

Act Amending and Supplementing the Concessions Act
(promulgated SG 96/2017, supplemented, SG 103/2017, amended SG 7/2018, SG
15/2018)

§ 1. Art. 19 shall be amended to read as follows:

“Art. 19 (1) An economic operator having submitted an application or an application and a preliminary offer, shall have the rights of an applicant in the procedure for designation of a concessionaire.

(2) From the date of submission of an application and an offer, of a preliminary offer and an offer, or of an offer, the economic operator shall acquire the rights of a participant in the procedure for designation of a concessionaire.”

§ 2. In Art. 20, paragraph 3, third sentence, at the end, a comma and the following text shall be added: “as provided for therein”.

§ 3. In Art. 21, paragraph 5 shall be amended to read as follows:

“(5) The concession agreement shall provide that the economic operators participating in the group referred to in par. 2 and 3, as well as the economic operator referred to in paragraph 4, shall be jointly liable with the project company for the implementation of the concession agreement as provided for therein, taking account of the nature and extent of the participation of each of the economic operators in the project company or of their undertaking to provide resources to the project company.”

§ 4. In Art. 29, paragraph 3, second sentence, the words “estimated value” shall be replaced with “thus calculated value”.

§ 5. In Art. 50 the following amendments and supplements shall be made:

1. In paragraph 1:

a) a new item 3 shall be inserted:

“3. conducting a repeated procedure;”

b) the previous items 3 and 4 shall become items 4 and 5, respectively.

2. A new paragraph 4 shall be inserted:

“(4) The notice for conducting a repeated procedure, regardless of whether the concession is with or without a cross-border interest, shall be filled out in an electronic form published on the website of the National Concession Registry.”

§ 6. In Art. 61, paragraph 1, the words “para. 2 – 6” shall be replaced with “para. 2 – 5”.

§ 7. In Art. 63, paragraph 3 shall be amended to read as follows:

“(3) The third person with whose abilities the fulfilment of the financial and economic state requirements is proven agreement, as provided for therein, taking into account the nature and extent of the undertaking by such third person for the provision of resources.”

§ 8. In Art. 77, paragraphs 2 and 3 shall be amended to read as follows:

“(2) The amendments shall be made by an amendment notice, which shall be subject to approval by the Grantor through a decision thereof. Such decision may also approve amendments to the concession documentation. The decision shall be issued prior to the expiry of the announced deadline for receipt of applications, preliminary offers or offers.

(3) Following the issuance of the decision referred to in paragraph 2, the amendment notice shall be submitted for publication in accordance with the procedure provided for in article 76, paragraph 1, subject to the conditions laid down in article 76, paragraph 3, first sentence.

The amendment notice, the decision referred to in paragraph 2, and, where amendments to the concession documentation have been approved, also the amended documentation, shall be published in the National Concession Registry. The relevant documents shall be published in the National Concession Registry following the publication of the notice in the Official Journal of the European Union or in the State Gazette, as the case may be.”

§ 9. B Art. 94, para. 2, second sentence, at the end, the words “in accordance with Art. 77, para. 3” shall be added.

§ 10. In Art. 118, paragraphs 3 and 4 shall be amended to read as follows:

“(3) A decision to conduct a repeated procedure for designation of a concessionaire may be issued only in the cases under art. 117, para. 2, item 1, 2 and 5. The decision may:

1. order that the repeated procedure take place under the terms and conditions of the terminated procedure, setting new time limits for conducting the procedure; or

2. approve changes to the originally published notice and concession documentation only if they are not substantial and do not affect the subject of the concession, the terms and conditions for participation, the award criteria and the minimum requirements to offers.

(4) Following the issuance of the decision under para. 3, the official nominated by the grantor shall send for promulgation in the State Gazette a notice of conducting a repeated procedure, and by this notice, in the case under para. 3, item 1, new time limits shall be announced, while in the case under para. 3, item 2, the approved changes shall be announced.”

§ 11. In Art. 122, the following amendments and supplements shall be made:

1. In paragraph 2, item 22, the words “and procedures for” shall be replaced by “and procedures for, and the consequences of”.

2. In paragraph 4, a new item 4 shall be inserted:

“4. the conditions under which the economic operators participating in a group, the private partner or the third parties shall be jointly liable with the concessionaire in the cases provided for in this Act.”

§ 12. In Art. 142, the following amendments and supplements shall be made:

1. In paragraph 1, the words “by the court in accordance with the Code of Civil Procedure” shall be replaced with the words “in accordance with article 154, paragraph 2 or 3, accordingly”.

2. In paragraph 2, the words “court judgement” shall be replaced with the words “court or arbitration decision”.

§ 13. In Art. 152, paragraph 1 shall be amended to read as follows:

“(1) In case of early termination of the concession agreement for a reason which none of the parties can be held responsible for, the consequences of such termination shall be determined in accordance with the provisions of the agreement depending on the reason for the termination and the conditions in which it has occurred.”

§ 14. In Art. 154 the following amendments and supplements shall be made:

1. Paragraph 2 shall be amended to read as follows:

“(2) Any disputes concerning the conclusion, implementation, amendment and termination of a concession agreement shall be resolved by the court in accordance with the procedures provided for by the Code of Civil Procedure, except for the cases under paragraph 3.”

2. A new paragraph 3 shall be inserted:

“(3) By the concession agreement for a concession with a cross-border interest, the parties may agree that all or certain disputes shall be resolved by an arbitration court.”

§ 15. In Art. 158, paragraph 3, item 4, the words “determined by a tariff approved by the Council of Ministers” shall be deleted.

§ 16. In Chapter Six, a new Section VIa, comprised of Art. 178a, shall be inserted:

“Section VIa. State fees and expenses Art. 178a. For the proceedings under this chapter before the Commission for Protection of Competition and the Supreme Administrative Court, state fees and expenses shall be due in accordance with a tariff approved by the Council of Ministers. The state fees for cassation appeals before the Supreme Administrative Court shall be determined in the amount of the fees due for proceedings on appeals before the Commission for Protection of Competition. State fees for annulment of effective court rulings and for interlocutory appeals before the Supreme Administrative Court shall be determined in accordance with the Code of Administrative Procedure.”

§ 17. In Art. 179, paragraph 2, item 6, the words “or conflict with another requirement of this Act” shall be deleted.

§ 18. In Art. 192 the following amendments and supplements shall be made:

1. In paragraph 2:

a) in item 7 at the end, a comma and the following text shall be added: “and where applicable – the amended documentation as well”;

b) item 9 shall be amended to read as follows:

“9. a decision of the grantor for designation of a concessionaire, or a decision of the grantor for termination of the procedure, as the case may be, and a notice of repeating the procedure – where applicable;”

c) in item 10 the word “procedures” shall be replaced with the word “procedure”;

d) in item 11, letter “k” [BG: “л”], at the end, a comma and the words “where applicable” shall be added.

2. In paragraph 3, item 6 shall be amended to read as follows:

“6. Notices of amendments to the concession agreement, if any, where publication is required”.

§ 19. The following amendments and supplements shall be made in the Transitional and concluding provisions:

1. In § 5, para. 2, first sentence, after the words “under para. 1”, a comma shall be inserted and the following words shall be added: “where instead of approval, the Council of Ministers or the Municipal Council, as the case may be, shall approve, in its capacity as grantor, the relevant decision under art. 141, para. 2, art. 143, para. 2 and 3 art. 148, para. 1”.

2. In § 6, item 3 shall be repealed.

3. In § 41, item 2, the number “2019” shall be replaced with “2021”.

Transitional and concluding provisions

§ 20. The provisions of this Act shall apply to procedures for which, as at the effective date of this Act, there is an issued decision by the grantor pursuant to art. 71, para. 1, and no applications or applications and preliminary offers have been submitted.

§ 21. In the State Property Act (promulgated, SG 44/1996, amended, SG 104/1996, SG 55/1997, SG 61/1997, SG 117/1997, SG 93/1998, SG 124/1998, SG 67/1999, SG 9/2000, SG 12/2000, SG 26/2000, SG 57/2000, SG 1/2001; Constitutional Court Decision No 7/2001 – SG 38/2001; amended, SG 45/2002, SG 63/2003, SG 24/2004, SG93/2004, SG 32/2005, SG 17/2006, SG 30/2006, SG 36/2006, SG 64/2006, SG 105/2006, SG 41/2007, SG 59/2007, SG 92/2007, SG 113/2007, SG 52/2008, SG 54/2008, SG 10 /2009, SG 17/2009, SG 19/2009, SG 33/2009, SG 41/2009, SG 18/2010, SG 87/2010, SG 19/2011, SG 47/2011, SG 45/2012, SG

82/2012, SG 99/2012, SG 27/2013; Constitutional Court Decision No 6/2013 – SG 65/2013; amended, SG 66/2013, SG 109/2013, SG 40/2014, SG 98/2014, SG 105/2014, SG 52/2015, SG 60/2015, SG 61/2015, SG 81/2016, SG 13/2017, SG 58/2017, SG 96/2017, SG 21/2018, SG 64/2018, SG 77/2018, SG 90/2018), in art. 16, para. 3 the words “except for” shall be deleted.

§ 22. This Act shall take effect as of the day of its promulgation in the State Gazette, except for § 19, item 3, which shall take effect as of 30 January 2019.