Act are respectively applied.

(5) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) With reference to the project company and the public-private partnership is applied the Commerce Act, unless otherwise provided in this act.

(6) (*Repealed - SG No. 45/2012, in force as of 01.09.2012*).

Art. 18a. (*New - SG No. 45/2012, in force as of 01.09.2012*) (1) The project company, respectively the public-private partnership, is bound by the offer of the participant nominated to be a concessionaire, and in case he is an association- any of the participants in the association:

1. is obliged to submit to the project company, respectively to the public-private partnership, the resources through which he has verified his correspondence with the applicable requirements related to the meeting of the selection criteria;

2. is jointly liable with reference to the implementation of the concession agreement along with the project company and the public-private partnership.

(2) The private partner may perform one or more than one of the activities subject of the concession agreement in his capacity of a subcontractor.

(3) The manner of submission of the resources and the participation of the private partner as a subcontractor are specified in the offer and are included in the economic and financial model attached to the participant's tender.

(4) Paragraphs 1-3 are respectively applied with reference to the sole owner of the project company and the partners or the shareholders in this company.

Chapter Three

PREPARATORY STEPS

Article 19. *(Last Amendment - SG No. 98/28.11.2014, in force as of 28.11.2014) (1) (Last Amendment - SG No. 15/2013, in force as of 01.01.2014 (does not concern the english version))* The preparatory steps and the submission of a proposal to grant a 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. *(Last Amendment - SG No. 15/2013, in force as of 01.01.2014 (does not concern the english version))* the government minister or the head of the central-government department, which is a first-level spending unit, 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 service of general interest;

2. *(Last Amendment - SG No. 15/2013, in force as of 01.01.2014 (does not concern the english version))* the government minister whose second-level spending unit 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. *(Last Amendment - SG No. 98/28.11.2014, in force as of 28.11.2014)* the Minister of Regional Development and Public Works: in the rest of the cases.

(2) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The preparatory activities and forwarding of proposal for award of municipal concession and the concession of a mineral water spring- exclusive state property, which has been awarded to the municipality for gratuitous management and use under the procedure of § 133 of the transitional and final provisions of the Act for Amendment and Supplement to the Water Act(SG, № 61 of 2010), is performed by the mayor of the respective municipality.

(3) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The preparatory activities and the forwarding of proposal for award of public concession are performed by the entity that manages the public law organization.

(4) *(New - SG No. 45/2012, in force as of 01.09.2012)* 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 grantor.

Article 20. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012) (1) (Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The initiative to grant a concession

may be declared by any interested party or by a decision of the respective authority under Article 19 (1) to (4).

(2) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The initiative of the interested party under Paragraph (1) shall be accompanied by reasons of the feasibility of the concession from the point of view of the grantor, and in a works concession, by a pre-development investigation or investment project as well.

(3) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* Not later than three months after the written declaration by an interested party under Paragraph (1), the respective authority under Paragraph (1) to (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 party shall not give rise to any rights or privileges for the said party.

(5) *(Repealed - SG No. 45/2012, in force as of 01.09.2012).*

Article 21. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* (1) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* 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) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The justification under para.1 motivates the proposal for award of concession and specifies the subject of concession, the requirements towards the subject and the object of concession and its main content. The justification may be also based on concession analyses and/or 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. 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) A concession shall be granted observing the following principles:

1. public openness and transparency;

2. free and fair competition;

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

4. (*New - SG No. 45/2012, in force as of 01.09.2012*) 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) (*Last Amendment, SG No. 52/2010*) The commission for conduct of 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) Upon conduct of a concession granting procedure, the commission shall, by a decision, exclude from participation in the procedure any candidates or tenderers in respect of whom any of the circumstances under Article 16 (2) to (4) applies. The candidates or tenderers in respect of whom any circumstance under Article 16 (4) applies, as defined by the notice under Article 41, shall likewise be excluded from participation in the procedure.

(2) The concession granting procedure shall be conducted even in cases where only a single candidate or tenderer has been admitted.

Article 26. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) (*Last Amendment, SG No. 52/2010*) Selecting the tenderers admitted to participation in the concession one or more granting procedure, the commission shall apply the following criteria:

1. suitability to pursue professional activity;

2. economic and financial standing;

3. technical capacity and/or professional qualification.

(2) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The criterion of suitability to pursue professional activity is evidenced by a registration in a professional or

trade register, if such is required in accordance with the legislation in the State of domicile of the participant.

(3) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The criterion of economic and financial standing shall be proved by:

1. (*Last Amendment, SG No. 52/2010*) registered fixed capital of the participant;
2. (*Last Amendment, SG No. 52/2010*) book value and/or market value of the participant's assets, which shall be certified by the annual financial statement or by the respective market valuation, prepared by licensed appraisers;
3. (*Last Amendment, SG No. 52/2010*) the participant's annual financial statements for the last three preceding years.

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

(5) (*Last Amendment, SG No. 52/2010*) Criteria for selection of participants and minimum levels of applicable requirements regarding their implementation for tenderers shall be determined in accordance with the specifics of the subject of the concession and/or the management of the service of general interest and shall be indicated in the notice.

(6) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The proof of the correspondence with the criteria under para.1, pt.2 and 3 may be performed through the resources of third parties. In these cases, the participant submits evidence that he will have resources of the third party at his disposal.

(7) The participants 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 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) As a result of the preparatory steps performed, the authority under Article 19 (1) to (4) shall submit to the grantor 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. *(Last Amendment -SG No. 45/2012, in force as of 01.09.2012)* (1) On the basis of the proposal under Article 38 (1), the grantor 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. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* the other business activities, when such are provided for;
3. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* the accessories- if such are included in the object of the concession;
4. the maximum period of the concession;
5. the starting date of the concession;
6. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* the conditions for implementation of the concession as well as the factual and legal circumstances, the occurrence or alteration of which may lead to a breach of 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. (*Last Amendment - 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 grantor;

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*) By the decision under Paragraph (1), the grantor may determine that the concession be granted under the terms established by Article 18 (5), In such cases, the decision shall furthermore state:

1. the percentage of the interest in the capital of the tenderer selected as a concessionaire;

2. the type and amount of the contribution with which the person under Article 18 (5) shall participate in the capital;

3. the material elements of a shareholding agreement or an agreement between the members or any other similar agreement whereof the purpose is to determine the

contractual relations for allocation of rights and obligations among the shareholders or the members, as the case may be.

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

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

Article 40. (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*) (1) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) 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, a notice of conduct of the procedure, bidding documents and a draft concession agreement.

(2) (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*) Upon documents approved under par. 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. (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*) (1) The announcement for the conducting of a procedure for an award of concession, further referred to as "the announcement" in case of a public works concession contains:

1. information about the body, organizing the conducting of the procedure (assigning body):

a) name, address and contact address;

b) type of the body and basic activity or activities;

2. information about the subject of the concession:

a) name;

b) type, scope and location of the construction works;

c) short description of the activities related to the construction works;

d) code in conformity with the Common Procurement Vocabulary (CPV);

e) in the cases under art.53, para.1- the minimum percentage of the construction which is to be executed by third parties- subcontractors;

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

a) the circumstances under art.16, para.2 and 3, the documents and the way of their certification;

b) the circumstances under art.16, para. 4 upon presence of which the commission disqualifies a candidate/ participant in the procedure, the documents and the way of their certification;

c) the selection criteria, the minimum levels of the applicable requirements related to the implementation and the documents providing evidence for compliance with these requirements;

4. information about the award of concession procedure:

a) the criteria that form the complex estimation of the offers (the assignment criteria) and the importance of each of them;

b) place and deadline for receipt of the applications or the offers;

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

5. additional information:

a) connection of the concession with a project and/or a programme which are funded by a European Union Fund;

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

c) type of the object of concession;

d) location of the object of concession;

e) description or requirements towards the accessories;

f) description and scope of the services of public interest- subject of the concession;

g) the amount of the guarantee for participation in the procedure and the conditions related to its handing or payment;

h) period of offers validity;

i) place and term for receipt of the participation in the procedure documentation;

j) place, date and time of opening of the applications or the offers;

k) the restrictions related to submission of variants in the offer;

l) date of forwarding of the announcement to State Gazette;

m) procedure and term for appeal of the approval of the announcement decision;

n) other information depending on the specifics of the concession, including the condition the concession contract to be concluded with a project company or a public-private partnership.

(2) Upon a service concession or an extraction concession, the announcement contains the information under para.1 which is applicable with reference to the respective concession.

Article 42. *(Last Amendment -SG No. 45/2012, in force as of 01.09.2012)* (1) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The announcement is completed in electronic form in accordance with a standard form:

1. *(New - SG No. 45/2012, in force as of 01.09.2012)* approved with Commission Regulation (EC) 1150/ 2009 of 10 November 2009 amending Regulation (EC) 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 313/3 of 28 November 2009) – with reference to the public works concessions;

2. *(New - SG No. 45/2012, in force as of 01.09.2012)* published on the web page of the National Concessions Register- with reference to the service concessions and the concessions for extracting natural resources.

(2) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The body under art. 19, para.1-4 sends the electronic form of the application for publication on the web page of State Gazette and for entry in the National Concessions Register within the term under art. 40, para.1. Within five days after sending of the announcement, it is published and entered in the National Concessions Register.

(3) *(Last Amendment, SG No. 52/2010)* Simultaneously with its dispatch to the State Gazette, the notice of a works concession of a value exceeding the value specified by a regulation of for publication in the Official Journal of the European Union shall also be dispatched electronically to the European Commission.

(4) *(New - SG No. 45/2012, in force as of 01.09.2012)* The value of the public works concession is set as a sum of the predicted value of all incomes of the concessionaire for the concession's period as follows:

1. income from provision of the service of public interest;
2. income from other business activities with the object of the concession;
3. payment of compensation by the concession grantor.

Article 43. *(Last Amendment, SG No. 52/2010)* (1) *(Last Amendment, SG No. 52/2010)* After promulgation of the notice in the State Gazette, in the case of art. 42, para. 3 - after its publication in the Official Journal of the European Union the authority under Article 19 (1) to (4) shall cause the insertion 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. *(Last Amendment -SG No. 45/2012, in force as of 01.09.2012)* (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;

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

5. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* the pre- investment studies or the investment projects- upon a public works concession, if such has 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) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* 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) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The technical specifications under Item 4 of Paragraph (1) shall be determined under the Public Procurement Act.

(4) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The participation documentation is published on the internet web page of the respective body under art.19, para. 1-4. The body, organizing the conduct of the award of concession procedure fixes a participation documentation price or its gratuitous granting. The participation documentation price may not be higher than the actual costs for its printing and copying. Upon request made by an interested party, the assigning body is obliged to send the documentation to the party that has made the request at its expense, as well as to provide for the possibility of the respective party to look at the documentation on the spot before buying 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. (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*) (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, in force as of 01.09.2012*) body, specified in coordination with the concession grantors- for joint concessions.

body, specified in coordination with the concession grantors- 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. (*Last Amendment, SG No. 52/2010*) is a party related to tenderer in the concession granting procedure or, in the cases where 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) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) 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. (*Last Amendment - SG No. 82/2012*) (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. (*Last Amendment, 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 legal non-conformity 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) (*Last amendment, SG No. 52 /2010*) For the decisions taken under paragraph 1, pt. 2 and 3 and for the reasons for their adoption committee in forms all interested participants.

(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) (*Last Amendment - 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, save in cases where the law provides otherwise.

Article 48a. (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*) (1) Providing clarifications, documents and information under Article 48, (1), pt. 4 is made against the signature of the person / party or of his authorized representative.

(2) Notification of the decisions under Article 48, (1), pt. 2 and 3 may be executed except in accordance with paragraph 1 and by sending of the decision via e-mail referred to in the purchase documentation for participation in the offer accordingly. When sending via e-mail the decision is considered served by entering into the information system and that is certified with a copy of the electronic record for that.

(3) (*New - SG No. 45/2012, in force as of 01.09.2012*) The procedure for notification under para.1 and 2 is also applied in other cases, specified by this act and the regulation 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. (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*)(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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) fifty-two days after the date of promulgation of the notice in the State Gazette: in a 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. *(Last Amendment, SG No. 52/2010)* (1) *(Last Amendment, SG No. 52/2010)* In preparing tender, stakeholders 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) *(Last Amendment, SG No. 52/2010)* Each participant in a concession granting procedure shall have the right to submit only one tender.

(4) *(Last Amendment, SG No. 52/2010)* A participant 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 variants of the tenders which meet the minimum requirements announced by the bidding documents.

(6) *(New, SG No. 52 /2010)* The Commission does not consider and assess the offer:

1. of a participant who is excluded from participation in the procedure by a decision under Article 25, (1) or under Article 26, (7);

2. which is withdrawn by the participant;

3. which has expired and after invited the participant has not renewed its validity;

4. of a participant who has not extended the bank guarantee needed for participation.

Article 52. *(Last Amendment, SG No. 52/2010)* (1) Each tenderer may attach a declaration to the tender, designating which part of the information contained therein is of a confidential nature.

(2) *(Last Amendment, SG No. 52/2010)* Information including technical or trade secrets of the participant may be of a confidential nature.

(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. *(Last Amendment, SG No. 52/2010)* (1) By the decision to initiate a works concession granting procedure, the grantor 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) *(Last Amendment, SG No. 52/2010)* Beyond the cases under Paragraph (1), the participants shall be free to propose by the tenders thereof the subcontracting of part of the works, 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. *(Last Amendment -SG No. 45/2012, in force as of 01.09.2012)* (1) *(Last Amendment -SG No. 45/2012, in force as of 01.09.2012)* In case of a public works concession, the concessionaire may assign part of the construction works to the subcontractors, listed in the offer. When a subcontractor, listed in the offer, has to be substituted or a necessity of employment of another one arises, the concessionaire chooses the new subcontractor through a 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) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* 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) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* 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. *(Last Amendment, SG No. 52/2010)* (1) *(Last Amendment, SG No. 52/2010)* Together with the tenders thereof, the participants shall submit a participation guarantee for the procedure in the form of a cash deposit or a bank guarantee. The form of the guarantee shall be chosen by the participants.

(2) *(Last Amendment, SG No. 52/2010)* The guarantee under Paragraph (1) shall secure the participation of the participant 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) *(Last Amendment, SG No. 52/2010)* The guarantee shall be released by decision of the authority who organizes the conduct of the concession granting procedure within seven days after expiry of the time limit for appeal of the decision on selection of a concessionaire or, respectively, of the decision to terminate the procedure.

(4) *(Last Amendment, SG No. 52/2010)* The guarantees of any tenderers who have discontinued the participation thereof in the procedure by withdrawing the offer before the expiry of the validity of her shall be retained or, respectively, shall be realized.

(5) The guarantee furnished by the following shall not be released within the time limit under Article 3:

1. the tenderer selected as a concessionaire;
2. *(Last amendment, SG No. 52 /2010)* the participant rated on second place.

(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) *(Repeal, 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. *(Last Amendment -SG No. 45/2012, in force as of 01.09.2012)* (1) *(Amended, SG No. 67/2008)* The authority which organizes the conduct of the concession granting procedure shall submit to the grantor 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 grantor 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, where after to perform a new ranking, or
3. termination of the procedure in the cases under Items 1 to 4 of Article 60 (1).

(3) (*Last Amendment, SG No. 52/2010*) Interested participants are notified of the decision under paragraph 2 and of the reasons for its adoption in accordance with Article 48a and they can appeal under Chapter Eleven in a period of 10 days after notification.

(4) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) Upon joint concessions, the decision under para.2 is adopted by the Council of Ministers and the respective Municipal Council and/or a public law organization body, unless otherwise provided for by law.

Article 59. (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*) (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)(*Last amendment, SG No. 52 /2010*) When the participant ranked first does not conclude the concession contract within the prescribed period, the Grantor may designate for a concessionaire, the second ranked participant.

(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 grantor thereunder, except in regard to the termination of the said agreement;

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

3. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) represents the State in cases related to 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) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) In the cases of joint concessions, the decision for selection of a concessionaire also specifies the body, exercising the rights under para.3, unless otherwise provided for by law.

Chapter Eight

SUSPENSION AND TERMINATION OF THE PROCEDURE FOR GRANTING CONCESSION

(*Last amendment, SG No. 52 /2010*)

Article 59a. (*New, SG No. 52/2010*) (1) The procedure for granting concessions for construction is stopped by reasoned decision of the Grantor or the authority under Article 19,

(1)-(4), where the European Commission has informed the Republic of Bulgaria that before the conclusion of the concession agreement there has been detected a serious violation of the law of European Union during the procedure for granting the concession and:

1. the infringement cannot be removed without changing the conditions under which the procedure is declared or

2. the relevant authority does not agree with the declared infringement by the European Commission.

(2) On the day a decision is adopted under paragraph 1 the relevant authority summons the Commission for the Competition Protection to establish illegality, including because of discriminatory requirements on the selection criteria or other discriminatory technical, economic or financial conditions in the notice, in the contract documents, or any other document related to the procedure granting a concession under Chapter Eleven.

(3) The Commission for Competition Protection within three days after it is summoned institute proceedings and notifies the relevant authority and the administration of the Council of Ministers for that.

(4) In proceedings under paragraph 3 interested participants are ex-officio constituted as stakeholders.

(5) Suspension under paragraph 1 has effect until the dispute is finally resolved by a final decision.

(6) The Commission for Competition Protection, respectively the Supreme Administrative Court notify the respective department and the Administration of the Council of Ministers for each decision on any proceedings under paragraph 3 within three days after it is adopted.

Article 60. *(Last amendment, SG No. 52 /2010)* (1) The concession granting procedure shall be terminated by a decision of the grantor 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. *(Last amendment, SG No. 52 /2010)* the designated the concessionaire participant and the second ranked participant consistently refuse to sign the 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) (*Last amendment, SG No. 52 /2010*) The decision under paragraph 1 together with the reasons for its adoption is communicated to the participants interested in accordance with Article 48a and is subject to appeal under Chapter Eleven within 10 days after its notification.

(4) (*Amended, SG No. 67/2008*) Upon termination of the concession granting procedure in the cases under Items 3 and 4 of Paragraph (1), the respective authority shall refund to the stakeholders the expenses incurred thereby on purchase of the bidding documents within 14 days after the entry into force of the decision under Paragraph (1) and shall release or return the guarantees deposited thereby according to the procedure established by 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"

INFRINGEMENTS IN PROCEDURES FOR GRANTING CONCESSIONS WORKS ESTABLISHED BY THE EUROPEAN COMMISSION

Article 61a. (*Last Amendment - SG No. 14/20.02.2015*) (1) (*Last Amendment - SG No. 14/20.02.2015*) When the European Commission communicates to the Permanent Representation of the Republic of Bulgaria to the European Union, that prior to the conclusion of the concession agreement for construction there has been committed a serious breach of European law in the field of public procurement during the procedure for granting concession rights for construction, the Representation refers the notification on date of receipt, or no later than next business day to the administration of the Council of Ministers, and the Ministry of Foreign Affairs and the Ministry of Economy.

(2) On the day of receipt of the notification the Administration of the Council of Ministers sends copies of it to the respective concessionaire and authority under Article 19, (1)-(4).

(3) The respective authority under Article 19, (1)-(4) makes inquiry as of the reasons why the European Commission has detected that a serious violation has been committed, and depending on the violation:

1. within 10 days after notification is made under paragraph 2:

a) it removes the violation or

b) stops the procedure for granting concession by a decision under Article 59a, (1);

2. within three days after the notification is made under paragraph 2 it submits to the grantor a draft decision for action under subsection 1 or for termination of the procedure in cases under Article 60, (1), pt. 4.

(4) In the cases under paragraph 3, pt. 2 the grantor adopts the decision respectively within 7 days after it is referred by an authority under Article 19, (1)-(4).

(5) The relevant authority informs the administration of the Council of Ministers for the actions carried out under paragraph (3) and (4), including for proceedings before the Commission for Competition Protection on the violation alleged, not later than 14 days after a notification is made under paragraph 2 and sends all the information and documents. When the violation results from a legislative act which is not in compliance with the European Union law, the notice specifies the act and authority to amend it.

Article 61b. (*Last Amendment - SG No. 14/20.02.2015*) (1) (*Last Amendment - SG No. 14/20.02.2015*) On the day following the receipt of information and documents under Article 61a, (5) the Administration of the Council of Ministers sends 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 a response to the European Commission concerning the alleged violation by it, which includes at least:

1. confirmation that the infringement has been removed or

2. information about the act by which the procedure is suspended and / or proceedings before the Commission for Competition Protection, and when the violation results from an enactment - and information on measures for bringing the legislative act in accordance with the European Union law.

(2) To the response under paragraph 1 relevant evidence is enclosed.

Article 61c. (*New, SG No. 52 /2010*) The Commission for Competition Protection sends the decisions and definitions enacted in proceedings under this Act, to the Administration of the Council of Ministers within 7 days after they are declared.

Article 61d. (*New, SG No. 52 /2010*) Notifications under Article 61a, with the exception of the notification from the European Commission to the Permanent Representation of the Republic of Bulgaria to the European Union, and applicable to them information and documents are sent electronically by electronic signatures.

Chapter Nine

CONCESSION AGREEMENT

Section I

Conclusion of Concession Agreement

Article 62. (*Last amendment, SG No. 52 /2010*) (1) The competent authority is not entitled to conclude the concession agreement before the expiry of 14 days after notification

of stakeholders for decision on the assignment of concessionaire, except in cases where a participant assigned to concessionaires, is the only interested party.

(2) The concession agreement is concluded within the deadline determined by the decision on the assignment of concessionaire, which runs from the entry into force of the decision on the assignment of concessionaire or of the order which was granted prior performance.

(3) The decision on the assignment of a concessionaire enters into force when all preceding decisions in the procedure for granting the concession has come into force, has not appealed or, if contested - the dispute is resolved.

Article 63. (*Last amendment, SG No. 52 /2010*) (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) (*Last amendment, SG No. 52 /2010*) In the cases where the highest ranked tenderer declines to conclude the concession agreement, the agreement may be concluded after conduct of negotiations on improvement of the proposals under the criteria applied in arriving at the integral evaluation of the tender. The said negotiations shall be conducted with the second highest ranked tenderer.

Article 64. (*Last Amendment -SG No. 45/2012, in force as of 01.09.2012*) (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) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) 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, in force as of 01.09.2012*) Debatable grounds related to the execution, implementation and termination of concession agreements are settled by the competent civil court.

Section II

Content of Concession Agreement

Article 65. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) By the concession agreement, the grantor shall concede 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 grantor;
4. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) description of the facility, including the concession area as well as the accessories of the object of concession, if there are such;
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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) the amount and the conditions for payment of the compensation under art.6, when such is provided;
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. (*Last amendment, SG No. 52 /2010*) the terms and procedure for exchange of information between the parties, including electronically, and 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, in force as of 01.09.2012)* the amount and the internal rate of return for the concessionaire, specified by the financial-economic model, as well as the procedure for its calculation, accounting and control;

22. *(Former Item 21, Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* other.

(3) *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* In the concession agreement in conformity with the announcement are listed the conditions that determine the economic balance and the factual or legal circumstances related to the object of concession and/ or the service of public interest, whose occurrence or alteration may upset the balance.

1. identification of the spatial-development area upon which the subject of the concession is to be constructed or extended, except in the cases where determination of the spatial-development area for extension requires adoption of a detailed plan or a modification of an effective detailed plan;

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

3. the obligations of the grantor related to ensuring and providing to the concessionaire the spatial-development area for building or extension of the subject of the concession, as well as for making public investments related to the subject of the concession, or to ensuring the use of the said subject as assigned;

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

(4) *(New - SG No. 45/2012, in force as of 01.09.2012)* The financial-economic model proposed with the offer of the participant, selected to be a concessionaire, is an inseparable 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. *(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* (1)*(Last Amendment - SG No. 45/2012, in force as of 01.09.2012)* The authority representing the

grantor 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, in force as of 01.09.2012)* (1) Upon implementation of the concession agreement, the concessionaire keeps analytical accounting with reference to the services provided and to the other business activities, included in the right of the concessionaire to operate the object of the concession.

(2) The annual financial statement of the concessionaire is subject to verification by a registered auditor under the Independent Financial Audit Act.

Article 67b. *(New - SG No. 45/2012, in force as of 01.09.2012)* Upon implementation of the concession agreement, the concessionaire has the rights of an assigning body within the meaning of the Spatial Planning Act also in the cases when the object of concession and the accessories are property of the State, the Municipality or the public law organization.

Article 67c. *(New - SG No. 45/2012, in force as of 01.09.2012)* (1) Upon implementation of the concession agreement are exercised monitoring and control over the performance of the obligations of the parties, as well as audit of the concessionaire.

(2) The parties to the concession agreement are obliged to provide for keeping and storage of the documentation and protection of the information related to the implementation of the agreement.

(3) The concessionaire provides for publicity of the implementation of the concession agreement.

Article 68. The authority representing the grantor 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 grantor.

(3) The occurrence of a circumstance under Paragraph (1) may be grounds for amendment to or termination of the concession agreement.

Article 70. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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, in force as of 01.09.2012*) The concession agreement may be amended and/or supplemented, including with reference to the object of the concession when, due to unforeseen circumstances, the assignment of additional construction works which have not been included in the concession agreement, alteration in the type or the scope of the construction works, included in the concession agreement, or the assignment of additional services of public interest have become necessary under the following conditions:

1. additional works or additional services may not be technically or economically separated from the subject of the concession agreement without significant impediments for the concession grantor, or when they can be separated but are of substantial necessity for the implementation of the concession agreement, and

2. the total cost of the additional works or the additional services is not more than 50 percent of the works and services cost in accordance with the agreement, or

3. the total cost of the altered works does not decrease or exceed with more than 50 percent the cost of the works listed in the agreement.

(4) (*Former Par. (3), Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) Outside the cases under para.2 and para 3, the concession agreement may be amended or supplemented only for the purpose of recovery of the concession's economic balance as specified in the concession agreement, in the following cases:

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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) upon occurrence of the circumstances under art.65, para.3;

5. in other cases, specified by a law.

(5) (*Former Par. (4), Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) Article 64 (2) shall apply to supplementary agreement to a concession agreement on a municipal concession.

Article 71. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) In the cases under art. 70, para. 3 and 4 each party may request for an amendment or supplement in

the concession agreement. The request is addressed to the other party with a motivated proposal.

(2) Addressing or approving of a proposal for amendment or supplement of the concession agreement is made by the concession grantor by a substantial decision.

(3) If the parties fail to reach consent with reference to the amendment or supplement of the concession agreement, the party, requested the amendment may claim amendment or termination of the agreement.

Article 72. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) Upon reorganization of the concessionaire, the successor of the concessionaire, within three months after the entry into the commercial register, may request an extension of the concession agreement with him/her, after submitting evidence of the absence of the circumstances under art. 16, para. 2-4, as well as of meeting the other requirements, specified by law and the decision for initiation of award of concession procedure. The procedure for submission of the request is specified by the regulation for implementation of the law.

(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) (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) When the successor meets the requirements under para.1, the concession grantor adopts a decision for extension of the concession agreement with the successor within two months after the request or after the elimination of the irregularities related to it.

(4) In case the successor does not comply with the requirements of Paragraph (1), the grantor 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 grantor 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) upon reorganization of the partnership- concessionaire, unless a contract for extension of the concession agreement under the conditions and the procedure of art.72 has been concluded with the successor;

3. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) upon termination of the partnership- concessionaire with liquidation- as from the date of termination;

4. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) upon insolvency of the concessionaire- from the date of entry into force of the announcement of the insolvency decision;

5. (*New - SG No. 45/2012, in force as of 01.09.2012*) upon a court decision, in the cases under art.71, para.3- from the date of entry into force of the decision;

56. (*Former Item 5, Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) on other grounds, provided for in a law or in the concession agreement: as from the date specified therein.

(2) Upon termination of the agreement in the cases under Item 4 of Paragraph (1), the State or, respectively, the municipality shall enjoy the rights of privileged creditor.

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 grantor, 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 grantor.

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 grantor 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 grantor under the agreement, and termination shall be effected by a decision of the grantor.

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

Section V "a"

Ineffectiveness of the concession contract

(*New, SG No. 52 /2010*)

Article 77a. (*New, SG No. 52 /2010*) (1) Ineffective against the persons under Article 95a is a concession agreement, which is concluded:

1. without publishing the notice in the State Gazette or
2. without publishing in the Official Journal of the European Union - where applicable, or
3. without a procedure for granting the concession or
4. under a procedure which is not permitted by this Act, or
5. in violation under Article 62, (1) or (2), combined with a violation under this act, which has affected the chances of the person to be assigned as a concessionaire or
6. in the presence of terms under Article 59a,(1) moreover, the procedure for granting the concession has not been suspended or
7. under a procedure stopped in violation under Article 59a,(4).

(2) It is not considered as invalid a contract, which is concluded on the basis of an enacted order of pre-release performance.

Section VI

Consequences of Termination of Concession Agreement

Article 78. (*Last Amendment, SG No. 52 /2010*) (1) (*Last Amendment, SG No. 52 /2010*) Upon termination of the concession agreement/ or declared invalid, the concessionaire shall be obliged to deliver the subject of the concession 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 of the subject shall be drawn and signed by the members of the commission and by an authorized representative of the concessionaire.

(2) (*Last Amendment, SG No. 52 /2010*) The time limit for delivery and/or acceptance of the subject of the concession shall be 30 days after the date of termination or declared invalid of the concession agreement, and in cases of refusal to extend the concession agreement with a successor, 30 days after the date of the said refusal.

(3) *(Last Amendment, SG No. 52 /2010)* Where the concessionaire refuses to deliver the subject, as well as in case by the date of termination of the concession agreement/ declared invalid the concessionaire is dissolved without a successor, the commission under Paragraph (1) shall draw up a memorandum of ascertainment on acceptance of the 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. *(Last Amendment - SG No. 98/28.11.2014, in force as of 28.11.2014)* (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) *(Last Amendment - SG No. 98/28.11.2014, in force as of 28.11.2014)* 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 and Public Works 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) Notification under paragraph 1 is done and under declaring the ineffectiveness of the concession agreement.

Article 80. *(Last Amendment - SG No. 102/2012, in force as of 01.01.2013)* (1) Upon termination of the concession agreement in case of expiration of the concession period, the concessionaire is not entitled the right to receive compensation.

(2) In case of a pre-term termination of the concession agreement on account of the concession grantor, the concessionaire is entitled the right to receive a compensation amounting to:

1. the sum of the unrecovered costs of the concessionaire made for investments in the object of concession- when the object is property of the State, the municipality or the public law organization;

2. the sum, corresponding to the calculated in the financial-economic model sum of the rate of return of the concessionaire for the whole period of the agreement, deducted with the sum corresponding to the recovered costs for investments in the object of concession- when the object is property of the concessionaire.

(3) Upon pre-term termination of the concession agreement on account of the concessionaire, the concession grantor:

1. (*Last Amendment - SG No. 102/2012, in force as of 01.01.2013*) owes the concessionaire a compensation amounting to the sum of the unrecovered costs of the concessionaire for investments in the object of concession, deducted with the sum, corresponding to the calculated in the financial-economic model sum of the rate of return of the concessionaire for the whole period of the agreement, but not more than the market price of the investments performed by the concessionaire in the object at the date of termination of the agreement- when the object of concession is property of the State, the municipality or the public law organization;

2. does not owe the concessionaire a compensation- when the object of concession is his property.

(4) The recovery of the costs made by the concessionaire for investments covers the own capital with return rate, calculated in the financial-economic model, and the attracted capital with its price.

(5) In the cases under para.3, pt.1, the concession grantor does not owe a compensation, when, at the date of termination of the agreement, the market price of the object of concession is reduced in comparison with the market price at the date of conclusion of the agreement, and the reduction is a result of the cause on account of which the concession agreement has been terminated.

(6) In the cases under para. 3, pt. 2, the concessionaire owes the concession grantor recovery of a sum amounting to the sum of the costs made for investments in the object of concession which have been recovered by the operation and which have been received until the date of termination of the agreement.

(7) Upon calculation of the amount of the due compensation, the allowances for depreciation and the available financial assets of the concessionaire are taken into consideration.

(8) Regardless of the compensations under para.2 and 3, the concession agreement also provides for a penalty for its pre-term termination.

(9) The concession agreement specifies the terms and the procedure for payment of the due compensations and penalties. The compensations under para.2 and 3 are paid on equal annual payments for the remaining period of the term of the terminated agreement, unless otherwise provided for in the agreement.

Article 80a. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) (1) Upon the announcement of the concession agreement as invalid each party must return to the other party everything received by it.

(2) Upon the announcement of the concession agreement as invalid the concessionaire owes the grantor the income received by the exploiting of the concession and / or the service of public interest.

(3) Upon the announcement of the concession agreement as invalid the Grantor owes the Concessionaire also:

1. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) a compensation for the improvements made and augmentation under Article 80;

2. reimbursement the expenses for the management and maintenance of the concession and / or service of public interest.

(4) Except in the cases under paragraph 1-3 relations between the parties are governed by reimbursement the monetary equivalent of what received under the agreement.

Chapter Ten

FINANCING OF CONCESSION ACTIVITIES

Article 81. (*Last Amendment - SG No. 24/2013, in force as of 12.03.2013*) (1) The monetary revenue from concession payments, penalties, guarantees, compensations and sale of participation documentation are received as a revenue in the budget of the respective Ministry or body.

(2) (*Last Amendment - SG No. 24/2013, in force as of 12.03.2013*) When this is provided for by law, part of the monetary revenue from concession payments for State concessions are transferred from the respective Ministry or body to the budgets of the municipalities in which the object of concession is located and before the funds under para.4 are deducted. The municipalities account the transferred sums as revenue from concessions.

(3) The Minister of Finance annually approves the revenue and the costs for the concessions activities of the Ministries and the bodies under the Uniform Budget Classification.

(4) (*Last Amendment - SG No. 24/2013, in force as of 12.03.2013*) The concession activities costs are provided for in the Ministry of Finance budget in amount of 15 percent of the funds under para. 2 with the exception of concession royalties.

(5) (*Last Amendment - SG No. 15/2013, in force as of 01.01.2014*) The sums under para.4 are spend through the budgets of the respective Ministries and bodies on the basis on

corrections made between them and the Ministry of Finance budget under the procedure of art.109 or art. 110 of Public Finance Act.

(6) The requirements related to the reports of the ministries and the bodies on the revenue from concessions and the expenses made are specified by the regulations for implementation of the act.

(7) *(Last Amendment - SG No. 24/2013, in force as of 12.03.2013)* Unless otherwise provided for by law, the funds under para.2 are spent by the respective municipality after a decision adopted by the Municipal Council on:

1. funding the activities related to municipal concessions;
2. performance of activities and initiatives related to the environmental recovery from harms caused as a result of the implementation of concession activities;
3. capital expenditures.
4. *(New - SG No. 24/2013, in force as of 12.03.2013)* funding the activities related to energy efficiency or municipal objects.
5. *(New - SG No. 24/2013, in force as of 12.03.2013)* funding the municipal medical institutions with over 50 percent of municipal participation.
6. *(New - SG No. 24/2013, in force as of 12.03.2013)* cofinancing under operational programmes of the European union
7. *(New - SG No. 24/2013, in force as of 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

APPEALS. ACTION FOR INVALIDATION OF THE CONCESSION CONTRACT. ACTION FOR THE AWARD OF BENEFITS

(Last Amendment, SG No. 52/2010)

Article 83. *(Last Amendment, SG No. 52/2010)* (1) Subject to appeal under this chapter is any decision of the authorities under this Act and the decisions of the Commission for carrying out the procedure under Article 48, (1), pt. 2 and 3. Decisions are appealed before the Commission for Competition Protection on their legality, including the existence of discriminatory requirements on the selection criteria or other discriminatory technical, economic or financial conditions in the notice, in the documentation for participation or in any other document related to the procedure for granting the concession.

(2) Appeal against the decision on the assignment of a concessionaire may be made only by an interested participant within 10 days after being informed of this decision.

(3) Except in the cases under paragraph 2 an appeal may be made by any interested party within 10 days after notification of the decision or after learning otherwise, but not later than the conclusion of the concession agreement.

Article 84. *(Last amendment, SG No. 52 /2010) (1)* The appeal against the decision on the assignment of a concessionaire suspends the procedure for granting concession until final resolution of the dispute.

(2) Except in the cases under paragraph 1 an appeal does not suspend the procedure for granting the concession, unless requested temporary suspension order of the procedure.

Article 85. *(Last amendment, SG No. 52 /2010) (1) (Last amendment, SG No. 52 /2010)* The appeal is filed simultaneously to the Commission for Competition Protection and to the Grantor for a decision under Article 39 and Article 58, (2), respectively - to the authority which organized the procedure. The relevant authority is required within three days after receipt of the appeal to send to the Commission for Competition Protection an opinion on it, if necessary supported by evidence.

(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. *(Last amendment, SG No. 52 /2010)* data for the procedure and the decision which is 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) When the appeal is against a decision for the assignment of a concessionaire, in the opinion under Article 85, (1) the relevant authority may request the admission of prior performance for the conclusion of a concession agreement. The request is justified, including through implementation of relevant evidence.

(2) The Commission for Competition Protection allows the prior implementation of the decision on the assignment of a concessionaire exceptionally when required to provide life and health of citizens, to protect essential state or public interests or if the delay of execution may lead to a significant or difficult to overcome damage.

(3) It is not allowed prior execution if the request is justified by economic interests that lead to disproportionate consequences, including costs resulting from:

1. delay of execution of the agreement;
2. the opening of a new procedure;
3. change of the concessionaire under the contract;
4. payment of compensation and / or other penalties arising from the contract.

Article 86. (Last amendment, SG No. 52 /2010) (1) (Last amendment, SG No. 52 /2010) (1) Where an appeal is not against a decision for the assignment of a concessionaire, the Commission for Competition Protection may impose a temporary measure - suspension of the procedure for granting concession, if requested by the application.

(2) The Commission for Competition Protection rules on the application after consideration of the possible consequences of the imposition of the temporary measure to all interests which can be damaged, including the public interest. The assessment is based on the allegations in the complaint, the opinion of the respective authority and the evidence enclosed by the parties.

(3) The Commission for Competition Protection may not impose a temporary measure, when the negative consequences of all interests that can be damaged, exceed the benefits of its imposition.

(4) Ruling of an interim measure does not bind the Commission for Competition Protection in resolving the dispute on the merits and does not concern the other claims of the applicant.

Article 87. (*Last amendment, SG No. 52 /2010*) (1) Within three days after receipt of an appeal or after curing the non-conformities of an appeal, the President of the Commission on Protection of Competition shall initiate proceedings and shall designate a rapporteur.

(2) (*Last amendment, SG No. 52 /2010*) When with a complaint it is made a request for the imposition of an interim measure, the Commission for Competition Protection in closed session approves by order the request within 7 days of initiation of proceedings.

(3) (*Last amendment, SG No. 52 /2010*) The order of the imposition of an interim measure is communicated to the parties and is subject to appeal before a three-member panel of the Supreme Administrative Court within three days after notification.

(4) (*Repeal, SG No. 52 /2010*) .

(5) (*Repeal, SG No. 52 /2010*) .

(6) (*Repeal, SG No. 52 /2010*) .

(7) An appeal of the ruling shall not suspend the proceedings before the Commission on Protection of Competition and the enforcement of the interim measure as imposed. The court ruling shall be final.

(8) (*Repeal, SG No. 52 /2010*) .

Article 87a. (New, SG No. 52 /2010) (1) Where the decision on the assignment of a concessionaire is appealed and the Grantor has requested the admission of prior performance on the conclusion of the concession agreement, the Commission for Competition Protection in closed session approves by order the request within three days after receiving a request under Article 85a, (1).

(2) The order allowing the conclusion of the concession agreement is communicated to the parties under Article 48a and is subject to appeal before a three-member panel of the Supreme Administrative Court within three days after notification.

Article 87b. (New, SG No. 52 /2010) (1) Where there is proceedings against the decision on the assignment of a concessionaire and no prior implementation is allowed, the Commission for Competition Protection checks ex-officio for any pending proceedings against an earlier decision on the same procedure.

(2) The Commission for Competition Protection suspends the proceedings on an appeal against a decision on the assignment of a concessionaire, where it finds pending proceedings against an earlier decision on the same procedure until the final resolution of the dispute.

(3) After the entry into force of the decision on appeals against previous decisions on the same procedure proceedings against the decision on the assignment of a concessionaire is recovered ex-officio or at the request of one of the parties.

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. (*Last Amendment - SG No. 73/2011, in force as of 21.10.2011*) (1) (*Last Amendment - SG No. 73/2011, in force as of 21.10.2011*) For the valid transaction of business at sittings, at least four of the members of the Commission on Protection of Competition have to be present thereat.

(2) (*Last Amendment - SG No. 73/2011, in force as of 21.10.2011*) The Competition Protection Committee shall adopt resolutions with open voting and a majority of 4 votes. In case the meeting is attended by less than 7 members the resolution shall be adopted only if at least 3 of the commission members have voted in favour of it.

(3) (*Last Amendment - SG No.102/2008*) A member of the commission may not participate in investigation proceedings under this Act when he is interested in its outcome or

substantial doubts in his impartiality are present. The member of the commission shall be challenged at his request or at the request of the parties.

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

(5) *(Repeal - 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. *(Last Amendment - SG No. 52/2010)* (1) The Commission on Protection of Competition, meeting behind closed doors, shall render a decision whereby:

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

2. *(Last Amendment - SG No. 52/2010)* revoke unlawful decisions and directions of the case back to the body to continue the procedure for granting concession of the last lawful decision or action or

3. *(New, SG No. 52 /2010)* declare the invalidity of the decision.

(2) *(Last Amendment - SG No. 52/2010)* Where the contested decision on the concession was granted and prior performance, the Commission for Protection of Competition:

1. leave the appeal without consideration, or

2. ascertain the legal non-conformity of the decision.

(3) In the cases under Item 2 of Paragraph (2) concluded concession agreement remain in force, but stakeholders have the right to seek compensation under the Administrative Procedure Code.

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

1. the designation of the issuing authority;

2. reasoning;

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. (*Last Amendment - SG No. 52/2010*) (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) (*Last Amendment - SG No. 52/2010*) The ruling under Paragraph (1) communicated to the parties pursuant to Art. 48a and shall be appealable before a three-judge panel of the Supreme Administrative Court within fourteen days after communication of the said ruling 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. (*Last Amendment - SG No. 52/2010*) (1) (*Last Amendment - SG No. 52/2010*) The decision of the Commission on Protection of Competition under Article 91 communicated to the parties pursuant to Art. 48a and shall be appealable according to the procedure established by Article 93 (2).

(2) (*Last amendment, SG No. 52 /2010*) The Supreme Administrative Court rules within two months after receipt of the complaint and its decision is final.

Article 95a. (*New, SG No. 52 /2010*) (1) Ruling the invalidation of a concession agreement may require:

1. Any person interested in the cases under Article 77a,(1), pt. 1-4;
2. each interested participant in the cases under Article 77a,(1), pt. 5;
3. any interested party, respectively an interested participant depending on the stage the procedure has been at the time of notification of the European Commission - in the cases under Article 77a, (1), pt. 6 and 7.

(2) The claim under paragraph 1 is brought under the Civil Procedure Code.

(3) The deadline for submitting a claim for declaring the invalidation of a concession agreement is two months after the entry of the concession agreement in the National Register of Concessions or the recognition, but not later than one year after the conclusion of the agreement.

Article 95b. *(New, SG No. 52 /2010)* (1) Any interested party may bring a claim for damages suffered as a result of violation under this act when carrying out the procedure for granting concessions.

(2) Action under paragraph 1 is brought in compliance with the conditions under Article 203, (1), Article 204, (1), (3) and (4) and Article 205 of the Administrative Procedure Code.

Chapter Eleven "A"

ALTERNATIVE SANCTIONS

(New, SG No. 52 /2010)

Article 95c. *(New, SG No. 52 /2010)* When the concession agreement is concluded after a preliminary implementation granted by the decision under Article 91, (2), pt. 2, the Commission for Competition Protection, respectively, the Supreme Administrative Court imposes sanction to the authority, called "alternative sanction" in the amount of 5 per cent higher than projected levels of investment for the duration of the concession or of the proceeds by the exploiting of the concession and / or the service of a public interest for the duration of the concession.

Article 95d. *(New, SG No. 52 /2010)* (1) The sanction under Article 95c is imposed on the authority which has concluded the concession agreement, and there is no violation of procedure for granting the concession detected, but the contract has been concluded in violation under Article 62, (1) or (2).

(2) In the cases under paragraph 1 the penalty is imposed by the decision under Article 91, (1), pt. 1, where the infringement under Article 62, (1) or (2) is established until the completion of the appeal proceedings.

(3) Where the infringement under Article 62, (1) or (2) is found after the completion of the appeal proceedings, the penalty is imposed in new proceedings before the Commission for Competition Protection , initiated under Chapter Eleven at the request of an interested party.

Article 95e. *(New, SG No. 52 /2010)* Penalties under this chapter are paid from the budget of the authority on which they are imposed.

Chapter Eleven "B"

(Former Chapter Eleven "A", SG No. 52/2010)

REPRESENTATION OF THE STATE

Article 95f. *(Former Art. 95a, Last Amendment, SG No. 52/2010)* (1) *(Former text of Art. 95a, Last Amendment, SG No. 52/2010)* In litigation concerning the performance 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 cases related to the termination of concession agreements, the Grantor is represented by the authority designated under 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 grantor 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. *(Last Amendment, SG No. 52 /2010)* (1) *(Last Amendment, SG No. 52 /2010)* Within 14 days of the conclusion of the concession contract, an official appointed by the body representing the Grantor under the concession contract, must provide concession in the National 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. *(Last Amendment, SG No. 52 /2010)* (1) *(Last Amendment, SG No. 52 /2010)* Within fourteen days after f the completion or termination of a concession granting procedure, official appointed by the authority organizing the conduct of the procedure shall present 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. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) The authorities under Article 19 shall transmit for observations, before their submission for consideration by the grantor:

1. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) drafts of decisions of the Council of Ministers- to the ministries and the specialized administration of the Council of Ministers and the chairperson of the State Agency for National Security, and the drafts of decisions for initiation of award of concession procedure, as well as the drafts of decisions related to their amending and/ or supplementing- also to the regional governor and to the mayor of the municipality of the location of the object of concession;

2. (***Last Amendment, 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 grantor: 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. (***Last Amendment, SG No. 103/2009***) (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) (***Last Amendment, 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. (*Last Amendment, SG No. 52 /2010*) (1) Any natural or legal person, who or which uses a facility of general interest without legal grounds, shall be liable to a fine or, respectively, to a pecuniary penalty of BGN 5,000 or exceeding this amount but not exceeding BGN 50,000.

(2) (*Last Amendment, SG No. 52 /2010*) Any person, who fails to fulfil an obligation under Article 99 or 100, shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000.

(3) Any official person commits an act whereby a procedure for selection of a concessionaire under this Act and under the Regulations for Application thereof is violated, shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding 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 of BGN 1,000 or exceeding this amount but not exceeding BGN 2,500.

(5) (*New, SG No. 52 /2010*) An authority which does not fulfill an obligation under Chapter Eight "a" is imposed a material sanction of 1000 to 5000 leva

(6) (*Former par.(5), SG No. 52 /2010*) Where a violation under Paragraphs (1) to (4) is recommitted, a fine or, respectively, a pecuniary penalty, shall be imposed on the offender in the originally imposed amount multiplied by the ordinal number of the respective violation.

Article 107. (*Last Amendment, SG No. 52 /2010*) (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. (*Last Amendment, SG No. 52 /2010*) Article 106 (3) and body Article 106 (5):

(a) by the authorities of the Public Financial Inspection Agency: in the cases where the violation has been committed by an authority under Article 19 (1) to (4);

(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. (*Last Amendment, SG No. 52 /2010*) (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) (*Last Amendment, SG No. 52 /2010*) The pecuniary penalties, alternative sanctions and fines under effective decisions of the Commission on Protection of Competition shall be subject to collection according to the procedure established by the Tax and Social-Insurance Procedure Code.

SUPPLEMENTARY PROVISION

§ 1. (*Last Amendment - SG No. 13/16.02.2016, in force as of 15.04.2016*) Within the meaning given by this Act:

1. "Extration" 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. (*Last Amendment, SG No. 52 /2010*) "Legislation of the State in which 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" is considered any person:

a) which has, or had an interest in concluding the concession agreement;

b) who has suffered or is likely to suffer damage from an alleged infringement in the procedure for granting concessions and

c) who has not been removed permanently from the procedure, if he/she has acquired a role as a participant.

56. (*New, SG No. 52 /2010*) "Interested party" is a party for which are present simultaneously the following conditions:

a) their offer and / or bank guarantee for participation are not expired;

b) has not ceased its participation in the proceedings by withdrawing its offer;

c) has not been removed permanently from the procedure for granting the concession by a final decision.

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

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

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

9. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) "Accessory" is the adjacent infrastructure within the meaning of § 5, pt.31 of the additional provisions of the Spatial Planning Act and any other autonomous object which provides the unimpeded and normal functioning of the object of concession or the provision of the service of public interest , as well as properties outside the object of concession which are necessary for the performance of other business activities, without necessarily being physically connected to the object of the concession.

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

11. (*Last Amendment - SG No. 45/2012, in force as of 01.09.2012*) "Public law organization" is the term, specified in the Public Procurement Act.

(a) a legal person, in respect of which any of the following conditions is fulfilled:

(aa) more than half of its income for the preceding year is financed by the state budget, by the budgets of the Bulgarian National Bank, public social insurance or of the National Health Insurance Fund, by the municipal budgets or by a contracting authority under Article 7 (1) of the Public Procurement Act;

(bb) more than half of the members of its management or supervisory body are designated by a contracting authority under Item 1 of Article 7 of the Public Procurement Act;

(cc) is subject to management supervision on the part of a contracting authority under Item 1 of Article 7 of the Public Procurement Act; management supervision shall be presumed when a person exerts, in any way whatsoever, a dominant influence on the activity of another person;

(b) a combination between a person under Littera (a), the State and a municipality.

c) (*New, SG No.47/2009, in force as of 23.09.2009*) Association of water supply and sanitation under the Water Act.

12. "Extension of the subject of the concession" shall be an expansion of the spatial-development area of the subject of the concession and/or extension or heightening of an existing facility.

13. (*Amended, SG No. 41/2007*) "Redevelopment of the subject of the concession" shall be a 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. (*Last Amendment - SG No. 13/16.02.2016, in force as of 15.04.2016*) "Related Persons" means:

- a) relatives of direct lineage of descent without exceptions;
- b) relatives of collateral lineage to the fourth degree inclusive;
- c) relatives by marriage- to second degree inclusive;
- d) spouses or persons living together as partners;
- e) partners;
- f) the persons, one of whom participates in the management of the enterprise of the other one;
- g) an enterprise and a person who owns more than 5 per cent of the stocks or the shares, issued as voting ones in the respective enterprise.

Any enterprise whose capital is 100 per cent state or municipal property and a person who exercises the rights of the state, respectively the municipality, in this enterprise are not related persons.

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 grantor, 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. (*Repealed - SG No. 45/2012, in force as of 01.09.2012*) "Service of general interest" shall be a service under Annex 2 to Item 1 of Article 5 (1) and under Annex 3 to Item 2 of Article 5 (1) of the Public Procurement Act which, at the time of commencement of the preparatory steps for granting of a concession is provided or must be provided by the grantor under the terms established by this Act.

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 FINAL PROVISIONS

§ 2. This Act shall supersede the Concessions Act (promulgated in the State Gazette No. 92 of 1995; [modified by] Constitutional Court Judgment No. 2 of 1996, [promulgated in] No. 16 of 1996; amended in No. 44 of 1996, Nos. 61 and 123 of 1997, No. 93 of 1998, Nos. 23, 56, 64 and 67 of 1999, Nos. 12, 64 and 97 of 2000, Nos. 28 and 63 of 2002, Nos. 24, 80 and 104 of 2004).

§ 3. Where at the date of entry into force of this Act a decision of the Council of Ministers under Article 7 (1) of the Concessions Act as superseded, or a resolution of a Municipal Council under Item 1 of Article 71 (1) of the Municipal Property Act as repealed by Item 3 of § 16 has been adopted, the procedure shall be completed according to the hitherto effective procedure.

§ 4. (1) (*Amended, SG No. 105/2006*) (*Amended, SG No. 105/2006*) In the cases referred to in § 17a of the Transitional and Final Provisions of the Privatisation and Post-Privatisation Control Act, not later than the 31st day of March 2007 the competent government ministers shall submit a proposal to grant a concession to a corporation which has submitted, after the privatisation thereof but not later than the 30th day of September 2003, an application for the granting of a concession to a state body. Where the said corporation has been transformed after the privatisation thereof according to the procedure established by Chapter Sixteen of the Commerce Act or the enterprise thereof has been transferred according to the procedure established by Article 15 of the Commerce Act, the concession shall be granted to the successor to the said corporation or to the transferee of the enterprise. The concession shall be granted without an auction or competitive bidding procedure according to the procedure established by the Concessions Act as hereby superseded.

(2) *(New, SG No. 53/2006)* Rights under Paragraph (1) shall furthermore be held by commercial corporations or successors thereto which held a right but did not submit an application to a state body after the expiry of the time limit referred to in sentence two of § 17 (1) of the Transitional and Final Provisions of the Privatisation and Post-Privatisation Control Act and not later than the 30th day of June 2004.

(3) *(Renumbered from Paragraph (2), SG No. 53/2006)* When submitting a proposal to grant a concession under Paragraph (2), the competent government minister need not attach the analyses referred to in Article 6 (3) of the Concessions Act as hereby superseded. By the proposal thereof, the government minister shall justify the conditions and the principal rights and obligations under the concession proposed.

(4) *(Renumbered from Paragraph (3), SG No. 53/2006)* The concession shall be granted under the terms and according to the procedure established by § 17a (2) of the Transitional and Final Provisions of the Privatisation and Post-Privatisation Control Act and in compliance with the following additional conditions:

1. payment by the concessionaire of the legal interest on the concession royalty due for the period from the transfer of ownership under the contract for privatisation until the conclusion of the concession agreement;

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

§ 4a. *(New, SG No. 105/2006)* Not later than the 31st day of March 2007, the competent government ministers shall submit a proposal to grant a subsurface resources extraction concession under Article 2 of the Subsurface Resources Act under the terms and according to the procedure established by § 4 (1) to (4) herein to each privatised state-owned or municipal-owned enterprise which has performed extraction at the date of conclusion of the contract for privatisation, as well as to any buyer of a self-contained part of each privatised state-owned or municipal-owned enterprise, which in technological terms is directly linked with the use of subsurface resources or, respectively, to the successors to any such enterprise or buyer.

§ 4b. *(New, SG No. 105/2006)* (1) Not later than the 31st day of March 2007, the persons or the successors thereto, whereto the ownership to a corporeal immovable has been restored according to the procedure established by the Act Restoring Ownership of Nationalized Corporeal Immovables and the use of the said immovable is directly related to extraction of subsurface resources under Article 2 of the Subsurface Resources Act, shall submit an application to the competent government minister for the granting of a concession without an auction or competitive bidding procedure according to the procedure established by the Concessions Act as hereby superseded.

(2) Together with the application referred to in Paragraph (1), the persons shall also present the analyses referred to in Article 8 of the Regulations for Application of the Concession Act (promulgated in the State Gazette No. 111 of 1995.; amended in No. 15 of 1997, No. 39 of 1998, No. 27 of 2002, Nos. 13 and 101 of 2004, Nos. 10, 78, 83 and 96 of 2005; repealed in No. 54 of 2006) as hereby superseded.

(3) Within three months after the submission of the application referred to in Paragraph (1), the competent government minister shall lay before the Council of Ministers a proposal

to grant a concession without an auction or competitive bidding procedure to the commercial corporation wherein the persons whereto the ownership has been restored or the successors to the said persons hold the entire capital, subject to the condition that the subsurface resource specified in the application is not subject to a prospecting and exploration permit, nor a commercial find has been registered, nor an extraction concession by a third party has been granted.

(4) The concession agreement shall enter into force as from the date of conclusion thereof.

(5) A concession in the cases referred to in § 2 of the Transitional and Final Provisions of the Subsurface Resources Act shall likewise be granted according to the procedure established by Paragraphs (1) to (3). In such cases, the concession agreement shall enter into force as from the 15th day of March 1999. The concessionaire shall owe a concession royalty for the period from the entry into force of the concession agreement until the conclusion of the said agreement together with the legal penalty interest, unless the said concessionaire proves the payment of a fee for quarrying under the Local Taxes and Fees Act.

(6) Where the reserves of the subsurface resource specified in the application referred to in Paragraph (1) are not included in the National Balance of Resources, the applicant or, respectively, the persons reserved to in Paragraph (3), shall be issued a prospecting and exploration permit valid for six months, whereafter the concession shall be granted according to the procedure established by the Subsurface Resources Act.

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

“(3) Self-contained parts of the corporeal immovables under Paragraph (2) may be leased terms under the terms and according to the procedure established by the State Property Act.”

§ 6. The Water Act (promulgated in the State Gazette No. 67 of 1999; amended, in No. 81 of 2000, Nos. 34, 41 and 108 of 2001, Nos. 47, 74 and 91 of 2002, Nos. 42, 69, 84 and 107 of 2003, Nos. 6 and 70 of 2004, Nos. 18, 77 and 94 of 2005, Nos. 29 and 30 of 2006) shall be amended and supplemented as follows:

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

"3. the Minister of Economy and Energy – in respect of water-power systems and projects;”.

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

3. In Article 21, Paragraphs (4) and (5) shall be amended to read as follows:

“(4) The justification of the concession under Article 21 of the Concessions Act for mineral water constituting public municipal property shall be prepared according to

methodological guidelines endorsed by the Ministry of Environment and Water for preparation of a justification for granting of a mineral water concession.

(5) The proposal by the municipality mayor under Article 38 (1) of the Concessions Act shall be coordinated with the Minister of Environment and Water regarding the parameters of the concession and the terms for security and monitoring of the mineral water."

4. In Article 40, Item 3 shall be repealed.

5. Article 47 shall be amended to read as follows:

"Article 47. (1) An extraction concession for mineral water constituting exclusive state property shall be granted under the terms and according to the procedure established by the Concessions Act.

(2) A mineral water extraction concession shall be granted where water use is for commercial purposes and is intended for:

1. bottling of natural mineral water and/or carbonated and other drinks whereof mineral water is an ingredient;

2. extraction of valuable substances;

3. production of hydro-geothermal energy.

(3) A mineral water extraction concession shall be granted with due consideration for the needs of medical-treatment facilities for hospital care and for the needs of common water use for drinking and water draft.

(4) Upon granting an extraction concession for mineral water constituting exclusive state property, the concessionaire shall pay a portion of the concession royalty which may not be less than 30 per cent and which shall be determined by the decision of the Council of Ministers to initiate a concession granting procedure, to the municipality within whose territory the concession right is created."

6. There shall be inserted a new Article 47a:

"Article 47a. A works concession or a service concession for water development systems and facilities and for related water bodies, as well as for hydraulic-engineering, water-power, irrigation and land-reclamation, water-supply and sewerage systems shall be granted under the terms and according to the procedure established by the Concessions Act."

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

"2. concession;".

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

"2. the application is for water use and/or [water body] use for a private water body or for a facility for which a concession has been granted;".

9. Article 95 shall be amended to read as follows:

"Article 95. Where a concession granting procedure is initiated for a water development system intended for multiple-purpose use, the preparatory steps shall be performed in a coordinated manner, and the proposals under Article 38 (1) of the Concessions Act shall be made simultaneously by the competent government ministers, if different."

10. In Article 96a:

(a) Paragraph (1) shall be amended to read as follows:

"(1) A concession for water development systems and facilities which constitute state or mixed state and municipal property and belong to one and the same technological system or have an integral management system within the territory of multiple municipalities shall be granted by the Council of Ministers according to the procedure established by the Concessions Act.";

(b) Paragraph (9) shall be amended to read as follows:

"(9) The representatives of the municipalities under Paragraph (7) shall participate in the preparation of the draft concession agreement."

11. Article 98 shall be amended to read as follows:

"Article 98. Upon granting an extraction concession for mineral water constituting exclusive state property and public municipal property, the regional governors and the municipality mayors shall take the measures necessary for implementation of the concession, each within their respective competence."

12. Article 100 shall be repealed.

13. In Article 101 (1), the words "the decision of the Council of Ministers to grant a concession" shall be replaced by "the decision of the Council of Ministers to initiate a concession granting procedure".

14. Article 102 shall be repealed.

15. In Item 1 (b) of 1 of Article 151 (2), after the words "concession for", there shall be inserted "extraction of mineral".

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

"2. the government ministers under Items 1, 2 and 3 of Article 10 (1), who conclude the concession agreement;"

17. In Article 195, Paragraph (2) shall be repealed.

§ 7. In the Forests Act (promulgated in the State Gazette No. 125 of 1997; amended in Nos. 79 and 133 of 1998, No. 26 of 1999, Nos. 29 and 78 of 2000, Nos. 77, 79 and 99 of 2002, Nos. 16 and 107 of 2003, Nos. 72 and 105 of 2005, Nos. 29 and 30 of 2006), Article 16 shall be amended to read as follows:

"Article 16. (1) A right of use and servitudes to forests and forest-stock land tracts constituting private state property of an area exceeding 10 hectares shall be created by the Council of Ministers on a motion by the Minister of Agriculture and Forestry, and for areas not exceeding 10 hectares by the Minister of Agriculture and Forestry on a motion by the Head of the National Forestry Board. The motions shall be cleared with the Minister of Environment and Water. The right of use shall be created for a period not exceeding 30 years.

(2) Servitudes for implementation of physical-infrastructure projects to forests and forest-stock land tracts constituting public state property shall be established by the Council of Ministers on a motion by the Minister of Agriculture and Forestry for the period of operation of the infrastructure project.

(3) A gratuitous right of use under Paragraph (1) may be created by an order of the Council of Ministers on a motion by the Minister of Agriculture and Forestry only for facilities directly related to national security and defence, or for other particularly Important state needs.

(4) A gratuitous right of use under Paragraph (1) shall be created by an order of the Council of Ministers on a motion by the Minister of Agriculture and Forestry and the Minister of Education and Science to state schools, to scientific research institutes and to public-financed legal persons, which conduct training or perform scientific research activities related to the management, stewarding, organization and protection of forests.

(5) A right of use to forests and forest-stock land tracts may be created for:

1. performance of activities related to prospecting and exploration of subsurface resources according to the procedure established by the Subsurface Resources Act;

2. placing of movable amenities, which are not permanently attached to the ground, 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 development, within the meaning given by Article 12 (1) of the Spatial Development Act, is required.

(6) A servitude to forests and forest-stock land tracts may established for:

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

2. underground water mains of a cross section not exceeding 1,500 mm, sewers, cables and other physical-infrastructure elements.

(7) By resolution of the Municipal Council, a right of use and servitudes may be created to areas of the municipal forest stock.

(8) The owner shall retain the right of ownership to the timber from the areas made available."

§ 8. The Code of Civil Procedure (promulgated in Transactions of the Presidium of the National Assembly No. 12 of 1952; amended in No. 92 of 1952, No. 89 of 1953, No. 90 of 1955, No. 90 of 1956, No. 90 of 1958, Nos. 50 and 90 of 1961; corrected in No. 99 of 1961;

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

1. In Article 18, there shall be added a new Paragraph (5):

“(5) In litigation concerning the performance and termination of concession agreements, the State shall be represented by a government minister designated by the decision of the Council of Ministers under Article 58 (2) of the Concessions Act.”

2. In Article 237, there shall be added a new Littera (n):

“(n) concession agreements regarding the liabilities contained therein for concession royalties and obligations to deliver the subject of the concession.”

3. In Article 242 (2), after the words “Litterae (f) to (h)”, there shall be inserted “and Littera (n)”.

4. In Article 243:

(a) there shall be inserted a new Paragraph (2):

“(2) The writ of execution under Littera (n) of Article 237 shall be issued on the basis of:

1. a request on the part of the authority representing the grantor under the concession agreement;

2. a certified true copy of the agreement executed, and

3. a written invitation to the concessionaire to voluntarily pay the receivable or to deliver the subject of the concession with a valid date of acceptance.”;

(b) the existing Paragraph (2) shall be renumbered to become Paragraph (3).

§ 9. The Civil Aviation Act (promulgated in the State Gazette No. 94 of 1972; amended in No. 30 of 1990, No. 16 of 1997, No. 85 of 1998, No. 12 of 2000, Nos. 34 and 111 of 2001, Nos. 52 and 70 of 2004, Nos. 88 and 102 of 2005, No. 30 of 2006) shall be amended as follows:

1. In Article 43b:

(a) Paragraph (2) shall be amended to read as follows:

“(2) The Minister of Transport shall perform the preparatory steps for granting a concession for civil airports for public use, shall conclude the concession agreements and shall exercise control over the performance thereof.”

(b) in Paragraph (3), the words “under Article 7 (1) of the Concessions Act” shall be replaced by “to initiate a concession granting procedure”;

(c) Paragraphs (5) to (10) shall be repealed.

2. In Paragraph (1), Item 3 of Paragraph (3) and Paragraph (5) of Article 122c, the words “under Article 7 of the Concessions Act” shall be replaced by “to initiate a concession granting procedure”.

§ 10. In the State Gazette Act (promulgated in the State Gazette No. 89 of 1995; corrected in No. 92 of 1995; amended in No. 123 of 1997, No. 56 of 1999, No. 1 of 2000, No. 97 of 2001, Nos. 9 and 42 of 2003, No. 31 of 2005), in Article 7 (2), after the words “the Public Procurement Act”, there shall be added “and for granting concessions under the Concessions Act”.

§ 11. The State Property Act (promulgated in the State Gazette No. 44 of 1996; amended in No. 104 of 1996, Nos. 55, 61 and 117 of 1997, Nos. 93 and 124 of 1998, No. 67 of 1999, Nos. 9, 12, 26 and 57 of 2000, No. 1 of 2001; [modified by] Constitutional Court Judgment No. 7 of 2001, [promulgated in] No. 38 of 2001; amended in No. 45 of 2002, No. 63 of 2003, Nos. 24 and 93 of 2004, No. 32 of 2005, Nos. 17 and 30 of 2006) shall be amended and supplemented as follows:

1. In Article 2, Paragraph (2) shall be amended to read as follows:

“(2) The following shall constitute public state property:

1. the items under Article 18 (1) of the Constitution of the Republic of Bulgaria, designated by a law as constituting exclusive state property;

2. the items and corporeal immovables, designated by a law or by an act of the Council of Ministers as constituting public state property;

3. the movable things, designated by a law or by an act of the Council of Ministers as constituting public state property;

4. the corporeal immovables allocated to central-government departments for the performance of their functions;

5. the corporeal immovables of national importance, intended for sustained satisfaction of public needs of national importance by shared use, as designated by the Council of Ministers.”

2. In Article 7, Paragraph (2) shall be repealed:

3. Article 15a shall be repealed.

4. In Article 16:

(a) Paragraphs (1) and (2) shall be amended to read as follows:

“(1) Any corporeal immovables constituting public state property may not be used otherwise than assigned and may not be allocated to third parties, except in the cases under Paragraph (2) and under Article 16a.

(2) Separate corporeal immovables or parts of corporeal immovables constituting public state property may be leased according to the procedure established by Article 19 (1) for a period of up to five years, subject to the condition that they are used as assigned and the performance of activities for which they have been allocated for management is not impeded.”

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

5. There shall be inserted a new Article 16a:

"Article 16a. (1) Beyond the cases under 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 concession granting procedure for a facility of general interest has been conducted and has ended without conclusion of a concession agreement, the Council of Ministers may allocate the management of the facility to a state-owned enterprise created under the procedure of Article 62 (3) of the Commerce Act, or to a wholly state-owned commercial corporation.

(3) In consideration of the management assigned under Paragraph (2), the state-owned enterprises and the wholly state-owned commercial corporations shall be obliged to maintain the facility and shall have the right to exploit the said facility, deriving revenue from the provision of services to third parties and/or from the performance of other economic activities through the facility.

(4) The persons under Paragraph (3) may lease parts of the facility of general interest assigned for management thereto under the terms established by Article 16 (2).

(5) The right of management under Paragraph (2) shall be of a fixed term until the granting a concession for the facility according to the procedure established by the Concessions Act.”

6. Article 84 shall be amended to read as follows:

“Article 84. Any person, who violates a prohibition under Article 16 (1), shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 2,000.”

§ 12. The Rail Transport Act (promulgated in the State Gazette No. 97 of 2000; amended in Nos. 47 and 96 of 2002, Nos. 70 and 115 of 2004, Nos. 77 and 88 of 2005) shall be amended and supplemented as follows:

1. In Article 3, Paragraph (4) shall be amended to read as follows:

“(4) Railway infrastructure facilities assigned for economic use, which are not directly related to the traffic control and safety systems, may be leased according to the procedure established by the State Property Act, subject to the condition that traffic safety would not be compromised.”

2. In Article 25, Paragraph (2) shall be repealed.

§ 13. The Local Taxes and Fees Act (promulgated in the State Gazette No. 117 of 1997; amended in Nos. 71, 83, 105 and 153 of 1998, No. 103 of 1999, Nos. 34 and 102 of 2000, No. 109 of 2001, Nos. 28, 45, 56 and 119 of 2002, Nos. 84 and 112 of 2003 and Nos. 6, 18, 36, 70 and 106 of 2004, Nos. 87, 94, 100, 103 and 105 of 2005, No. 30 of 2006), Article 11 shall be amended and supplemented as follows:

1. In Paragraph (3), sentence two shall be deleted.

2. There shall be added a new Paragraph (4):

“(4) Should a concession have been granted, the concessionaire shall be the taxable person.”

§ 14. In the Obligations and Contracts Act (promulgated in the State Gazette No. 275 of 1950; corrected in Transactions of the Presidium of the National Assembly No. 2 of 1950; amended in No. 69 of 1951, No. 92 of 1952; State Gazette No. 85 of 1963, No. 27 of 1973, No. 16 of 1977, No. 28 of 1982, No. 30 of 1990, Nos. 12 and 56 of 1993, Nos. 83 and 104 of 1996, Nos. 83 and 103 of 1999, No. 34 of 2000, No. 19 of 2003, Nos. 42 and 43 of 2005), in Item 2 of Article 136, a comma shall be placed at the end and there shall be added “as well as any receivables arising from concession royalties, interest and damages under concession agreements;”.

§ 15. The Maritime Space, Inland Waterways and Ports of the Republic of Bulgaria Act (promulgated in the State Gazette No. 12 of 2000; amended in No. 111 of 2001, Nos. 24 and 70 of 2004, No. 11 of 2005; [modified by] Constitutional Court Judgment No. 5 of 2005, [promulgated in] No. 45 of 2005; amended in Nos. 87, 88, 94, 102 and 104 of 2005, No. 30 of 2006) shall be amended as follows:

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

2. Article 116a shall be amended to read as follows:

"Article 116a. (1) In addition to the port services under Article 116, ancillary activities may also be performed in public transport ports.

(2) The activities under Paragraph (1) may be performed subject to the condition that they do not or would not interfere with the provision of port services.

(3) Ancillary activities in public transport ports of national importance may be performed by a person where to a concession has been granted for a facility under Article 117c (1). In such cases, the performance of the ancillary activity shall be treated as an object supplementary to the object of the concession agreement.

(4) Except in the cases under Paragraph (3), ancillary activities may also be performed by a person where to a concession has been granted under the terms and according to the procedure established by the Concessions Act.

(5) Ancillary activities in public transport ports of regional importance shall be performed by the owner or by persons who have concluded a contract therewith."

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

"(1) A concession shall be granted for one or more terminals of a public transport port of national importance with the object of provision of a port service under Item 2 of Article 116 (3).

(2) Depending on the object, the concession under Paragraph (1) may be a works concession or a service concession."

4. In Article 117d:

(a) Paragraph (2) shall be amended to read as follows:

"(2) The Minister of Transport shall perform the preparatory steps for the granting of a concession for port terminals of public transport ports of national importance, shall conclude the concession agreements and shall exercise control over their performance."

(b) Paragraph (3) shall be repealed.

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

§ 16. The Municipal Property Act (promulgated in the State Gazette No. 44 of 1996; amended in No. 104 of 1996, No. 55 of 1997, Nos. 22 and 93 of 1998, Nos. 23, 56, 64, 67, 69 and 96 of 1999, No. 26 of 2000, No. 34 of 2001, No. 120 of 2002, No. 101 of 2004, Nos. 29 and 30 of 2006) shall be amended as follows:

1. In Article 9 (3), the words "under Article 69" shall be replaced by "for which a concession is granted".

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

3. Chapter Eight "Granting of Concessions", with Articles 67 to 75a, shall be repealed.

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

5. In § 46 of the Transitional and Final Provisions of the Act to Amend and Supplement the Municipal Property Act (State Gazette No. 96 of 1999), Paragraph (5) shall be repealed.

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

“(2) The agreements under Paragraph (1) may not have as their subject matter any corporeal immovables constituting public state property.”

§ 18. The Privatisation and Post-Privatisation Control Act (promulgated in the State Gazette No. 28 of 2002; amended in No. 78 of 2002, Nos. 20 and 31 of 2003; [modified by] Constitutional Court Judgment No. 5 of 2003, [promulgated in] No. 39 of 2003, Nos. 46 and 84 of 2003, Nos. 55 and 115 of 2004, Nos. 28, 39, 88, 94, 103 and 105 of 2005) shall be amended and supplemented as follows:

1. Article 36 shall be amended to read as follows:

“Article 36. (1) Any commercial corporation wherein the State holds shares or interests, which is subject to an initiated privatisation procedure, and which uses any items constituting public state property, shall receive concessions *ex lege* for the items used, save in the cases under Article 38 herein.

(2) Within three months after the declaration of the privatisation of the corporations concerned, the competent government ministers under Article 19 (1) of the Concessions Act shall perform the necessary steps and shall submit to the Council of Ministers a proposal for adoption of a decision on selection of the corporation whose privatisation has been declared as a concessionaire. The Council of Ministers shall adopt a decision not later than two months after submission of any such proposal.

(3) The concession rights as conceded and the principal obligations under the concession, including the concession royalty and the required investments where such have been defined, shall be taken into consideration upon preparation of legal status analyses and conduct of privatisation appraisals.

(4) The Privatisation Agency shall adopt a decision determining a privatisation method after the adoption of the decision referred to in Paragraph (2).

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

(6) Any commercial corporation wherein a municipality holds an interest equal to or exceeding 50 per cent, and which is subject to an initiated privatisation procedure, shall receive *ex lege* concessions for the units constituting public municipal property used.

(7) In the cases referred to in Paragraph (6), within three months after the declaration of the privatisation of the corporations concerned, the municipality mayor shall perform the necessary steps and shall submit to the Municipal Council a proposal to pass a resolution on selection of the corporation whose privatisation has been declared as a concessionaire. The Municipal Council shall pass a resolution determining a privatisation method after passing the resolution on selection of a concessionaire.”

2. Article 37 shall be amended to read as follows:

“Article 37. (1) Upon privatisation of any self-contained part of the property of any commercial corporation wherein the State holds an interest exceeding 50 per cent, which in technological terms is directly linked with any item constituting public state property, the concession shall be granted to the buyer of the said self-contained part under the contract for privatisation.

(2) The competent government minister under Article 19 (1) of the Concessions Act shall perform the necessary steps and shall submit to the Council of Ministers a proposal to adopt a decision on selection of the buyer of the said self-contained part as a concessionaire within three months after the decision referred to in Item 1 or Item 3 of Article 3 (3) herein.

(3) The conditions and requirements of the decision to grant a concession shall mandatorily be included in the privatisation appraisal and the information memorandum on the self-contained part and shall be reckoned with upon making a decision on a method.

(4) The contract for privatisation shall be concluded under the suspensive condition that the concession agreement shall be concluded.

(5) Upon privatisation of any self-contained part of the property of any commercial corporation wherein a municipality holds an interest exceeding 50 per cent, which in technological terms is directly linked with any item constituting public municipal property, the concession shall be granted to the buyer of the said self-contained part under the contract for privatisation.

(6) In the cases under Paragraph (5), within three months after the decision referred to in Item 2 of Article 3 (3) herein, the municipality mayor shall perform the necessary steps and shall submit to the Municipal Council a proposal to pass a resolution on selection of the buyer of the said self-contained part as a concessionaire."

3. There shall be inserted a new Article 37a:

"Article 37a. A service concession or an extraction concession may be granted in the cases under Articles 36 and 37 herein. The decision on selection of a concessionaire shall contain the elements referred to in Items 1 to 15 of Article 39 (2) and Article 59 (3) of the Concessions Act."

4. Article 38 shall be amended to read as follows:

In the cases where any commercial corporations referred to in Article 36 (1) herein use any port terminals of public transport ports of national importance or civil airports for public use, a concession may be granted only according to the procedure established by the Concessions Act."

§ 19. The Roads Act (promulgated in the State Gazette No. 26 of 2000; amended in No. 88 of 2000, No. 111 of 2001, Nos. 47 and 118 of 2002, Nos. 9 and 112 of 2003, Nos. 6 and 14 of 2004, Nos. 88 and 104 of 2005, No. 30 of 2006) shall be amended and supplemented as follows:

1. Article 11 shall be amended to read as follows:

"Article 11. (1) A concession for the national and municipal roads or for individual sections thereof shall be granted under the terms and according to the procedure established by the Concessions Act.

(2) The preparatory steps for granting of a concession for national roads or for individual sections thereof, the conclusion of the concession agreements and the exercise of control over the said agreements 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 to read as follows:

“(1) The concession territory shall cover a specific national road or a section thereof and the corresponding areas under Article 5.”

4. Articles 15 to 17 shall be repealed.

§ 20. The Physical Education and Sports Act (promulgated in the State Gazette No. 58 of 1996; [modified by] Constitutional Court Judgment No. 8 of 1997, [promulgated in] No. 53 of 1997; No. 124 of 1998, Nos. 51 and 81 of 1999, No. 53 of 2000; corrected in No. 55 of 2000; amended in No. 64 of 2000, No. 75 of 2002; [modified by] Constitutional Court Judgment No. 6 of 2002, [promulgated in] No. 95 of 2002; amended in No. 120 of 2002, No. 96 of 2004, Nos. 88 and 103 of 2005, No. 30 of 2006) shall be amended and supplemented as follows:

1. Article 50 shall be amended to read as follows:

“Article 50. (1) Sports grounds and facilities constituting state or municipal property shall be used for the needs of physical education and sports and any related support and auxiliary activities.

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

(3) The State and the municipalities shall allocate gratuitously, in whole or in part, for a specified period of time, sports and tourist grounds and facilities to kindergartens, comprehensive, secondary, special, vocational and higher schools and to extracurricular units for fulfilment of the compulsory curricula 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 pupils and undergraduates, under terms and according to a procedure established by the respective authorities.

(4) Sports grounds and facilities constituting property of the State, the municipalities and the schools shall also be used by school and university sports clubs for implementing the programmes for development of physical education, sports, recreation and tourism of pupils and undergraduates.

(5) Municipal councils shall establish the procedure according to which sports and tourist grounds and facilities constituting municipal property shall be used by citizens for attainment of the purposes of physical education and sports.”

2. There shall be inserted a new Article 50a:

"Article 50a. (1) Beyond the cases under 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 subject of the concession onerously or gratuitously to other natural and legal persons for training or competition activities."

§ 21. In the Subsurface Resources Act (promulgated in the State Gazette No. 23 of 1999, amended in No. 28 of 2000, No. 108 of 2001, No. 47 of 2002, No. 86 of 2003, Nos. 28 and 94 of 2005, No. 30 of 2006), in Article 61 (3), there shall be added a second sentence to read as follows: "A portion of the concession royalty, but not more than 30 per cent, to be determined by the decision to grant a concession, shall be credited to the budgets of the municipalities where the concession area is located."

§ 22. The Council of Ministers shall adopt Regulations for Application of this Act not later than the 1st day of July 2006.

§ 23. This Act shall enter into force as from the 1st day of July 2006, with the exception of Article 42 (3) and Article 58 (4), which shall enter into force as from the date of accession of the Republic of Bulgaria to the European Union.

§ 23a. (*Last Amendment - SG No. 102/2012, in force as of 01.01.2013*) (1) The procedures that have started and with reference to which the decision for initiation of an award of concession procedure has been adopted until 1 September 2012, are finished in accordance with the present procedure.

(2) With reference to the concession agreements, concluded until 1 September 2012 with concessionaires which are not trade companies, art.18, para.3 is not applied. For them, the hitherto existing art.72, para.1 and art.74, para.1, pt.2 and 3 are applied.

(3) With reference to concession agreements, concluded until 1 September 2012 the concession economic balance rules are not applied. For them, the hitherto existing art.70, para.3 is applied.

(4) (*New - SG No. 102/2012, in force as of 01.01.2013*) With reference to the concession agreements, concluded until 1 September 2012, the provision of Art. 80 effective until 1 September 2012 is applied.

§ 24. (1) The implementation of this Act shall be entrusted 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 Regulations for Application 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.