

Decision no. 1.239 of December 8, 2010 (*restated*)

approving the Methodological Rules for Application of the Law of Public-Private Partnership no. 178/2010, as well as for Approval of Certain Measures regarding Reorganization of the Central Coordination Unit for the Public-Private Partnership from the Ministry of Public Finance

ISSUER: THE GOVERNMENT

PUBLISHED IN: THE OFFICIAL GAZETTE no. 833 of December 13, 2010;

Date of entry into force: 13 December 2010

Restated form, valid on: 23 April 2013

This restated form is valid from January 15, 2013, until the selected date

*) The restated form of this normative act, until April 23, 2013, has been attained by including all the amendments and additions made by the RECTIFICATION no. 1.239 from December 8, 2010; DECISION no. 1.000 from October 12, 2011; DECISION no. 7 from January 9, 2013.

Pursuant to article 108 of the Constitution of Romania, republished and to article 38 and 46 of the Law of Public-Private Partnership no. 178/2010,

the Government of Romania hereby enacts the following resolution. ARTICLE 1.

We hereby approve the Methodological Rules for Application of the Law of Public-Private Partnership no. 178/2010, provided in appendix no. 1, integral part of this decision.

ARTICLE 3.

The Government Decision no. 34/2009 regarding the organization and functioning of the Ministry of Public Finance, published in the Official Gazette of Romania, Part I, no. 52 from January 28, 2009, with the subsequent amendments and additions, is hereby modified as follows:

1. Article 3, paragraph (1), subparagraphs 61 and 62 shall be repealed.

2. Article 3, paragraph (1), subparagraphs 63 shall read as follows:

“63. manages the database regarding the projects for the concession of public works, services and goods, carried out at local and central level;”.

Appendix no. 1 “The organizational structure of the Ministry of Public Finance” is replaced by the appendix no. 2, integral part of this decision.

ARTICLE 4.

Article 3, paragraph (1) of the Government Decision no. 405/2007 regarding the functioning of the General Secretariate of the Government, published in the Official Gazette of Romania, Part I, no. 302 of May 7, 2007, with the subsequent amendments and additions, after subparagraph 14, a new paragraph is introduced, subparagraph 15, with the following contents:

“15 The public partners and private investors interested in designing and running public-private partnerships are guided and monitored by the Central Coordination Unit for the Public-Private Partnership (CCUPPP), in compliance with the law. For this purpose:

a) reviews each selection announcement or other complementary documentation submitted by the public partner to be published in the Electronic Public Procurement System (SEAP) and in the Official Journal of the European Union (OJEU), if the value of the project is higher than 5 million Euro;

b) within 2 working days since the receipt date of the announcement from SEAP, the CCUPPP has the duty either to issue to the SEAP operator the acceptance for publication in respect of the relevant announcement, should the review find no filling-in errors/omissions, or to reject the publication of the announcement, if filling-in errors/omissions are found, informing also the public partner of this decision, as well as how such errors/omissions can be addressed;

c) draws-up the annual national strategy for promotion and implementation of the public-private partnership projects and submits such for the government’s approval;

- d) follows-up reviews and regularly reports to the Government on implementation of the national strategy for promotion and implementation of the public-private partnership projects;
- e) determines and promotes procedures for identification and execution of the public-private partnership projects and providing support to all the public partners referred to under Chapter I, Section 4 - "Public Partners" of the Law of the public-private partnership no. 178/2010, in preparation and implementation of the public-private partnerships projects;
- f) develops and manages the integrated unique and updated public database of all the public-private partnership projects announced, as well as of the ones under performance or already completed;
- g) updates and procures maintenance and operation of the system implemented to process, collect and manage the statistical data and information regarding performance of the public-private partnerships at central and local level;
- h) ensures the promotion of the public-private partnership concept and projects;
- i) draws-up, relying on its own analyses and reviews, the summary documents regarding the performance of the public-private partnership projects;
- j) participates, by its representatives, by initiative of the public partners, according to the legal provisions in force, in the evaluation and negotiation committee, constituted with the scope of choosing the private investor and of signing the public-private partnership contract with the investor;
- k) identifies and ensures national distribution of the best practices in the field of public-private partnerships;
- l) establishes contacts and maintains relations in matters of investment, through public-private partnership projects, with governmental and nongovernmental bodies, as well as with foreign and domestic investors;
- m) facilitates contact between foreign or domestic investors and public partners in order to jointly develop public-private partnership projects;
- n) may represent the Government of Romania in meetings on public-private partnership, organized at national or international level;
- o) issues recommendations regarding the structure of public-private partnership projects, having in mind the impact on the public sector lending level, as well as on the level of lending limits at national and local level;
- p) monitors, together with the public partners, the evolution of the implementation process of the public-private partnership projects and coordinates the actions necessary for their adequate implementation;
- q) provides speciality assistance for public partners and interested investors, in all the phases of performance of the public-private partnership;
- r) ensures speciality consultancy, necessary for the setting-up and functioning, as part of some public authorities, of internal units for coordinating public-private partnership projects, organized according to article 39 of the Law no. 178/2010."

PRIME MINISTER
EMIL BOC

Countersigns:

General Secretary of the Government,
Daniela Nicoleta Andreescu

Minister of Transportation and Infrastructure
Daniela Boagiu

Minister of Regional Development and Tourism,
Gabriela Udrea

Minister of Economy, Commerce and Business Environment,
Ion Ariton

Minister of Communications and Informational Society,
Valerian Vreme

Minister of Administration and of the Interior,
Constantin-Traian Igaş

p. Minister of the Environment and Forestry,
Cristian Apostol,
Secretary of State

Minister of Health,
Cseke Attila

Minister of Public Finance,
Gheorghe Ialomiţianu

Bucharest, December 8, 2010.
No. 1.239

APPENDIX 1

METHODOLOGICAL NORMS

for Application of the Law of Public-Private Partnership no. 178/2010

CHAPTER I. Definitions

ARTICLE 1.

(1) The public-private partnership is an economic mechanism through which 2 partners, public authority and private investor, associate themselves, in order to achieve, through the public-private partnership, a public good or a public service, as defined by article 4, letters a) and c) of the Law of public-private partnership no. 178/2010.

(2) The public-private partnership is achieved, compulsory, through a distinct legal entity - the project company.

ARTICLE 2.

(1) The public-private partnership project is created in order to design, finance, built, rehabilitate, modernize, operate, maintain, develop and transfer any public good or service, based on a type of public-private contract, achieved according to the provisions of article 5 and 6 of the Law no. 178/2010, with the subsequent amendments and additions.

(2) The public-private partnership project is developed by the conclusion of a public-private partnership contract, which can be of different types, according to the activities from the public-private partnerships transferred by the public partner, as duties, to the private investor, according to article 6, paragraph (1) of the Law no. 178/2010.

ARTICLE 3.

Developing a public good or service as part of a public-private partnership project represents the ensemble of activities of designing, financing, construction, rehabilitation, modernizing, operating, maintaining, development and transfer hereof.

CHAPTER II.

Main responsibilities of the public partners in a public-private partnership project

ARTICLE 4.

Types of public works that may be the object of the public-private partnership contract:

- a) public works of local interest;
- b) public works of county-level interest;
- c) public works of national interest;

ARTICLE 5.

(1) The list of the main documentation constituting the basis of the public-private partnership project and the competencies regarding the approval hereof are provided in the appendix no. 1, integral part of the methodological norms.

The public-private partnership project for the design, finance, building, rehabilitation, modernization, operation, maintaining and development of public works of local interest are initiated by the commune, city and municipal councils and the councils of the administrative territorial subdivisions of the municipalities or the associations for inter community development.

ARTICLE 6.

The public-private partnership project for the design, finance, building, rehabilitation, modernization, operation, maintaining and development of public works of county-level interest are initiated by the county councils.

ARTICLE 7.

The public-private partnership project for the design, finance, building, rehabilitation, modernization, operation, maintaining and development of public works of national interest are initiated by the Government of Romania, ministries and public partners, as defined by article 8 of the Law no. 178/2010, with the subsequent amendments and additions.

ARTICLE 8.

In order to develop a public-private partnership project, the executive authorities, as defined by the Law of public local administration no. 215/2001, republished, with the subsequent amendments and additions, have the following responsibilities:

- a) to identify the main objective of the public-private partnership project;
- b) to execute the prefeasibility or foundation study with the specialists from their own structure or, where the case may be, through a company with expertise in the field;
- c) to prepare the documents which constitute the object of the decision of the deliberative authorities, regarding the approval of the public-private partnership project;
- d) to publish the selection notice and the attached document, according to the law;
- e) to distribute, free of charge, the document attached to the selection notice
- f) to organize, according to the law and the mandate given by the deliberative authorities, the receiving of tenders or, where the case may be, of the letters of intent, the works of the evaluation committee, the signing of the project agreement with the selected private investors, the works of the negotiation committee, the analysis of the final tender of the selected private investor, the conclusion of the public-private partnership contract.

ARTICLE 9.

In order to develop a public-private partnership project, the legal representatives of the public partners, as defined by article 8 of the Law no. 178/2010, with the subsequent amendments and additions, have the following responsibilities:

- a) to identify the main objective of the public-private partnership project;
- b) to execute the prefeasibility or foundation study with the specialists from their own structure or, where the case may be, through a company with expertise in the field, according to the legal provisions in force;
- c) to prepare the documents which constitute the object of the decision of the board of directors, regarding the approval of the public-private partnership project;
- d) to publish the selection notice and the attached document, according to the law;

- e) to distribute, free of charge, the document attached to the selection notice

- f) to organize, according to the law and the mandate given by the deliberative authorities/management bodies, the receiving of tenders/letters of intent, the works of the evaluation committee, the signing of the project agreement with the selected private investors, the works of the negotiation committee, the analysis of the final tender of the selected private investor, the conclusion of the public-private partnership contract.

ARTICLE 10.

In order to develop a public-private partnership project, the ministry with responsibilities in managing the field of applicability of the public-private partnership project has the following responsibilities:

- a) to identify the main objective of the public-private partnership project;
- b) to execute the prefeasibility or foundation study with the specialists from their own structure or, where the case may be, through a company with expertise in the field, according to the legal provisions in force;
- c) to publish the selection notice and the attached document, according to the Law no. 178/2010, with the subsequent amendments and additions;
- d) to distribute, free of charge, the document attached to the selection notice
- e) to organize, according to the law and the mandate given by the Government, the receiving of tenders/letters of intent, the works of the evaluation committee, the signing of the project agreement with the selected private investors, the works of the negotiation committee, the analysis of the final tender of the selected private investor, the conclusion of the public-private partnership contract.
- f) to ensure the integration of the public-private partnership project in the fiscal-budgetary strategy, approved according to the Law no. 69/2010 of fiscal-budgetary responsibility.
- g) to ensure the integration of the public-private partnership project in the fiscal-budgetary strategy, approved according to the Law no. 69/2010.

ARTICLE 11.

The deliberative authorities, as defined by the Law no. 215/2001, republished, with the subsequent amendments and additions, have the following responsibilities:

- a) to approve the opportunity of launching the public-private partnership project, based on the identification of the object of the public-private partnership project, made by the executive authorities;
- b) to approve the prefeasibility or foundation study, pertaining to the public-private partnership project;
- c) to approve the content of the selection notice and the attached document;
- d) to approve the constituency of the committee/committees of evaluation and negotiation. In order to select the private partners who will enter the negotiation stage, the public partner appoints a committee, that can be the same or can be different in the negotiation stage, with the view of establishing the private investor with whom the public-private partnership contract will be concluded;
- e) to approve the evaluation criteria, evaluation grid and the manner of handling the tenders/letters of intent received late or unsealed, according to the Law no. 178/2010, with the subsequent amendments and additions;
- f) to approve the criteria of negotiation with the selected public investors, signers of the project agreement, with the view of selecting the private partner with whom the public-private partnership contract shall be concluded;
- g) to delegate, where applicable, to the mayor/president of the county council or a team coordinated by them, one or more of the responsibilities provided under the letters a)-f);

h) to approve the evaluation report of the evaluation committee for the private investors with whom the project agreement shall be concluded;

i) to approve the basic elements, such as: the type of public-private partnership project, the estimated value of the investment pertaining to the project, the determined time period for the public-private partnership project, the risk grid, possible penalties etc., of the frame form of the public-private partnership contract.

ARTICLE 12.

The Government has the following responsibilities:

a) to approve the opportunity of launching the public-private partnership project, based on the identification of the object of the public-private partnership project, made by the ministry with responsibilities in managing the field of applicability of the public-private partnership project ;

b) to approve the prefeasibility or foundation study, pertaining to the public-private partnership project;

c) to approve the content of the selection notice and the attached document;

d) to approve the constituency of the committee/committees of evaluation and negotiation. In order to select the private partners who will enter the negotiation stage, the public partner appoints a committee, that can be the same or can be changed/modified in the negotiation stage, with the view of establishing the private investor with whom the public-private partnership contract shall be concluded;

e) to approve the evaluation criteria, evaluation grid and the manner of handling the tenders/letters of intent received late or unsealed, according to the Law no. 178/2010, with the subsequent amendments and additions;

f) to approve the criteria of negotiation with the selected public investors, signers of the project agreement, with the view of selecting the private partner with whom the public-private partnership contract shall be concluded;

g) approves the evaluation report of the evaluation committee for the private investors with whom the project agreement shall be concluded;

h) to approve the basic elements, such as: the type of public-private partnership project, the estimated value of the investment pertaining to the project, the determined time period for the public-private partnership project, the risk grid, possible penalties etc., of the frame form of the public-private partnership contract;

i) to delegate, where applicable, to the ministry responsible for the field of applicability of the public-private partnership project or a team coordinated by the minister or the secretary of state, one or more of the responsibilities provided under the letters a)-h).

ARTICLE 13.

The deliberative bodies of the public partners, as defined by article 8 of the Law no. 178/2010, with the subsequent amendments and additions, have the following responsibilities:

a) to approve the opportunity of launching the public-private partnership project, based on the identification made by the legal representatives of the public partners;

b) to approve the prefeasibility or foundation study, pertaining to the public-private partnership project;

c) to approve the content of the selection notice and the attached document;

d) to approve the constituency of the committee/committees of evaluation and negotiation. In order to select the private partners who will enter the negotiation stage, the public partner appoints a committee, that can be the same or can be changed/modified in the negotiation stage, with the view of establishing the private investor with whom the public-private partnership contract shall be concluded;

e) to approve the evaluation criteria, evaluation grid and the manner of handling the tenders/letters of intent received late or unsealed, according to the Law no. 178/2010, with the subsequent amendments and additions.

f) to approve the criteria of negotiation with the selected public investors, signers of the project agreement, with the view of selecting the private partner with whom the public-private partnership contract shall be concluded;

g) to delegate, where applicable, to the legal representatives, one or more of the responsibilities provided under the letters a)-f);

h) approves the evaluation report of the evaluation committee for the private investors with whom the project agreement will be concluded;

i) to approve the basic elements, such as: the type of public-private partnership project, the estimated value of the investment pertaining to the project, the determined time period for the public-private partnership project, the risk grid, possible penalties etc., of the frame form of the public-private partnership contract.

ARTICLE 14.

The boards of directors of the intra community development associations have the following competencies:

a) to coordinate a public-private partnership project, within the limits set by the provisions of this decision and by the competencies of the intra community development associations set by the Law no. 215/2001, republished, with the subsequent amendments and additions;

b) to carry into effect the competencies regarding the public-private partnership project, transferred by means of delegation of competence by the local councils of the intra community development associations.

ARTICLE 14¹.

In the attached document, the public partner can require from the private investor to indicate, in its tender, the part of the contract which it intends to subcontract to third parties, as well as the proposed subcontractors. This definition does not prejudice the aspect of the responsibility of the private investor.

ARTICLE 14².

(1) The public partner can indicate in the attached document the body or bodies from whom the private investors can obtain adequate information regarding the duties with respect to taxes, environmental protection, the requirements for protection and working conditions in force, in the region or the place where the works or services are to be carried out, and which shall apply to the works carried out on the construction site or to the services furnished during the execution period of the contract.

(2) The public partner who furnishes the information provided at paragraph (1) shall require from the private investors to mention in the selection procedures that during the elaboration of the tender/letter of intent they have respected the duties regarding the requirements with respect to the protection and working conditions in force at the place where the works or services are to be carried out. Paragraph (1) does not prejudice the carrying out of the provisions of article 54³⁵, regarding the verifying of the abnormally low tenders.

CHAPTER IV.

The form and content of the prefeasibility and foundation studies

ARTICLE 32.

(1) The prefeasibility study and the foundation study represent basic documents for the initializing of a public-private partnership project and are drawn-up according to the legal requirements in force.

(2) The public partner carries out the prefeasibility study or the foundation study, the costs generated by their carrying out being incumbent upon the public partner.

(3) The documents set forth at paragraph (1) provide the basic elements for the document attached to the selection notice for the carrying out of a public-private partnership project.

(4) The prefeasibility or the foundation study executed by the public partner shall make available to the private investors interested, together with the document attached to the selection notice.

(5) The prefeasibility or the foundation study will be approved by decision, in accordance with the provisions of II. chapter.

ARTICLE 33.

(1) The prefeasibility study represents the documentation containing the technical and economical justification of the public-private partnership project, its main characteristics, as well as its technical-economic indicators.

(2) The results of the prefeasibility study must tender comprehensive information regarding:

a) the benefits that the project will bring to the community;

b) the alternatives of carrying out of the analysed project;

c) the way in which the carrying out of the project meets the requirements and policies of the public partnership;

d) the fact that the project benefits from financial closing and if the cost of the project can't be covered from public revenue, what is the content and form of the participation of the public partner to the project, with respect to the law.

ARTICLE 34.

The prefeasibility study must cover the main technical, financial, economic, social, institutional and environmental aspects of the public-private project, containing, at least, the following elements:

- a) the public objective of the project;
- b) the evaluation of the participation of the public partner to the project;
- c) the scope of the project;
- d) the benefits brought by the project;
- e) the direction of addressability of the project;
- f) the technical implementation possibilities;
- g) the budget assessment, comprising the estimate value of the private investment, as well as the estimate value of the participation of the public partner in the project;
- h) the approximate evaluation of the set period of performance of the public-private partnership contract;
- i) the possibilities of recovering the investments;
- j) the evaluation of the main risks;
- k) the evaluation of the impact on the labour market;
- l) the evaluation of the impact on the environment;
- m) creating an illustration of the theme of the project, if the case may be, comprising, in principle, the deployment plan, the general plan, general architectural plans and sections or any other technical and architectural elements that may lead to a real as possible evaluation of the real value of the investment;
- n) the analysis and proposition of a certain type of public-private partnership contract, denoting the degree of participation of each partner in the project.

ARTICLE 35.

The foundation study is the document, usually more elaborate than the prefeasibility study, which is made for more complex projects and represents the documentation containing the technical and economical justification of the public-private project, as well as the main characteristics and technical-economic indicators hereof. The results of the foundation study must tender comprehensive information in order to justify the following:

- a) that the project can be carried out;
- b) that if it is carried out, the project will meet the requirements and policies of the public partnership;
- c) that various alternatives of carrying out the project have been analysed and that the best option is the public-private partnership;
- d) that the project benefits from financial closing and if the cost of the project can't be covered from public revenue, what is the content and form of the participation of the public partner to the project, with respect to the law.

ARTICLE 36.

The foundation study must cover the main technical, financial, economic, social, institutional and environmental aspects of the public-private project, containing, at least, the following elements:

- a) the public objective of the project;
- b) the evaluation of the participation of the public partner in the project, specifying the real status of the assets used in order to participate (land, utilities, services etc.);
- c) the scope of the project;
- d) the benefits brought by the project;
- e) the direction of addressability of the project;
- f) the technical implementation possibilities;
- g) the budget and risk assessment (identification, impact, probability, panning);
- h) the stages of implementing the project and the necessary resources for the implementing and operation;
- i) the list of procedures and standards used in the public-private partnership project;

- j) the budget assessment, comprising the estimate value of the private investment, as well as the estimate equivalent value of the participation of the public partner in the project;
- k) the approximate evaluation of the set period of performance of the public-private partnership contract;
- l) the possibilities of recovering the investments;
- m) the evaluation of the impact on the labour market;
- n) the evaluation of the impact on the environment;
- o) creating an illustration of the theme of the project, if the case may be, comprising, in principle, the deployment plan, the general plan, general architectural plans and sections or any other technical and architectural elements that may lead to a real as possible evaluation of the real value of the investment;
- p) the analysis and proposition of a certain type of public-private partnership contract, denoting the degree of participation of each partner in the project.
- q) the change/transition management.

CHAPTER V.

The form and content of the attached document and of the selection notice;

ARTICLE 37.

The attached document has the purpose to:

- a) present the public-private partnership project and the services that the public-private partnership expects to find on the market;
- b) inform the potential public investors about the public objective desired to be carried out by a mechanism of public-private partnership, the criteria of evaluation and the steps to be made during the implementation;
- c) receive tenders/letters of intent from potential investors, based on the document, which would allow the public authorities to gain a point of view upon the investors capable to carry out the public-private project, as close as possible to the objectives of the project;
- d) tendering sufficient and coherent information so that the potential investors may present comprehensive tenders/letters of intent, based on which the public authority to be able to make a substantiated selection;
- e) tendering information so that the interested parties may make a point of view regarding the technical, economic and financial capacity needed to carry out the public-private project;
- f) tendering clarifications on the risks of the project and the manner in which the distribution of risks is going to be made between the public authority and the private investor.

ARTICLE 38.

The attached document shall contain at least the following elements:

- a) information about the public partner and the initiated public-private partnership project, especially:
 - a.1) a short description of the initiating public partner, together with its responsibilities and duties regarding the public-private project;
 - a.2) a short description of the public-private project, of its objectives and why it integrates into the strategy and priorities of the public partner;
 - a.3) the budget assessment, comprising the estimate value of the private investment, as well as the estimate equivalent value of the participation of the public partner in the project;
 - a.4) the proposition of distribution of the project risks (the risk distribution matrix);
 - a.5) details regarding the category and types of goods and services that the private investor must furnish in the public-private project;
 - a.6) the indicative timetable of the public-private project, containing the dates and steps for the implementation of the project;
 - a.7) the commercial principles applicable to the carrying out of the public-private partnership project;
- b) details regarding the base of evaluation of the tenders/letters of intent for the selection of investors with whom the project agreements shall be concluded, which will have to cover, without limitation to, the following:
 - b.1) the experience of the private investor in carrying out similar projects;
 - b.2) the balance of the capabilities and expertise of the legal person or association of legal persons;

- b.3) the capability of the private investor to fulfil the financial and technical requirements of the public-private project;
- b.4) proven probity of the legal person or, where applicable, of each member of the association of private investors, proven by the way they handled the financing of a significant investment before;
- c) the general terms and conditions of the attached document, meaning:
 - c.1) a declaration of the public authority, according to which it reserves, unilaterally and undoubtedly, the right to continue the public-private partnership project, with clear justificatory reasons, in any stage prior to the submittal of the final tender resulting from the negotiation by the private investor;
 - c.2) a declaration that the public authority shall not reimburse to any of the investors participating in the selection of the costs made in order to prepare the tenders/letters of intent or any other activities carried out during the negotiation phase;
 - c.3) details regarding the manner in which the rights of intellectual property comprised in the letter of intent and its appendixes are protected. It is customary for the public partner to give guarantees that the information presented by the tenderer in the letter of intent will not be divulged; nevertheless, the public authority reserves the right to use some comments of the private investors in the subsequent phases of preparing the public-private partnership project;
 - c.4) a declaration that the public partner has no intention of disclosing any information regarding the documents or information extracted from the files of the other tenderers, excepting information on their own tender;
- d) the format, deadline and place where the tenders/letters of intent will be received;
- e) the information which the private investors have to present in the tender, meaning:
 - e.1) details regarding the private investor, including details for each member of the association of private investors, if it is an association, the nature and form of relationship of the members and the general conditions of the agreement of the members regarding the financing and carrying out of the type of activities proposed to be performed by the private investor in the public-private partnership project;
 - e.2) a general presentation of the proposition of approach of the public-private partnership project, in order to prove the capability of the private investor to meet the requirements of the public authority;
 - e.3) information about the expertise and capability of the private investor and, in the same time, justification of the ability to meet the requirements of the project;
 - e.4) details regarding the financial situation of each member of the association of private investors, as well as possible collateral financing sources, if applicable;
 - e.5) information regarding the requirements of confidentiality and possible conflicts of interest;
 - e.6) confirmation that neither the private investor, nor the members of the association of private investors have a current or potential conflict of interests;
 - e.7) evidence/proof of the capability of the private investor to manage the proposed level of risk management.

ARTICLE 38¹.

(1) The technical specifications are defined in the appendix no. 4, integral part of these norms, specifications mentioned in the documents of the contract, such as the selection notices, the indicated document, the prefeasibility or foundation study. The indicated technical specifications must be set so as to meet the criteria of accessibility for disabled persons and all users.

(2) The technical specifications must allow equal access for private investors and must not have the effect of imposing unjustified obstacles for the competition, in what the launch of the selection procedures is concerned.

(3) Without prejudice to the compulsory technical norms of internal law, the technical specifications are enunciated:

a) either by referral to the technical specifications defined in the appendix no. 4 and, in the order of preferences, to the national standards transposing the European standards, to the European technical agreements, to the common technical specifications, to the international standards or other technical reference system set by the European standardization bodies or, when they do not exist, to the national standards, to national technical agreements or national technical specifications in the field of design, computing and execution of works, as well as those referring to the use of products. Each referral is accompanied by the mention "or equivalent";

b) either in terms of performance or functional requirements; they can include environmental characteristics. Nevertheless, the technical specifications must be accurate enough in order for the investors to be able to determine the object of the contract and for the public partners to be able to assign the contract;

c) either in terms of performance or functional requirements, provided at letter b), referring to the specifications provided at letter a) as a means of presuming compliance with the respective performances or functional requirements;

d) or by referring to the specifications provided at letter a), for some characteristics and to the functional performances or requirements provided at letter b), for other characteristics.

(4) When they use the possibility to refer to the specifications provided at paragraph (3), letter a), the public partners can't decline an tender because the goods or services are not complying with the specifications that they referred to, if the investor proves in its tender, in a manner that addresses the requirements of the public partner, by any adequate means, that the solutions proposed meet in an equivalent manner the requirements defined in the technical specifications. The adequate means can consist of a technical file issued by the producer or a testing report issued by a known body.

(5) When they use the possibility provided at paragraph (3), of setting the functional performances or requirements to be met, the public partners can't decline an tender for works, goods or services in accordance with a national standard transposing an European standard, an European technical agreement, an international standard or a technical reference system elaborated by a European standardization body, if these specifications refer to functional performance or requirements that they have imposed.

(6) In its tender, the private investor must prove, in a manner that addresses the requirements of the public partner and by any adequate means, that the works, goods or services in accordance with the standard address the functional performances or requirements of the public partner. The adequate means can consist of a technical file issued by the producer or a testing report issued by a known body.

(7) When they set environmental characteristics in terms of functional performances or requirements, as provided at paragraph (3), letter b), the public partners can use detailed specifications or, when necessary, parts hereof, according to the EU or (multi)national Ecolabels or according to any other Ecolabels, provided that:

a) the said specifications are adequate so that they define the characteristics of the goods or services that constitute the object of the contract;

b) the requirements of the label are elaborated based on scientific information;

c) the Ecolabels are adopted by a procedure open to all the involved parties, such as governing bodies, consumers, producers, distributors and environmental organizations;

d) the specifications are accessible to all the stakeholders.

(8) The public partners can mention that the goods and services bearing Ecolabels or considered to be in compliance with the technical specifications defined in the attached document; the public partners must accept any other adequate justifications, such as a technical file issued by the producer or a testing report issued by a known body.

(9) For the purpose of this article, by bodies recognized shall designate testing and calibration laboratories, inspection and certification bodies complying with the applicable European standards.

The public partners shall accept the certificates issued by the recognized bodies from other member states.

(10) With the exception of the case when it is justified by the object of the contract, the technical specifications can't mention a determinate production, a determinate origin or a determined procedure and can't refer to a determinate commercial brand, patent, type, origin or production, which would result the in the favouring or eliminating of certain enterprises or products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject matter of the contract in compliance with paragraphs (3) and (4) is not possible; such reference shall be accompanied by the words "or equivalent".

ARTICLE 39.

The selection notice and the attached document are subject to authorization by the deliberative authorities, the Government or the deliberative or managing bodies of the public partners, as the case may be, together with the schedule for the selection procedure, the constituency of the evaluation committee of the letters of intent, the evaluation criteria, the evaluation grids and the manner of handling of the letters of intent received late or unsealed.

ARTICLE 40.

The selection notice shall be published, in compliance to the provisions of article 24 of the Law no. 178/2010, the public partner having the duty to distribute, free of charge, the attached document to all of the private investors.

ARTICLE 41.

In order to tender to all the stakeholders the possibility to answer to the selection notices, the public partner can also publish the same notice via mass media.

CHAPTER VI.

The evaluation committees of the tenders/letters of intent and of negotiation of the final tenders of the private investors

ARTICLE 42.

(1) The selection procedures of the private investor, with whom the public-private partnership contract shall be concluded are: the open procedure and the competitive dialogue procedure.

(2) The public partner appoints, according to the law, the following committees;

a) the evaluation committees of the tenders/letters of intent and of negotiation of the final tenders of the private investors

b) the negotiation committee for the selected private investors and with whom project agreements have been signed, when the competitive dialogue procedure is applied.

ARTICLE 43.

(1) The evaluation committee of the tenders/letters of intent and of the attached documents is constituted of a minimum of 5 members from the experts and specialist of the public partner and, as the case may be, members of the deliberative authorities/managing bodies, members of the executive of the public partner, as defined at article 8 of the Law no.

(2) 178/2010, with the subsequent amendments and additions, as well as any other person with expertise in the field of the objective of the public-private partnership project, as co-opted expert, who is not in an interest conflict, as defined by the Law no. 161/2003 regarding some measures for ensuring transparency in occupying a public office position, a public office and in the business environment, the prevention and fight against corruption, with the subsequent amendments and additions.

(3) The purpose of the evaluation committee of the tenders/letters of intent and of the attached documents is that of analysing and selecting the private investors who take part in the selection procedure, with the view of signing the public-private partnership contract or of the project agreement, as the case may be.

(4) If a single candidate turns out at the evaluation, the committee analyses the documentation submitted by him, based on the approved evaluation criteria, and, if it fulfils the selection criteria, the project agreement is signed and the negotiation stage continues, according to the law.

ARTICLE 44.

The selection criteria have the purpose of establishing the technical, financial and organizational potential of each private investor participating in the procedure, potential that needs to reflect its actual possibility of carrying out the contract and of solving the contingent difficulties related to its carrying out, if it will be declared successful tenderer.

ARTICLE 44¹.

The public partner has the right to apply the criteria of qualification and selection referring only to:

- a) the personal situation of the private investor;
- b) the capacity to practice the professional activity;
- c) the economic and financial situation;
- d) the technical and/or professional capacity;
- e) the quality assurance standards;
- f) the environmental protection standards;

ARTICLE 44².

(1) The private investors have the right to present certificates issued by a public competent authority or by a body of public or private law respecting the European standards of certification, in order to prove the fulfilment of the selection criteria set in accordance with the provisions of article 44¹.

(2) The public partner has no right to impose to the private investors the duty of presenting a specific certification, the latter having the right to present, in order to demonstrate the fulfilment of certain requirements, any documents equivalent with such certification or that prove, in a convincing manner, the fulfilment of such requirements. The public partner has the right to request, if necessary, clarifications or additional information to the submitted documents.

(3) By order of the general secretary of the Government, means of certification or inclusion on the official lists, at national level, of private investors who choose such a certification system, can be established. In this case, the central cooperation unit for the public-private partnership (CCUPPP) has the duty to inform the European Commission regarding the coordinates and the functioning mode of the system.

(4) If the official lists of the successful private investors are used, the public partners shall request additional certificates attesting the fulfilment of the duties of payment of taxes, charges and social insurance contributions, in accordance with the legal provisions in force.

ARTICLE 44³.

(1) The public partner does not have the right to restrict the participation to the procedure of concluding the public-private partnership contract by introducing certain minimal selection criteria, which:

a) are not relevant in relation with the nature and complexity of the public-private partnership contract, set to be concluded;

b) are disproportionate in relation with the nature and complexity of the public-private partnership contract, set to be concluded.

(2) The public partner shall impose minimal criteria of selection, referring to the economical and financial situation or the technical and/or professional capacity of the private investors, elaborating in this respect an explanatory note.

ARTICLE 44⁴.

For the purpose of the provisions of article 44³, paragraph (1), letter b) it is presumed that the minimal selection requirements are disproportionate in relation with the nature and complexity of the public-private partnership contract, set to be concluded, if the fulfilment of such conditions is imposed:

a) the total of the values/quantities of furnished goods, supplied services and executed works, included in the contract/contracts submitted by the private investor in order to prove similar experience, to be higher than the value/quantity of goods/services/works to be furnished/supplied/executed based on the public-private partnership contract, set to be concluded;

b) the value of the turnover of the private investor to be higher than the estimated value of the contract, multiplied by 2.

ARTICLE 44⁵.

(1) When certain selection criteria is requested, the public partner must specify in the selection notice and in the attached document the information that the private investors shall submit for this purpose, as well as the specific documents able to confirm the respective information.

(2) The requested documents must not limit the possibility of the private investor of demonstrating the fulfilment of the selection criteria by other means, insofar as they can be considered probative by the public partner.

(3) For the purpose of the provisions of paragraph (2), any official site of a public institution or of an entity authorized by the law for this purpose it is considered to be included in the category of probative means, insofar as the respective source of data contains up-to-date information.

(4) If there are any uncertainties or queries regarding any of the submitted documents, the public partner has the right to request additional details, definitions or confirmations, not only from the concerned private investor but also from the competent authorities able to furnish information in this respect. In any case, the public partner has the duty to ensure a reasonable period of time in order to furnish the definitions/confirmations requested.

(5) The public partner has no right to impose the fulfilment of certain selection criteria for the contingent subcontractors, but the material and human resources of the subcontractors shall be taken into consideration, in what their part of involvement in the contract to be carried out is concerned, if relevant documents are presented in this respect.

ARTICLE 44⁶.

(1) The public partner has the duty to use only the selection and negotiation criteria provided in the selection notice in the selection of private investors.

(2) The selection stage of the competitive dialogue of the private investors procedure represents a specific process, having only the purpose of limiting the number of private investors participating in the dialogue. The selection is made by awarding a score to each of the private investor, that must reflect their capacity of fulfilling the public-private partnership contract set to be concluded.

(3) The public partner has the duty to specify in the selection notice and in the attached document the manner of awarding the score, based on which the classification of the private investors shall be drawn up, each time a selection is going to take place.

ARTICLE 44⁷.

The persons who are in the situations described by article 12, paragraph (2) of the Law no. 178/2010, with the subsequent amendments and additions, cannot participate in the selection procedures for the awarding of a public-private partnership contract.

ARTICLE 44⁸.

(1) The public partner has the duty to accept as being sufficient and relevant, in order to prove the fact that the private investor does not fall into any of the situations provided at article 44⁷, any document considered probative, from this point of view, in the country of origin or in the country where it is established, such as certificates, criminal record certificates or any other equivalent documents issued by the competent authorities from the respective country.

(2) If there are uncertainties regarding the personal situation of the respective private investors, the public partner has the right to request directly information from the competent authorities issuing documents as those stated at paragraph (1).

(3) If the country of origin or the country where the private investor is established does not issue documents as those stated at paragraph (1) or the said documents do not address all the situations provided at article 44⁷, the public partner has the duty to accept a declaration on honour or, if in the respective country there are no legal provisions regarding the declaration of honour, a certified statement in front of a notary, judicial or administrative authority or a professional association with competencies in this respect.

ARTICLE 44⁹.

The public partner has the right to request from any private investor to submit the probative documents proving the form of registration as legal person or, if applicable, of attestation or membership from a professional point of view, in accordance with the provisions in force in the country where the private investor is established.

ARTICLE 44¹⁰.

(1) If the public partner requests the proof of the economic and financial situation, then it has the duty to attach the information and documents that the private investors must submit for this purpose.

(2) The proof of the economic and financial situation of the private investor can be made, as a general rule, with one or more of the following references:

a) an adequate bank declaration or, if the case may be, proof of an insurance of professional risk;

b) submittal of balances or balance statements, if the publication of balances is provided by the laws of the country where the private investor is established;

c) a declaration regarding the total turnover and, if applicable, the turnover from the field of activity constituting the object of the contract, at most for 3 financial exercises, available depending on the date of set-up or of starting the activity of the private investor, insofar as the information regarding the turnover is available. In this latter case, the public partner has the duty to take into consideration the date when the private investor was set-up and the date when it has started its activity.

(3) If the case may be, the private investor can include and present in its tender the capabilities of other entities, regardless of the legal nature of the relation between the public investor and the respective entities. In this case, the public investor must prove to the public partner that it will have the necessary means, presenting, for example, the firm commitment of the respective entities in this respect.

(4) In the same conditions, a group of private investors can mention the capabilities of the members of the group or of other entities.

(5) If, for just reasons, the private investor cannot submit the references requested by the public partner, it is authorized to prove its economic and financial capacity by any other document, which the public partner considers and accepts as adequate.

ARTICLE 44¹.

(1) The technical capabilities of the private investors can be proved in one of the following manners, according to the function, nature or importance and use of the works, goods or services:

a) by presenting the list of executed works in the last 5 years, accompanied by the certificates of performance. The respective certificates indicate the value, period and place of the execution of the works and states if they have been executed according to the professional standards in the field and if they have been carried out successfully; if the case may be, the competent authority sends the certificates directly to the public partner;

b) by presenting a list of the main deliveries or main services made in the last 3 years, indicating the value, date and the beneficiaries, public or private. The deliveries or supplies of services can be proven:

(i) if the beneficiary was a public partner, with the certificates issued or countersigned by the competent authority;

(ii) if the beneficiary was private, with the certification awarded by him, or, in default of such certification, with a declaration of the private investor;

c) by indicating the techniques and technical bodies, regardless if they are or are not part of the enterprise of the private investor, especially of those who are responsible for quality control and, if public-private partnership contracts are in question, of those that the contracting party will use in order to execute the works;

d) by describing the technical equipment affected for the carrying out of the public-private partnership project, of the measures applied by the supplier or by the services provider in order to ensure the quality and its analysis and research resources;

e) if the goods and services set to be supplied have a complex nature or if, exceptionally, they are intended for a certain effect - an inspection carried out by the public partner or, on its behalf,

by a competent official body from the country where the supplier or services provider is established, subject to the consent of the respective body; the inspection aims to establish the capabilities of production of the supplier or the technical capability of the services provider and, if necessary, the measures intended for ensuring quality control;

f) by indicating the level of education and professional level of the private investor who provides services or manages the works and that of its managing personnel and, especially, that of the manager or managers for the providing of services or coordinating the works;

g) for the public-private partnerships for works and services contracts and only in the adequate cases - by indicating the measures of environment management which the private investor can apply during the carrying out of the contract;

h) with a declaration indicating the average annual personnel effective of the private investor, who provides services and the number of managing personnel for a period of 3 years;

i) with a declaration indicating the machinery, materials and technical equipment which the private investor providing services or executing works will have at its disposal in order to carry out the contract;

j) by indicating the part of the contract which the private investor providing services intends to subcontract;

k) in what the goods to be supplied are concerned, by request of the public partner for samples, descriptions and photographs, whose authenticity can be proved at the request of the public partner;

l) in what the goods to be supplied are concerned, by certificates issued by the official institutions or services responsible with quality control and with recognized competencies, attesting the conformity of the products in a clear manner, by referring to adequate specifications or standards.

(2) If the case may be, a private investor can mention the capabilities of other entities, irrespective of the legal nature of the relationship between the private partner and the respective entities, also for a public-private partnership determined contract. In this case, the public investor must prove to the public partner that it will have the necessary means, presenting, for example, the firm commitment of the respective entities in this respect.

(3) In the same conditions, a group of private investors, provided at article 3¹ of the Law no. 178/2010, with the subsequent amendments and additions, can mention the capabilities of the members of the group or of other entities.

(4) In the case of procedures for awarding public-private partnership contracts for goods that need assembling or installation, providing services and executing works, the capability of the economic operators of providing the services or executing the installations or works can be evaluated, especially, according to their capabilities, efficiency, experience and reliability.

(5) The public partner shall mention, in the selection notice or in the attached document, the references from those provided at paragraphs (1)-(4) it intends to receive.

ARTICLE 44¹².

If the submittal of certain certificates issued by independent bodies, attesting that the private investor is respecting certain standards of guaranteeing the quality is requested, the public partner shall refer to the systems of ensuring quality founded on the series of relevant European standards and certified by the bodies complying with the European standards regarding certification. The public partners shall recognize the equivalent certificates of the bodies established in other member states. Equally, the public partners accept other proof of the equivalent measures of guaranteeing quality presented by the private investors.

ARTICLE 44¹³.

If the public partner requests the submittal of certain certificates issued by independent bodies, attesting that the private investor is respecting certain standards of environmental management, the public partner shall refer to the Eco-Management and Audit Scheme (EMAS) or the environmental management systems based on the European or international standards in the field and certified by the bodies complying with the community legislation or with the European or international standards regarding certification. The public partners shall recognize the equivalent certificates of the bodies established in other member states. Equally, the public partners accept other proof of the equivalent measures of environmental management presented by the private investors, if they are in compliance with the relevant legislation.

ARTICLE 44¹⁴.

The public partner may invite the investors to clarify the certificates and documents submitted on the grounds of articles 44⁷- 44¹³.

ARTICLE 45.

The criteria described at article 44 constitute the basic elements for the drawing up and approving by the public partner of its own selection rules for the initiated public-private partnership project.

ARTICLE 46.

(1) The evaluation committee for the selected private investors is constituted of a minimum of 5 members from the experts and specialist of the public partner and, as the case may be, town councillors or county councillors, ministers, secretaries of state, members of the management boards or members of executive of the public partner, as defined at article 8 of the Law no. 178/2010, with the subsequent amendments and additions, as well as any other person with expertise in the field of the objective of the public-private partnership project, who is not in an interest conflict, as defined by the Law no. 161/2003, with the subsequent amendments and additions.

(2) The purpose of the negotiation committee for the selected private investors and with whom project agreements have been signed, is that of negotiating with each candidate selected for this stage, of determining the private partner who will submit the final tender and with whom the public-private partnership contract shall be signed.

ARTICLE 47.

The criteria of negotiation with the selected public investors, with whom the project agreement has been signed, with the view of selecting the private partner with whom the public-private partnership contract shall be concluded are the following:

- a) the clear identification of the responsibilities of the public partner and of the private investor in the public-private partnership project that is being negotiated;
- b) setting the legal responsibilities of the 2 partners in the preliminary and organization phases of the project campaign;
- c) setting, by the parties, of the objectives requested by the public partner for the carrying out of the public-private partnership project;
- d) clear identification of the responsibilities of technical, financial and legal nature of the 2 partners;
- e) clear setting, based on the legislation in force and on the analysis of the justifying documents, of the quotas of participation of the 2 partners in the project campaign, of the number of members of the management board and of the functions and responsibilities hereof during the carrying out of the public-private partnership project;

f) the modification, revision, adaptation or termination of the preliminary or necessary studies, analysis and business plans after the negotiation stage, based on the conditions of carrying out of the public-private partnership project, developed and accepted by the 2 partners during the negotiation stage;

g) clear identification of the performance standards, facilities and equipments set to be furnished, of the services to be provided, of the charts of execution for the entire period of carrying out of the public-private partnership contract and of the data of delivery and performance;

h) setting the total value of the investment, describing clearly the participation of the parties and agreeing on the determinate period needed to carry out the public-private partnership contract;

i) ensuring the control of the costs, quality, services, safety, relationship with the local communities, as well as the control of the operation and maintenance requirements;

j) setting the manner of allotting and balancing risks between the public and private partner during the entire duration of the public-private partnership contract;

k) alternative arrangements for the cases in which the private investor is wound up, becomes bankrupt, breaches the contract or the special subcontracts or the case when the partnership is terminated before the set term;

l) identification of the mechanisms of monitoring performance, quality of services and other objectives of the public partner, including the manner of using the benefits, if they are obtained;

m) setting the mechanisms of dispute settling;

n) setting the transfer clauses of the object of the public-private partnership project at the end of the period of duration of the public-private partnership contract;

o) setting the clauses and the form of the public-private partnership contract to be concluded by the 2 partners;

p) issues regarding the workforce taken over or hired for the carrying out of the public-private project;

q) other objectives set by the public partner.

ARTICLE 48.

The negotiation of the conditions of carrying out the public-private project, of the contractual clauses and the appendixes hereof shall be performed only within the limits of the mandate given to the negotiation committee by the head of the public partner.

CHAPTER VII.

Methods of calculating the estimated value of the public-private partnership contracts

ARTICLE 53.

(1) The calculation of the estimated value of a public-private partnership contract is based on the total value, excepting VAT, estimated by the public partner, representing the sum of the value resulting from the value of the contribution of the public partner and the total cost resulting from the prefeasability or founding study, including the sum of the value of the project risks.

This calculus shall include any form of possible option and the contingent renewal of the contract.

(2) The estimation must be valid at the time of sending the selection notice.

(3) No public-private partnership contract for works and no public-private partnership contract for a certain amount of goods and services can be divided in order to elude the application of the provisions of this decision.

ARTICLE 54.

The estimated value of the public-private partnership contracts must include the sum of the up-to-date costs generated by the designing, financing, construction/carrying out or transforming, rehabilitating/modernizing, servicing, maintaining, operating, exploiting or managing works, equipment and incorporeal/corporeal values and by the provision of services provided for the duration of the contract.

ARTICLE 54¹.

In the calculation of the estimated value of the public-private partnership contract the value of the project risks shall also be kept in mind.

ARTICLE 54².

(1) In the case of public-private partnership contracts, the risk can be of two types: transferable risk and retained risk.

(2) The transferable risk represents the quantifying of the value of all the project risks set to be taken over by the investor.

(3) The retained risk represents the quantifying of the value of all the project risks set to be taken over by the public partner.

ARTICLE 54³.

The risk assessment consists in following the steps hereunder:

- a) identification of all the risks;
- b) quantifying the consequences of all the risks;
- c) assessment of the probability of the risks;
- d) financial quantification of the risks;
- e) identification of the structure of allotting the risks;
- f) calculating the transferable risk;
- g) calculating the retained risk.

ARTICLE 54⁴.

In the context of the estimated value, the risk reflects potential additional costs, over the basic cost of the estimated value of the public-private partnership contract.

ARTICLE 54⁵.

In general, the risk can be included in the estimated value of the public-private partnership contract, by one of the following methods:

- a) including the costs of the project risks in the general cash flow;
- b) adjusting the updating rate of the capital cost in order to reflect the specific level of risk for each project.

ARTICLE 54⁶.

The main risk categories are, as follows:

- a) the risk of carrying out the specific requirements imposed on the project;
- b) the risk of designing and constructing;
- c) the risk of the request for use being lower than the estimations;
- d) the risk associated to environmental protection;
- e) the financing risk;
- f) the risk of a case of force majeure;
- g) the operational risk and that of ensuring the level of performance;
- h) the risk of legislative change;
- i) the risk of obsolescence and of the necessity of modernization;
- j) the risk specific to the project.

ARTICLE 54⁷.

After identifying all the risks, the public partner must evaluate and quantify the possible consequences of each risk, including the effect of any succession or synchronizing of the elements of risk.

ARTICLE 54⁸.

The consequence of the emergence of a risk measures the difference between the basic level of the evaluated value and the new cost generated by the emergence of that risk, harmonized with the probability of emergence the said risk.

ARTICLE 54⁹.

The consequences of the emergence of the risk can be direct or indirect. The direct consequences include the value, time and costs that exceed the basic level of the estimated value. The indirect consequences emerge by interaction of different risks.

ARTICLE 54¹⁰.

All the identified and quantified risks must be included in the estimated value of the public-private partnership contract.

ARTICLE 54¹¹.

After identifying and evaluating all the material risks, each risk must be analysed as a transferable or retained risk, insofar as it can be transferred to the private partner or retained by the public partner in an arrangement of the public-private partnership type.

ARTICLE 54¹².

The retained risk represents the sum of those risks proposed to be assumed by the public partner in the public-private partnership. These risks must be added to the value of the projects, thus obtaining the real cost borne by the public partner in the public-private partnership. Such risks can be: changes in the legislation, risks induced by omissions in the project specifications, the part assumed by the public partner from the risk of decrease in request etc.

ARTICLE 54¹³.

The factors that can diminish the retained risks are:

- a) the ability of directly influencing the probability of the emergence of a risk;
- b) the collaboration between contractors with a reputation and by using high performance technologies, efficient leverages for risk monitoring and management, covering the risk through insurance.

ARTICLE 54¹⁴.

(1) The established risks can be estimated based on some previous losses or in comparison with the value of the insurance premium for an equivalent risk.

(2) All the established risks must be evaluated, quantified and included in order to set a real value to the cost borne by the public partner.

ARTICLE 54¹⁵.

(1) The criterion used in order to award the public-private partnership contracts is of the "most economic advantageous tender" and determining the winning tender is made by applying a system of evaluation factors for which relative weightings or a specific algorithm shall be set.

(2) The algorithm, as well as the evaluation factors for the tenders, which are going to be taken into consideration, shall be mentioned clearly and detailed in the document attached to the selection notice and shall reflect the objective methodology of scoring the advantages resulting from the technical and financial propositions presented by the private investors.

ARTICLE 54¹⁶.

(1) The public partner has no right to use the selection criteria as evaluation criteria of the tenders/letters of intent.

(2) When setting the evaluation criteria of the tenders/letters of intent, the public partner has no right to use criteria that:

- a) have no directly connected with the nature and complexity of the public-private partnership contract, set to be concluded;
- b) do not reflect a real and manifest advantage that the public partner can obtain by using the respective evaluation criteria.

(3) The weighing set for each evaluation criteria must not lead to distorting the result of applying the procedure for concluding the public-private partnership contract. For each evaluation criterion, the public partner has the duty to set a weighing that reflects in an accurate manner:

- a) the importance of the technical/functional characteristic considered to present a qualitative advantage that can be scored; or

b) the value of the financial advantages which the private investors can tender by assuming certain additional commitments in terms of minimal requirements provided in the specifications.

(4) The public partner shall mention in the selection notice or in the attached document the relative weighing that it will award to each selection criteria, in order to determine the most economic advantageous tender.

(5) The weighing can be expressed by a score, elaborated in an adequate manner in what the interval between maximum and minimum is concerned.

(6) If the public partner considers that such a weighing is not possible from an objective point of view, the evaluation criteria shall be set in a hierarchy based on their importance and the public partner shall draw up an explanatory note in this respect.

ARTICLE 54¹⁷.

The guarantee of participation shall be constituted by the private investor in order to protect the public partner from the risk of a contingent inadequate behaviour thereof, on the entire duration of the public-private partnership contract.

ARTICLE 54¹⁸.

The public partner has the duty to mention in the document attached to the selection notice that for the participation to the selection procedure it is required that the private investors constitute a participation warranty. In this case, the attached document must contain the following information:

a) the value of the participation guarantee in a fixed sum of 1% from the estimated value of the public-private partnership contract;

b) the period of validity of the participation guarantee, which shall be at least equal with the minimum period of validity of the tender, as requested by the attached document.

ARTICLE 54¹⁹.

(1) The participation guarantee shall be constituted by bank transfer, using a guarantee instrument issued according to the law by a banking company or an insurance company or by submitting it to the cashier's office of the public partner and shall be presented in original, in the amount and for the period provided in the attached document.

(2) The guarantee must be irrevocable.

(3) The public partner has no right to:

a) impose or prohibit the submittal of a guarantee instrument issued by a certain banking company or insurance company, named expressly in the awarding documentation;

b) limit the possibility of submitting the guarantee instruments only to those issued by banking companies or only those issued by insurance companies;

c) impose or prohibit the submittal of letters of indemnity in any of the forms provided or to grant, in the evaluation process, of an additional score for a certain form of guarantee.

(4) The participation guarantee can also be constituted by submitting to the cashier's office of the public partner of:

a) a banker's order or a cheque, under the condition of their confirmation by the bank until the date of opening of the tenders;

b) a sum in cash.

(5) In any case, the proof of constituting the participation guarantee must be presented at the latest at the date and hour set for the opening of the tenders/letters of intent.

ARTICLE 54²⁰.

The public partner has the right to retain the participation guarantee, the private investor losing, thus, the constituted sum, when the latter is in one of the following situations:

a) it calls back the tender in the period of validity hereof;

b) if its tender is declared winner, but it refuses to sign the public-private partnership contract in the period of validity of the tender.

ARTICLE 54²¹.

(1) The participation guarantee, constituted by the private investor, whose tender has been declared winner, shall be returned by the public partner in a maximum of 3 working days from the date of signing the public-private partnership contract.

(2) The participation guarantee, constituted by the private investor, whose tender has not been declared winner, shall be returned by the public partner, after signing the public-private partnership contract with the private investor whose tender was declared winner, but no later than 3 working days from the date of expiry of the tender.

(3) If the public partner is in the situation of annulling the procedure for concluding the contract, the participation guarantee shall be returned after the expiry date of the deadline for filing challenges against this decision, but no later than 3 working days from the said date.

(4) After receiving the communication regarding the result of the procedure, the private investors whose tenders have not been declared winners have the right to obtain the return of the participation guarantee before the expiry of the period provided at paragraph (2) or, as the case may be, at paragraph (3), if they submit to the public partner a request in this respect.

ARTICLE 54²².

(1) The selection notice shall be published, in compliance to the provisions of article 24 of the Law no. 178/2010, with the subsequent amendments and additions.

(2) The public partner has the duty to send the selection notice for publication, including the corrigendum to the respective notices, to the SEAP operator.

(3) The transmission of the notices for publication to the SEAP operator shall be made only via electronic means.

(4) Any other means of publication of the selection notice and of the attached document, excepting the one provided at paragraph (1), including any modifications hereof, is prohibited.

ARTICLE 54²³.

(1) The notices for which the Law no. 178/2010, with the subsequent amendments and additions imposes the duty of publishing in the Official Journal of the European Union, shall be drawn up by the public partner in an official language of the European Union, respecting the provisions and forms provided in the COMMISSION REGULATION (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council.

(2) The notices published in SEAP must not comprise other information than those contained in the notices published in the Official Journal of the European Union and must mention the date when the notice was sent to the European Commission.

ARTICLE 54²⁴.

(1) After transmitting the notices to the SEAP operator, CCUPPP has the duty to verify the notices from the point of view of their accordance with the formal rules of filling in, at most in 5 working days from the date of receiving them in SEAP.

(2) CCUPPP has the duty to communicate to the SEAP operator, in the time limit provided at paragraph (1), the acceptance or the dismissal of publication of the notice.

ARTICLE 54²⁵.

If CCUPPP determines, during the verifying of the notice transmitted by the public partner to the SEAP operator, that there are errors or omissions in the form or content hereof, it has the following duties:

- a) to communicate to the SEAP operator the dismissal of the publication of the notice;
- b) to inform the public partner about the decision to dismiss the publication of the notice, motivating the said decision and indicating the manner in which the errors/omissions can be rectified.

ARTICLE 54²⁶.

(1) The notices transmitted after the rectification of the errors/omissions determined according to the provisions of article 54²⁵ are considered new notices and are subject to all the rules of transmission and verifying provided by this norms.

(2) If, after the publication of a notice certain modifications of the information already published occurs, the public partner has the duty to transmit a corrigendum notice for publication, in the conditions provided by the COMMISSION REGULATION (EC) No 1564/2005.

ARTICLE 54²⁷.

(1) The SEAP operator has no right to publish the notice transmitted by the public partner or to transmit it for publishing in the Official Journal of the European Union, without obtaining the approval for publication issued by CCUPPP.

(2) The SEAP operator has the duty to ensure the transmission of the notices for publication in the Official Journal of the European Union in the standard format adopted by the European Commission and in a maximum of two working days from the obtaining of the publishing approval.

(3) When setting the time limits for submitting the tenders/letters of intent, the public partner has the duty to also take into consideration the time margin of 7 working days, necessary in order to verify the notices by CCUPPP and to transmit them to the Official Journal of the European Union by the SEAP operator.

(4) In order to set the deadline for receiving the tenders and the participation requests, the contracting authorities shall take into consideration, especially the complexity of the contract and the time necessary to prepare the tenders, without prejudice to the deadlines set in these norms.

(5) If, irrespective of the reason, certain additional documents or information, even though required in due time, were not submitted until the deadlines set by article 22, paragraph (4) of the Law no. 178/2010, with the subsequent amendments and additions, or if the tenders/letters of intent can only be drawn up after a visit on the ground, the deadlines for receiving the tenders/letters of intent shall be prolonged so that all the private investors can have access to all the information necessary in order to draw up the tenders/letters of intent.

ARTICLE 54²⁸.

(1) The SEAP operator has the duty to publish the notice in SEAP, at the most in two working days from receiving the approval of publication, but in no situation before the date of transmitting them for publishing in the Official Journal of the European Union, if the provisions of the Law no. 178/2010, with the subsequent amendments and additions, impose this duty.

(2) In order to set the deadline for receiving the tenders and the participation requests, the contracting authorities shall take into consideration, especially the complexity of the contract and the time necessary to prepare the tenders, without prejudice to the deadlines set in this article.

(3) In the case of the open procedure, when the estimated value of the public-private partnership contract is equal with or higher than the value thresholds set at article 5¹, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions, the public partner has the duty to transmit the selection notice for publication in SEAP and the Official Journal of the European Union, with at least 52 days prior to the deadline for submitting the tenders/letters of intent.

(4) In the case of the open procedure, when the estimated value of the public-private partnership contract is lower than the value thresholds set at article 5¹, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions, the public partner has the duty to transmit the selection notice for publication in SEAP and the Official Journal of the European Union, with at least 22 days prior to the deadline for submitting the tenders/letters of intent.

(5) In the case of the competitive dialogue procedure, when the estimated value of the public-private partnership contract is equal with or higher than the value thresholds set at article 5¹, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions, the public partner has the duty to transmit the selection notice for publication in SEAP and the Official Journal of the European Union, with at least 37 days prior to the deadline for submitting the tenders/letters of intent.

(6) In the case of the competitive dialogue procedure, when the estimated value of the public-private partnership contract is lower than the value thresholds set at article 5¹, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions, the public partner has the duty to transmit the selection notice for publication in SEAP and the Official Journal of the European Union, with at least 22 days prior to the deadline for submitting the tenders/letters of intent.

(7) The deadline shall run from the date of sending the selection notice, in the case of both of the procedures.

(8) The public partners who have awarded a public-private partnership contract shall send a notice regarding the results of the selection procedure in 48 days from awarding the contract, which shall be published in SEAP and e Official Journal of the European Union, as the case may be, in the same conditions in which the selection notice is published.

ARTICLE 54²⁹.

The deadlines for submitting the tenders in the case of applying the open procedure are those stated at article 18 of the Law no. 178/2010, with the subsequent amendments and additions.

ARTICLE 54³⁰.

(1) If the public partner receives requests to clarify the provisions of the document attached to the selection notice, it has the obligation to answer these requests, observing the provisions of article 22, paragraph (4) of the Law no. 178/2010, with the subsequent amendments and additions.

(2) The public partner has the duty, observing the provisions of article 21 of the Law no. 178/2010, with the subsequent amendments and additions, to make known the clarifications or contingent modifications related to the attached document, by creating a new electronic file with direct and unrestricted access, similar with the access to the initial file.

ARTICLE 54³¹.

(1) The public partner has the duty to open the tenders and, if the case may be, other documents submitted by the participating private investors, at the date, hour and place indicated in the selection notice. If the prolongation of the deadline for submitting the tenders is necessary, the public partner has the duty to mention these modifications in a corrigendum to the selection notice, which must be published with at least 3 days before the deadline first announced for the opening of the tenders.

(2) Any private investor has the right to participate to the opening of the tenders.

(3) In the meeting for the opening of the tenders it is not allowed to dismiss any of the tenders, excepting those falling into one of the following situations:

a) they have been submitted after the deadline and set hour or at a different address than the ones indicated in the selection notice;

b) they are not accompanied by the participation guarantee, in the sum and form and having the validity period requested in the attached document.

(4) The meeting for the opening of the tenders shall be concluded by a minutes signed by the members of the evaluation committee and by the representatives of the private investors present at the meeting, in which the manner in which the respective meeting took place, the formal aspects observed at the opening of each tender, the main aspects of each tender shall be mentioned, recording also the list of documents submitted by each private investor.

(5) The public partner has the duty to transcribe a copy of the minutes for all the private investors participating in the awarding procedure, at the most in one working day from the opening, irrespective if the aforementioned participated or not in the respective meeting.

(6) Any decision regarding the selection of private investors or, if the case may be, regarding the possible tenders shall be adopted by the evaluation committee in meetings subsequent to the meeting for the opening of tenders.

ARTICLE 54³².

(1) If through the attached document a duty to fulfil certain selection criteria has been set, the evaluation committee has the duty to verify the manner of compliance with the said criteria by each of the private investors.

(2) The evaluation committee has the duty to analyse every tender/letter of intent, not only from the point of view of the proposed technical elements, but also from the point of view of the financial aspects it implicates.

(3) The technical proposition must correspond to the minimal requirements provided in the attaches document.

ARTICLE 54³³.

During the analysis and verification of the documents submitted by the private investors, the evaluation committee has the right to require, at any time clarifications or additions to the submitted documents, in order to prove the fulfilment of the selection criteria, as provided by these norms, or to demonstrate the conformity of the tender with the set requirements.

ARTICLE 54³⁴.

(1) The tender is considered unacceptable in the following situations:

- a) it falls in the category provided at article 54³¹, paragraph (3) ;
- b) it has been submitted by a private investor who does not meet one or more of the selection requirements set in the attached document or it has not submitted the relevant documents in this respect;
- c) it does not ensure the compliance with the mandatory regulations regarding the specific labour conditions and labour protection, when this requirement is formulated in compliance with the provisions of article 14²;
- d) after the verifications provided at article 54³³ it is determined that the tender has a price unusually low for the object of the supply/provision/execution, so that the carrying out of the contract is not possible in the quantity and quality parameters required in the attached document.

(2) The tender is considered non-compliant in the following situations:

- a) it does not meet in an appropriate manner the requirements in the attached document;
- b) it contains propositions for modification of the contractual clauses set by the public partner in the attached document, which are explicitly disadvantageous for the latter, and the private investor, although having been informed regarding the respective situation, does not accept to renounce to the said clauses;
- c) it contains, in its own financial proposition, prices which are not the result of free competition and which cannot be justified.

ARTICLE 54³⁵.

(1) If for a certain contract tenders which seem unusually low, relating to the goods, works or provided services, the public partner, before being able to dismiss the respective tenders, requires, in writing, details about the elements of the tender which it considers relevant. The respective details can refer, especially to:

- a) the economy of the construction procedure, of the production procedure of the products or the provision of services;
- b) the technical solutions adopted and the conditions exceptionally favourable that the private investor possesses for the execution of the works, for the supplying of the goods or for the provision of the services;
- c) the originality of the works, goods or services proposed by the private investor;
- d) the compliance with the provisions regarding protection and working conditions in force at the place where the works or services are to be carried out;
- e) the possibility for the private investor to obtain state aid.

(2) By consultation with the private investor, the public partner verifies the elements mentioned at paragraph (1), taking into consideration the submitted proof.

(3) The public partner who establishes that the tender is unusually low, because the private investor has obtained state aid, cannot dismiss the respective tender based only on this reason, excepting the case when it consults the private investor in this respect and the latter is in no condition to demonstrate, in a sufficient amount of time set by the public partner, that the said aid does not affect fair competition between the private investors participating in one of the procedures set by the Law no. 178/2010, with the subsequent amendments and additions. The public partner who dismisses an unusually low tender because the private investor has obtained state aid, shall inform the European Commission thereof.

(4) For the purpose of carrying out the verification provided at paragraph (1), the public partner shall require from the private investor documents regarding, including, if the case may be, prices from suppliers, the situation of the stocks of raw materials and goods, the manner of organization and the materials used in the work process, the level of payment of the labour force, performances and costs required by certain machinery or work related equipment.

(5) If the private investor does not submit the requested information or the said information cannot justify the seeming unusually low price, the tender falls under the provisions of article 54³⁴, paragraph (1), letter d).

ARTICLE 54³⁶.

(1) The tenders which do not fall in any of the situations provided at article 54³⁴ are the only tenders which can be considered admissible.

(2) The winning tender is chosen only out of the admissible tenders, based on the award criteria “most advantageous tender from an economic point of view”, mentioned in the selection notice and the attached document.

ARTICLE 54³⁷.

(1) After finalizing the evaluation of the tenders, the evaluation committee has the duty to elaborate, in accordance with the provisions of article 18, paragraph (7), letter k) of the Law no. 178/2010, with the subsequent amendments and additions, a report of the evaluation procedure, subject to approval by the head of the public partner.

(2) The head of the public partner has the duty, for this purpose, to take all the necessary measures for informing all the private investors about the result of the selection procedure of the private investor with whom the public-private partnership contract shall be concluded.

ARTICLE 54³⁸.

(1) Before the initiating the competitive dialogue procedure, the public partner has the duty to verify the fulfilment of the conditions provided at 18, paragraph (5) of the Law no. 178/2010, with the subsequent amendments and additions.

The result of the verification shall materialize itself by elaborating an explanatory note, which shall become part of the file regarding the awarding of the public-private partnership contract.

(2) In the case of complex projects from a technical and/or economic point of view, when the public partner is not able to define, from objective reasons, without help and in advance, the technical means needed to satisfy its needs or to make the financial or legal arrangements for the project, it can decide the awarding of the public-private partnership project through the competitive dialogue procedure, insofar as it considers that the use of an open procedure cannot allow the awarding of the contract.

(3) In the competitive dialogue procedure, the public partners can limit the number of adequate private investors who can be invited to dialogue, with the condition that a sufficient number of private investors is available. The public partners shall indicate in the selection notice or in the attached document the objective and non-discriminatory criteria or norms which it estimates it will use, the minimum number of private investors estimated to be invited and, where applicable, the maximum number. In the competitive dialogue procedure, the minimum number is 3. In any case, the number of invited private investors must be sufficient to ensure real competition.

(4) The public partners shall invite a number of private investors, at least equal to the minimum number set beforehand. If the number of private investors who meet the selection criteria and the minimum levels is lower than the minimum number, the public partner can continue the procedure, inviting the private investor or the private investors who possess the required capabilities. In the same procedure, the public partner cannot include other private investors who have not submitted a letter of intent or other private investors who do not possess the required capabilities.

ARTICLE 54³⁹.

(1) In the case of the competitive dialogue procedure, when the estimated value of the public-private partnership contract is equal with or greater than the value thresholds set at article 5¹, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions, the period of time comprised between the transmission the selection notice for publication in SEAP and the Official Journal of the European Union and the deadline for submitting of the letters of intent must be of least 37 days.

(2) In the case of the competitive dialogue procedure, when the estimated value of the public-private partnership contract is lower than the value thresholds set at article 5¹, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions, the public partner has the duty to transmit the selection notice for publication in SEAP,

with at least 22 days prior to the deadline for submitting the letters of intent.

(3) After finalizing the selection of private investors, the evaluation committee has the duty to elaborate an evaluation report comprising the selected private investors who will be invited to negotiate and sign the project agreement, subject to approval of the head of the public partner.

(4) The head of the public partner has the duty to take all the necessary measures for informing all private

investors participating to the selection stage about the result of hereof.

(5) The public partner has the duty to transmit, in the same time, an invitation to the second stage of the competitive procedure to all the admitted private investors.

(6) The invitation shall contain at least the following information:

a) references regarding the published selection notice;

b) the address where the dialogue shall take place, as well as the date and hour of its starting;

c) the language/languages in which the dialogue shall take place;

d) if applicable, additional definitions regarding the documents which the private investors must submit for the purpose of verifying the declarations and supplementing the documents presented in the first stage for the purpose of demonstrating the technical and economic and financial capabilities.

(7) The public partner has the duty of including, in the invitation, of information regarding the manner of accessing the attached document.

ARTICLE 54⁴⁰.

(1) The second stage of the competitive dialogue procedure consists in organizing meetings with each admitted private investor, during which a dialogue with the purpose of identifying the solutions/options regarding the technical aspects, financial arrangements, issues relating to the legal framework and any other elements of the future contract shall develop. At the end of each meeting, the negotiation committee has the obligation to record all the discussed issues and of the agreed aspects in a minutes of the meeting.

(2) The identification of the solutions/options shall be structured according to the necessities, objectives and restrictions of the public partner, as highlighted in the attached document.

(3) In the dialogue, the public partners ensure equality of treatment for each private investor. Especially, the public partners shall not present information in a discriminatory manner, which can serve as an advantage for certain investors, related to the others.

(4) The public partners cannot disclose the solutions proposed or other confidential information submitted by one private investor participating to the dialogue to the other participants, without its consent.

ARTICLE 54⁴¹.

(1) The public partner has the right to also carry out the dialogue in intermediary rounds, with the purpose of reducing, successively, of the number of discussed solutions, if the following conditions are met, cumulative:

a) this possibility has been provided in the attached document;

b) the number of participants to the dialogue is high enough, so that such a reduction would not affect real competition.

(2) For the purpose of the provisions of paragraph (1), the public partner has the right to organize intermediary rounds in which the participants to the dialogue must present the partial technical and/or financial propositions, after the clarification of a part of the aspects provided at article 54⁴⁰, paragraph (1), following the dialogue with each private investor.

(3) The public partner has the duty to announce to all the participants to the dialogue about the manner of unfolding of the intermediary round, as well as the applicable factors of evaluation and of the actual manner of application thereof in order to reduce the number of participants.

(4) After finalizing an intermediary round for the reduction of the number of participants to the dialogue, the negotiation committee has the duty to elaborate a new report, subject to the approval of the head of the public partner or the person appointed for this purpose.

(5) The head of the public partner or the person appointed for this purpose has the duty to take all the necessary measures for informing all private investors participating to the dialogue about the result of the intermediary round.

(6) The next round of dialogue takes place only with the participants remaining in the competition after the finalization of the intermediary round organized before. The participants remaining in the competition, once admitted after the intermediary round, do not have the right to modify the commitments assumed through the submitted partial technical and/or financial propositions, during the following rounds or at the time of submitting the final tender, except for the purpose of their improvement.

ARTICLE 54⁴².

If the second stage of the competitive dialogue cannot be finalized by identifying a viable solution, the public partner has the right to annul the awarding procedure, considering that the conditions provided at article 54⁵⁸, paragraph (2) have been met.

ARTICLE 54⁴³.

(1) During the last stage of the competitive dialogue, the private investors must submit the final tenders, based on the solution/solutions identified during the previous stage. The tenders must comprise the requested and necessary elements for the finalization of the project.

(2) The public partner shall publish the deadline for the submitting of the final tenders in SEAP, in compliance to the provisions of article 18, paragraph (7), letter p) of the Law no. 178/2010, with the subsequent amendments and additions.

(3) The tenders can be clarified, defined and perfected at the request of the public partners. Altogether, the clarifications, definitions and perfections or the additional information cannot modify the basic elements of the tender or of the procurement notice, whose variations can denature competition or can even have a discriminatory effect.

(4) The public partners evaluate the received tenders according to the awarding criteria set in the selection notice or in the attached document and select the tender that is the most advantageous from an economic point of view.

(5) At the request of the public partner, the private investor identified as having the tender that is the most advantageous from an economic point of view can be invited to clarify some aspects from its tender or to confirm the commitments presented in the tender, with the condition that this fact does not modify some important elements of the tender or of the procurement notice, or denature competition or create discriminatory situations.

(6) The provisions of articles 54²⁹-54³⁷ shall apply accordingly.

ARTICLE 54⁴⁴.

The public partner has the duty to appoint, for the selection of the private investor, the persons responsible for the evaluation of the tenders/letters of intent, who will form the evaluation committee.

ARTICLE 54⁴⁵.

(1) The public partner shall appoint a person responsible with the application of the selection procedure; this person shall also become the president of the evaluation committee. The president can be a member of the evaluation committee or its role can be limited only to the aspects of organization and representation; in the latter case he shall have no right to vote. In any situation, the president of the evaluation committee signs the report of the awarding procedure.

(2) The duties of the evaluation committee are as follows:

- a) opening of the tenders and, where applicable, other documents accompanying the tender;
- b) verifying the tenderers'/candidates' compliance with the selection/qualifying criteria if those were required by the attached document;
- c) carrying out the candidates selection/preselection, if appropriate;
- d) carrying out the dialogue with the private investors, if the competitive dialogue is applied;
- e) verifying the technical propositions submitted by the private investors, from the point of view of their compliance with the minimal requirements from the foundation study or the attached document;
- f) verifying the financial proposals submitted by the private investors;
- g) setting out the unacceptable or non-compliant tenders and establishing the reasons behind the inclusion of these tenders in the said category;
- h) establishing the eligible tenders;
- i) applying the awarding criteria, as provided for in the attached document, and establishing the winning tender/tenders;
- j) in justified cases, developing a proposal to annul the awarding procedure;
- k) drafting the awarding procedure report.

(3) The public partner has the right to appoint reserve members for the evaluation committee.

(4) The public partner has the right to replace a member of the committee with a reserve member only if the person who is going to be replaced has no possibility, based on objective reasons, to fulfil the responsibilities resulting from the quality of member of the evaluation committee. After the replacement, the quality of the member of the evaluation committee is taken by the reserve member, who shall exert the due responsibilities

until the finalizing of the selection procedure.

ARTICLE 54^46.

(1) The public partner has the right to decide, with the purpose of supporting the evaluation activities, the appointing of external specialists with the evaluation committee, as co-opted experts. The co-opted experts can be assigned from the very beginning of the evaluation process or during the carrying out thereof, based on the problems in need of their expertise.

(2) The decision of appointing the co-opted experts must state the specific responsibilities and duties thereof and must justify the necessity of their participation in the evaluation process.

(3) The responsibilities and duties of the external co-opted experts resume, as the case may be, to the following:

a) verifying and assessing the technical propositions;

b) the analysis of the financial situation of the private investors or the financial analysis of the effects that certain elements of the tender can cause or the contractual clauses proposed by the private investor;

c) the analysis of the juridical effects that certain elements of the tender can cause or certain contractual clauses proposed by the private investor.

(4) Only the members of the evaluation committee have the right to vote.

(5) The co-opted experts have no right to vote, but have the duty to elaborate a speciality report with regard to technical, financial, juridical or other aspects, upon which they were co-opted to express their opinion, based on their expertise.

(6) The speciality report provided at paragraph (5) is meant to facilitate to the evaluation committee the taking of decisions in the analysis process of the tenders and of determining the winner tender/tenders. The speciality report shall be attached to the awarding report and becomes part of the selection file of the private investor.

ARTICLE 54^47.

(1) During the evaluation process, the evaluation committee and the co-opted experts have the duty to keep the confidentiality of the tenders, as well as of any other information submitted by the private investors, whose disclosure could prejudice the right of the latter to protect intellectual property or commercial secrets.

(2) Breach of the commitments regarding the confidentiality shall be sanctioned according to the law, disciplinary or criminally.

(3) With the exception of the meeting for the opening of tenders, only the members of the evaluation committee and, if the case may be, the co-opted experts have the right to participate to the meetings thereof.

(4) The rules for avoiding the conflict of interest are equally applicable to the evaluation committee and the co-opted experts.

ARTICLE 54^48.

(1) The evaluation committee and the co-opted members have the duty to sign, on their own honour, a confidentiality and impartiality declaration, confirming that they do not fall in any situation implicating the existence of a conflict of interest.

(2) The declaration provided at paragraph (1) must be signed before taking up the specific responsibilities, in the evaluation and selection process.

(3) If one of the members appointed to the evaluation committee or one of the co-opted experts discovers that it is in an incompatibility situation, then it has the duty to ask for immediate replacement, with another person, in the respective committee. The incompatibility situations can also be referred to the public partner by third parties.

(4) If such situations are referred, the public partner has the duty of verifying the referred matter and, if appropriate, to adopt the necessary measures in order to avoid/remedy any aspects which could determine the arising of a conflict of interests.

ARTICLE 54^49.

(1) The operating mode of the evaluation committee is set on mutual agreement between the members hereof, having in mind the indicative timetable for the carrying out of the procedure and the period of time selected for the validity of the tenders.

(2) The members of the evaluation committee have the right to analyse and evaluate the documents submitted by the private investors, individually and/or in common meetings, but any decision of the evaluation committee must meet the vote of at least two thirds of its members. The evaluation committee has the duty to draw up documents through to formalize the decisions taken during the evaluation and selection process.

(3) The vote of the members of the evaluation committee reflects itself in the score awarded to each tender.

(4) If the provisions of paragraph 2 are not observed based on divergent opinions of the members of the evaluation committee, the head of the public partner or, if the case may be, the president of the committee shall request that the points in divergence be reanalyzed, with the purpose of finalizing of the evaluation stage of the tenders and determining the winning tender on time. If the evaluation committee does not reach an agreement, the final decision shall be adopted with the majority of its members.

(5) The members of the evaluation committee who do not agree with the decision taken have the duty to present their point of view in writing, drawing up, in this respect, an individual note attached, which shall be attached to the report of the awarding procedure.

ARTICLE 54^50.

The evaluation committee has the duty to determine the formal clarifications and additions or those needed for approval, necessary for the evaluation of each tender, as well as the period of time set for submitting the clarifications.

The communication transmitted in this respect by the private investor must be explicit, precise and to define in an explicit manner and with sufficient details in what the request of the evaluation committee resides.

ARTICLE 54^51.

(1) If the private investor does not transmit, in the period of time set by the evaluation committee, the requested clarifications/answers or in the case when the explanations submitted are not conclusive, the tender shall be considered non-compliant.

(2) If the private investor, by the answers submitted, modifies the content of the technical proposal, the tender shall be considered non-compliant. Modifications of the technical proposal are acceptable, if they:

a) can fall in the category of form flaws or arithmetical errors; or

b) consist of corrections of minor technical deviations and a possible modification of the price, induced by these corrections, would not have lead to modifications in the ranking of the private investors participating to the selection procedure.

(3) If the private investor, by the answers submitted, modifies the content of the technical proposal, the tender shall be considered non-compliant, with the exception provided at article 54^52, paragraph (2).

ARTICLE 54^52.

(1) The evaluation committee has the right to correct the arithmetical errors or form flaws only with the consent of the private investor. If the private investor does not accept the correction of the said errors/flaws, the tender shall be considered non-compliant.

(2) The arithmetical errors shall be corrected as follows:

a) if there is a discrepancy between the unitary price and the total price, the unitary price must be taken into consideration and the total price shall be corrected accordingly;

b) if there is a discrepancy between letters and numbers, the value in letters must be taken into consideration and the value in numbers shall be corrected accordingly.

(3) The form flaws consist in those errors or omissions in the document whose correction/completion is sustained unequivocal by the sense and content of other information existing initially in the documents submitted by the private investor or if the clarification or completion has the purpose of clarifying or confirming them, not being able to produce an unfair advantage in relation to the other participants to the selection procedure.

ARTICLE 54^53.

The evaluation committee has the duty to dismiss the unacceptable and non-compliant tenders.

ARTICLE 54^54.

(1) The evaluation committee has the duty to determine the winning tender out of the admissible tenders.

(2) The evaluation of the offers is done by awarding, for each tender, of a score resulting from the application of the algorithm set in the attached document.

(3) In the decreasing order of the scores awarded, the evaluation committee must draw up the ranking based on which the winning offer is determined.

(4) The comparison of the prices provided in the financial propositions of the private investors is made using the value, excluding VAT.

ARTICLE 54^55.

(1) After the finalization of the evaluation of the offers, the evaluation committee has the duty to elaborate a report of the selection procedure, signed by all the members of the evaluation committee, including the president hereof.

(2) The report of the selection procedure shall be forwarded to the head of the public partner for approval.

(3) The head of the public partner shall assign, from the unit he conducts, a project manager who will supervise and control, in compliance with the law, the carrying out of the activities set for the entire period of validity of the public-private partnership contract.

ARTICLE 54^56.

(1) The public partners inform, as soon as possible, the private investors regarding the decisions taken with respect to the concluding of the public-private partnership contract, including the motives for which they have renounced to conclude it, for whose conclusion they had sent a notice of selection, or if the procedure is to be renewed; if the public partners are requested to do so, they shall submit the information in writing.

(2) At the request of the interested party, the public partner communicates, as soon as possible:

a) to each private investor, the reasons for dismissing the tender/letter of intent hereof;

b) to each private investor, the reasons for dismissing the tender hereof, including, if the case may be, the reasons of the decision for lack of equivalence or the reasons of the decision for lack of conformity with the functional performances or requirements of the works, goods or services;

c) to each private investor who has submitted an acceptable tender/letter of intent, the characteristics and advantages of the selected offer, as well as the name of the winner. In the cases of receiving requests in writing, the deadlines are of 15 days from receipt.

(3) However, the public partners can decide not to communicate certain information regarding the awarding of contracts, in the cases in which the disclosure of the respective information would impede the application of legal provisions, would be contrary to the public interest, would prejudice the legitimate commercial interests of the private investors or it would prejudice the fair competition between them.

ARTICLE 54^57.

(1) All communication, as well as all exchanges of information provided in this title can be fulfilled, by choice of the public partner, by post, fax or e-mail.

(2) The means of communication chosen must be generally available and, consequently, must not limit access of the private investors to the selection procedure.

(3) The communications, exchanges of information and their holding shall be done so that the integrity of the data and the confidentiality of the tenders and of the letters of intent is kept, as well as the fact that the public partners are analysing the content of the tenders and of the letters of intent only after the expiry of the deadline provided for their submittal.

(4) The instruments used for electronic communication, as well as the technical characteristics hereof must have a non-discriminatory character, must be permanently available to the public and compatible with the information technologies and communication generally used.

ARTICLE 54^58.

(1) The public partner has the duty to finalize the selection procedure by concluding the public-private partnership contract.

(2) By exception from the provisions of paragraph (1), the public partner has the right to finalize the selection procedure by annulling it, but only in the following circumstances:

a) only unacceptable and/or non-compliant tenders have been submitted;

b) no tender has been submitted or only tenders which, although capable of being taken into consideration, cannot be compared because of the irregular manner of addressing the technical and/or financial solutions have been submitted;

c) serious deviations from the legal provisions affect the selection procedure or it is impossible to conclude the contract;

d) as a result of the decision of the National Council for Solving Complaints, ordering the elimination of all the technical, economic or financial specifications from the selection notice, from the attached document or from other documents issued in relation to the selection procedure.

(3) The provisions of paragraph (1) cannot prejudice the duty, of the public partner, to annul the selection procedure as a result of a court decision or of a decision of the National Council for Solving Complaints.

(4) For the purpose of the provisions of paragraph (2), letter c), the selection procedure is considered to be affected when the following conditions are met, cumulatively:

a) errors or omissions resulting in the breach of the principles stated at article 3, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions, are discovered in the attached document and/or in the manner of applying the selection procedure;

b) the public partner is in the impossibility of adopting collective measures, without the effect of breaching the principles stated at article 3, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions.

(5) The public partner has no right, without solid justification, to delay the taking of a decision for the finalization of the selection procedure, to delay the concluding of the contract or to adopt any measures with the purpose of creating artificial circumstances for the annulment of the procedure. These situations are considered breaches of the principles stated at article 3, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions and shall be sanctioned accordingly. The private investor, considering himself injured by such a behaviour, has the right to request damages in court proceedings.

ARTICLE 54⁵⁹.

(1) At least the following documents shall become part of the public-private partnership contract, as appendixes:

a) the prefeasibility or the foundation study;

b) the technical proposition and financial proposition;

c) the schedule for the carrying out of the contract;

d) the firm commitment for support from a third party, if necessary.

(2) If, during the carrying out of the contract, it is determined that certain elements of the technical proposition are inferior or do not comply with the requirements of the foundation study, the provisions of the foundation study shall prevail.

ARTICLE 54⁶⁰.

(1) If parts of the public-private partnership contract are going to be carried out by one or more subcontractors, the public partner has the duty to require, at the concluding of the respective public-private partnership contract, the submittal of the contracts concluded between the future contracting party and the subcontractors named in the tender. The submitted contracts must comply with the tender and shall become appendixes to the public-private partnership contract.

(2) During the carrying out of the contract, the private investor does not have the right to replace the subcontractors named in the tender without the approval of the public partner and the possible replacement hereof must not lead to the modification of the initial technical or financial proposition.

ARTICLE 54⁶¹.

(1) The price of the public-private partnership shall be expressed in lei or, if the case may be, in currency.

(2) During the carrying out of the contract, the price can be adjusted in the following situations:

a) legislative modifications, modification of the technical norms have taken place or the local authorities have issued administrative documents with the object of instituting, modifying or lifting certain local duties/taxes, whose effect reflects in the rise/fall of the basic costs on which the price of the contract was based;

b) certain conditions have appeared on the market, as a result of which the price indicators for the constitutive elements of the offer have risen/fallen, further resulting in the rise/fall of the basic costs on which the price of the contract was based.

(3) In order to observe the principle of transparency, the possibility of adjusting the price must be mentioned, not only in the attached document, but also in the contract due to be signed, through special clauses in this respect. In the case provided at paragraph (2), letter b), the public partner has the duty to mention, altogether, the practical manner of adjusting the price, the indicators set to be used, as well as the source of information or quotations of the stock exchanges. The absence, modification or completion of the said information/clauses determines the applicability of the provisions regarding the possibility of adjusting the price of the public-private partnership contract.

(4) The adjustment of the price, without the conditions provided at paragraph (3) to have been met, shall be possible only in the following cases:

a) when unpredictable circumstances supervene, without the fault of any of the parties, other than those provided at paragraph (2); or

b) when the duration of the selection procedure prolongs itself beyond the initial envisaged duration, in an unpredictable manner and from reasons excluding any guilt of the private investor.

(5) In any case, the price of the contract cannot be risen, except when it is strictly necessary for covering the increase in the costs on which the price of the contract has been founded. The manner of adjusting the price of the public-private partnership contract must not lead, in any case, to the altering of the result of the selection procedure, by annulling or diminishing the competitive advantage based on which the respective private investor has been declared winner after the finalization of the said procedure.

(6) If the duration for the carrying out of the contract prolongs itself beyond the deadlines set initially in the respective contract, because of the public partner, then it is not possible to invoke the provisions of paragraph (4), the private investor having the right to request penalties and/or damages.

(7) Any other modification regarding the clauses of the public-private partnership contract shall be made by means of an addendum, with the approval of the signing parties.

ARTICLE 54⁶².

(1) The monitoring of the awarding of the public-private partnership contracts is carried out by CCUPPP.

(2) The public partners have the duty to transmit to CCUPPP an annual report regarding the public-private partnership contracts awarded in the previous year.

(3) The required information shall be transmitted in electronic format, according to the standardized format, provided by SEAP, on 31 of March of each year, at the latest.

ARTICLE 54⁶³.

(1) CCUPPP processes the relevant information from the selection notices, as well as those from other information received from the public partners, building a data base used for:

a) submitting on time the reports requested by the European Commission;

b) providing information to all the interested parties, in relation with the manner of functioning of the public-private partnership system;

c) supervising the manner of concluding public-private partnership contracts;

d) preventing and, if the case may be, determining breaches of the applicable laws.

(2) In order to allow for the appraisal of the results of the implementation of the Romanian legislation in the field of the public-private partnership, CCUPPP communicates to the European Commission, at the latest on October 31 of each year, a statistic report, elaborated in compliance with article 54⁶⁴, with the separate subject of public-private partnership contracts for goods, public-private partnership contracts for services and the public-private partnership contracts for works, awarded by the public partners in the previous year.

ARTICLE 54⁶⁴.

(1) The statistic report provided at article 54⁶³, paragraph (2) shall present, for each public partner:

a) the number and value of the public-private partnership contracts awarded, regulated by the Law no. 178/2010, the Law no. 178/2010, with the subsequent amendments and additions;

b) the number and total value of the contracts awarded based on the exemptions from the Agreement on Government Procurement reached in the Uruguay Round multilateral negotiations.

(2) If possible, the information provided at paragraph (1), letter a), are classified as follows:

a) the procedures for the awarding of public-private partnership contracts used;

b) for each of the procedures provided at letter a), the types of public-private partnership contracts: of goods and services, respectively of works;

c) the citizenship and nationality of the private investor to whom the contract has been awarded.

(3) The statistic report shall comprise any other statistic information requested on the basis of the Agreement.

CHAPTER VIII.

The form and content of the project agreement.

ARTICLE 85.

The project agreement is the legal act, preceding the public-private partnership contract, concluded between the public partner and the private investor with the view of preparing the public-private partnership contract.

ARTICLE 86.

The project agreements shall be concluded with each of the private investors selected after the first stage of the procedure for determining the private partner, in the order set by the evaluation committee for the letters of intent and of the attached documents submitted by the interested private investors.

ARTICLE 87.

The project agreement shall have the following content:

a) general terms:

a. 1) identification, with the identification data, of the signing parties; a. 2) concluding the conditions for the keeping of confidentiality; a. 3) the duration of the validity of the project agreement;

b) the duties and rights of the parties, as well as the manners of extinguishing the reciprocal duties during negotiation;

c) specific terms:

c.1) enumerating the main criteria based on which the negotiation is going to be conducted;

c.2) enunciation, as agreed between the parties, of keeping, during the entire time of the negotiation, to all the principles provided at article 3 of the Law no. 178/2010;

c.3) establishing, in principle, the estimated value of the private investment which constitutes the object of the negotiation, in order to determine, in the content of the public-private partnership contract, of the proportions of participation of the parties to the project company;

c.4) establishing, in principle, of the determined duration which constitutes the object of the negotiation, in order to determine it substantially, in the content of the public-private partnership contract.

ARTICLE 88.

A letter of intention/tender of the investor shall be attached to each project agreement, together with the attached documents submitted by the investor and shall become integral part of the respective agreement.

ARTICLE 89.

The content and form of the project agreement shall be negotiated based on the project framework agreement. The model of project framework agreement shall be put at the partners' disposal and is provided in the appendix no. 3, integral part to these methodological norms.

CHAPTER X.

The criteria for determining the period of performance of the public-private partnership contract

ARTICLE 90.

According to the Law no. 178/2010, the determined period is the negotiated period in which the public-private partnership contract shall be carried out and which ensures the recovery of the financing for the private investor.

ARTICLE 91.

At the end of the determined period, the object completed by the means of the public-private partnership project shall be transferred, with gratuitous title, to the public partner, in good condition and free of any burden or duty.

ARTICLE 92.

The determined period shall be negotiated by the partners, based on the elements provided in the prefeasibility/foundation study.

CHAPTER X.

The manner of organization and functioning of the project company

ARTICLE 93.

The project company shall be organized and shall function according to the Law no. 31/1990 of trading companies, republished, with the subsequent amendments and additions and to other legislative acts in force, as a trading company whose share capital is owned by the public partner and the private investor.

The public partner shall bring as contribution to the capital of the project company, in compliance with the law, goods from the private property of the state or of the administrative-territorial units. (2)

By effect of the public-private partnership contract, the project company is allowed to charge, observing the legal provisions in force, adequate tariffs for the use, by third parties, of the public good, for a set time, the investor having the possibility to recover the investment, to finance the maintenance and to make profit. (3)

ARTICLE 94.

The purpose of the project company is to operate and manage, based on economic principles, of all the steps of carrying out the public-private partnership project contract, under the conditions of article 6, paragraph (1) of the Law 178/2010, as well as the transfer of public goods and services to the public partner.

ARTICLE 95.

During the entire duration of the project company, it cannot change the object of activity and cannot carry out economic activities, outside the express purpose of the public-private partnership project for which it has been created or of developing hereof for the use of the community.

ARTICLE 96.

(1) During the entire duration of the public-private partnership contract, respectively, until the date when the decision for winding up the project company remains final and irrevocable, the head of the association forming the private partner cannot be replaced in the project company.

(2) In compliance with the form of agreement or association of the private entities forming the association under which the private partner is registered, some entities can withdraw from the project, with the approval of the public partner, to the extent to which the activities of the project in which they have been implicated have been fulfilled and they have obtained the contractual rights in the association.

(3) The document based on which the formation and functioning of the association forming the private partner shall be attached to the public-private partnership contract.

ARTICLE 97.

The project company shall be managed by a board of directors, where the 2 partners are represented proportionally, with the participation provided at article 27, letter f) of the Law no. 178/2010.

ARTICLE 98.

(1) The evaluation of the participation of the public partner to the share capital and the patrimony of the project company, with the view of establishing the proportionality of representation of the 2 partners in the board of directors, shall be carried out before the starting of the selection procedure of the private partner by adding the value of the goods used to participate in the project and of the estimated value of the services provided for the benefit of the project.

(2) The goods used by the public partner to participate in the project shall be evaluated by their market value, based on the evaluation report, drawn up according with the standards in force, by evaluators, natural persons or legal authorized persons, attested according with the law.

ARTICLE 99.

The project company has no right to decide, neither about the change of the property or administration form of the public or private patrimony used by the public partner to participate in the public-private partnership, on the entire duration of the public-private partnership contract, nor about the divestiture of certain rights received from the contract.

ARTICLE 100.

Repealed.

CHAPTER XI.

The form and content of the public-private partnership project contract

ARTICLE 101.

According to the provisions of the article 4, letter g) of the Law no. 178/2010, the public-private partnership contract or the project contract is the legal act stipulating the rights and duties of the public partner and of the private investor, for the entire duration of the public-private partnership.

ARTICLE 102.

The content and form of the public-private partnership contract shall be negotiated based on a contract project proposed by the public partner to the selected private investor, as well as based on the framework project agreement, in the competitive dialogue procedure.

ARTICLE 103.

The clauses of the public-private partnership contract shall be drawn up based on the already negotiated and accepted conditions for the carrying out of the project.

ARTICLE 105.

The public-private partnership contract, in its final form, is subject to the approval of the public partner, according to the competencies and legal responsibilities hereof.

ARTICLE 106.

The standard content of the public-private partnership contract shall be structured in two sections:

a) general conditions, comprising the general, specific and common terms. In this section, the different elements agreed between the public partner and the private investor shall be formulated from a legal point of view;

b) technical conditions, containing the conditions for the carrying out of the public-private project, shall identify with the main aspects hereof, respectively financing, construction, operation, profit etc.

ARTICLE 107.

(1) The general information of the public-private partnership contract shall contain at least the following elements:

- a) the signing parties, with the legal identification data;
- b) objective of the contract;
- c) duration of the contract;

- d) beginning of the contract;
- e) ownership rights;
- f) confidentiality;
- g) exploitation rights of the good.

(2) The general conditions of the public-private partnership contract shall contain at least the following elements:

- a) manner of entrusting the carrying out of the public-private project;
- b) financing value;
- c) manners of financing;
- d) ways of ensuring free competition;
- e) acceptable amendments in the project;
- f) purchasing of land, if applicable;
- g) ways of ensuring certain exclusivity rights, if applicable;
- h) compensatory formulae, if applicable;
- i) duties and taxes regime;
- j) special guarantees;
- k) ways of highlighting and using private goods used by the public partner to participate to the project company;
- l) defining financial and currency risk guarantees;
- m) interdictions regarding the substitution of the signing parties;
- n) monitoring of the design, construction and exploitation of the public-private project, as well as of the other activities which constitute the object of the public-private partnership;
- o) user rights;
- p) cases of suspension or of early contract termination;
- q) liaison and communication procedures;
- r) procedures for the revision of documents;
- s) determining the participation quota of the public partner and of the private investor in the project company; §)
- determining the set duration of the public-private partnership contract;
- t) conditions for setting up the project company;
- §) basic elements of the statute of the project company, as a basic document for the registration of the resulting trading company;
- u) determining the calculation basis for liquidations;
- v) other financial funding and auditing during the functioning of the public-private partnership ;
- w) procedures for observing the fulfilment of the objectives of the public-private partnership;
- x) the manner of recovering the investment by each party to the contract;
- y) the manner of transferring, to the public partner, of the good resulted from the public-private partnership project, at tend of the contract;
- z) determining certain commitments of the parties; aa) the conditions for carrying out the feasibility study;
- bb) clauses for withdrawal from the project;
- cc) penalties for the situation when the objectives/deadlines/clauses set in the contract are not fulfilled/observed.

(3) The general conditions shall comprise the following common terms, as well:

- a) applicable legislation;
- b) insurance of property;
- c) termination of the contract;
- d) force majeure;
- e) dispute settling.

ARTICLE 108.

(1) The technical conditions comprised in the public-private partnership contract refer to the following financial aspects:

- a) the invested capital or, if applicable, the initial paid in capital;
- b) debit-capital rapport, if applicable;
- c) coverage ratio, if applicable;
- d) working capital;
- e) dividends, if applicable;
- f) standby crediting facilities, if applicable;
- g) other agreements between shareholders;
- h) applicable interest rate;
- i) currency of loans and financing sources.

(2) The technical conditions comprise the following construction or modernizing clauses, as the case may be:

- a) standards and specifications;
- b) projected life span;
- c) the maximum duration of construction or modernization;
- d) methods of starting exploitation;
- e) quality of construction standards;
- f) acquisition of materials;
- g) construction characteristics;
- h) applicable construction technologies;
- i) program of the auxiliary works, if applicable;
- j) temporary prescriptions, guarantees and constructive precautions.

(3) The technical conditions comprised in the public-private partnership contract comprise the following exploitation and operation clauses:

- a) performance specifications;
- b) minimum demand;
- c) infrastructure capabilities;
- d) direct method of measuring use;
- e) guarantees;
- f) accounting, registrations and access hereto;
- g) equipment specifications;
- h) control and inspection procedures;
- i) operating methods.

(4) The technical conditions comprised in the public-private partnership contract refer to the following economic-financial clauses:

- a) level of collected duties/tariffs and the manner of collecting hereof;
- b) period of time during which the duties/tariffs shall be collected;
- c) frequency and criteria for updating the duties/tariffs, if applicable;
- d) distribution of income, if applicable;
- e) currency of income, if applicable;
- f) guarantees for the minimum demand;
- g) structure of the tariff, if applicable;
- h) escrow bank settlements, if applicable.

ARTICLE 109.

(1) The form and content of the public-private partnership contract shall be negotiated and finalized, observing the the terms above, which can be partially or totally developed in the content of the contract or to which specific terms of the public-private partnership project can be added.

(2) During the entire evaluation of tenders/letters of intent, respectively, during negotiation, the public partner has the duty to consult with CCUPPP, observing the compliance with the provisions regarding the public-private partnership from the Manual on Government Deficit and Debt, elaborated by the European Commission - EUROSTAT, so that the investment in case will not influence the budget deficit.

(3) Before signing the contract, the public partner shall transmit the project agreement to the National Institute for Statistics, for analysis hereof and for consulting EUROSTAT upon the budgetary treatment of the expenditure implicated in the public-private partnership project.

CHAPTER XII. Final provisions

ARTICLE 110.

According to article 24 of the Law no. 178/2010, with the subsequent amendments and additions, the public partner has the duty to publish the selection notice and the attached document in SEAP and, if applicable, in the Official Journal of the European Union, in all the situations when the estimated value of the public-private partnership contract due to be carried out is equal or higher than the value thresholds set at article 5¹, paragraph (1) of the Law no. 178/2010, with the subsequent amendments and additions; SEAP shall provide to the public partner, by ensuring a specialized flux of information, the technical support necessary for ensuring the transparency of the complete procedure for determining the public partner, including the selection notice, the document attached to the selection notice, clarifications requested by the private investors, deadlines for the submitting of tenders/letters of intent, selection stage, negotiation stage and the awarding of the public-private partnership contract stage.

ARTICLE 111.

(1) SEAP implements and operates a new specialized information flow at national level, under the name “public-private partnership”, which ensures the electronic support required for publishing the selection notice and the afferent documentation for ensuring the transparency of the public-private partnership procedure.

(2) SEAP communicates to the public partners the manner of applying the procedure for using SEAP for the public-private partnership, as well as the specific formulations.

ARTICLE 112.

The public partner has the duty to respect the SEAP procedures and to register and transmit the information according hereof, observing the provisions of chapter II of the Rules of Application of the provisions regarding the awarding of public procurement contracts by electronic means of The Government Resolution no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts, approved by the Government Decision no. 1.660/2006, with the subsequent amendments and additions.

ARTICLE 113.

The SEAP operator has the duty to publish the selection notice and the attached document needed to ensure the transparency of the procedure for the carrying out of the public-private partnership project, at the most in two working days from receiving the accept for publishing from CCUPPP.

ARTICLE 114.

If, based on reasons of technical nature, the SEAP operator does not have the possibility to transmit a certain notice for publishing in the Official Journal of the European Union, the public partner has the duty to transmit the said notice for publishing, by own means. The SEAP operator has the duty to inform the public partner regarding the emergence of such a situation, at most in one working day from ascertaining the technical reason.

APPENDIX 1
to the methodological norms

The list of the main documentation
constituting the basis of the public-private
partnership project and the competencies
regarding the approval hereof

The main documents on which the public-private partnership project is based are elaborated and approved during the selection procedure of a private investor by the public partner, together with whom the project company shall be set up. As a principle, the respective documents are divided into the following 3 categories, according to the competencies granted to the public partners by the law:

1. The documents drawn up and elaborated by the public partners (proposed for approval):

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		The president			Councils			
Public partner	Competence	Local Council	County Council	Mayor	Board of Directors and ADI	Executive management	Government	Ministry
The prefeasibility or the foundation study								
The attached document and the selection notice								
Selection criteria, score sheets etc.								
The framework form of the project agreement								
Negotiation criteria, including participation, estimated value								
The framework form of the final PPP contract								
The PPP contract and the appendixes hereof								
Other documents								

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2. Documents subject to the approval of the competent public partners:

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		The president			Councils			
Public partner	Competence	Local Council	County Council	Mayor	Board of Directors and ADI	Executive management	Government	Ministry
The prefeasibility or the foundation study								
The attached document and the selection notice								
Selection criteria, score sheets etc.								
The framework form of the project agreement								
Negotiation criteria, including participation, estimated value								
The framework form of the final PPP contract								
The PPP contract and the appendixes hereof								
Other documents								

ST

3. Documents due to be elaborated, as the case may be, by the private investor or the project company:

- prefeasibility study for the public-private partnership project;
- business plan for the duration of the public-private partnership contract;
- other documents.

APPENDIX 3
to the methodological norms

- Model -

PROJECT FRAMEWORK AGREEMENT

This project framework agreement shall enter into force on
.....and has been concluded between
...../[public partner (name, address, agency)] /.....,
hereinafter called public partner, and
...../[the private investor or the head of the association of private
investors (name, address, agency)] /,

hereinafter called private investor.

The partners mentioned above are called, collectively, parties or, individually, party. Taking into consideration the following:

The public partner is decided to carry out/(The project is named.)/
....., hereinafter called The project.

The public partner intends that the Project be carried out based on a public-private partnership contract, in compliance with the law, and, for this purpose, has selected a number of potential private investors whom, in its opinion and based on the documents submitted on their own responsibility by the private investors, are capable to carry out the Project, among which the private investor is also included.

A. The private investor, in its own name and assuming the duty jointly and severally with any and all of its partners and subcontractors, enumerated in the appendix to this agreement, as well as with other partners and subcontractors who could be drawn into the carrying out of the Project, is ready to procure the financial and technical resources needed in order to carry out the Project.

B. For the purpose of carrying out the Project, the private investor is ready to enter into negotiations with the public partner and, with the view of concluding a public-private partnership contract with the purpose of carrying out the Project in the conditions required by the public partner, the parties agree on the following:

1. Duties of the public partner

The public partner has the following duties:

a) to carry out, at its own cost, a prefeasibility or foundation study, representing the basis of negotiating a public-private partnership contract;

to provide to the private investor, for studying, the intermediary reports and the final report of the prefeasibility or the foundation study;

b) to appoint a negotiation team, to cover technical, commercial/financial and legal aspects of the Project;

c) to facilitate the access of the private investor to any data, information, studies, statistics and, in general, any document able to clarify any of the technical, economic and financial aspects of the Project;

d) to support the private investor in the process of clarifying the status of the properties due to be included in the Project or to facilitate access hereof;

e) to take all the necessary measures for the optimal carrying out of the negotiations; to keep absolute confidentiality during the negotiations and to protect, if applicable, the intellectual property rights generated by the propositions or the solutions offered by the private investor.

2. The duties of the private investor The private investor has the following duties:

a) to appoint a negotiation team to cover technical, commercial/financial and legal aspects of the Project and to assign to it full powers to negotiate;

b) to negotiate in good faith and in the limit of the time allotted by this project framework agreement;

c) to procure and/or provide to the public partner, on request or from own initiative, all the available documents for the clarification of any negotiation point;

d) to provide to the public partner all the results of the visits on the ground, of measurements, inspections and, in general, all the data which, in its opinion, could complete the image of the Project;

e) to keep absolute confidentiality during the negotiations and to protect, if applicable, the intellectual property rights generated by the propositions or the solutions offered by the public partner.

f) to return all the studies, documents, reports or the such, provided by the public partner;

g) to inform the public partner, immediately and in writing, about any modification of its statute or of its associates and subcontractors, of its financial position, of the occurrence of a conflict of interest and, in general, of any situation that would change the elements included in the letter of intent or that would prejudice, in any way, the continuation of the negotiations.

3. Duration of the project framework agreement

3.1. This project framework agreement shall enter into force on the date of its signing and shall be terminated on
regardless if the parties finalize or not the negotiations or if they reach or not the conclusion of the public-private partnership contract.

3.2. The negotiation schedule is attached to this project framework agreement and constitutes integral part hereof.

3.3. This project framework agreement shall terminate its applicability automatically at the entry into force of the public-private partnership contract, if it has occurred before the deadline set at clause 3.1.

4. Organizational clauses

4.1. The parties undertake to analyse and decide upon the setting up of the company project.

4.2. The parties convene to negotiate the act of incorporation of the new company and to establish the relationships between the said company and the parties until the termination of the public-private partnership contract.

5. Special clauses

5.1. The public partner cannot be demanded to reimburse any cost directly or indirectly associated with the carrying out of this project framework agreement.

5.2. All the information, studies, documents, synthesis, software, tables, presentations, maps, plans and the such, provided to the private investor by the public partner, are and remain the exclusive property of the public partner. Copying, multiplying and distributing hereof by the private investor, by any means, is prohibited.

6. Other clauses, set according to the law

7. Language of the project framework agreement

The language governing the project framework agreement shall be Romanian.

8. The letter of intent submitted and assumed by the private investor in the name and on behalf of all the associates and subcontractors is attached to this project framework agreement and is integral part hereof.

Hereby, the parties have concluded this project framework agreement, as follows: For and in

the name of the public partner,

.....

.....

(Signature)

For and in the name of the private investor,

.....

(Signature)

The date

ANNEX 4

to the methodological norms

DEFINITIONS REGARDING CERTAIN TECHNICAL ASPECTS

For the purpose of this annex:

1. a) technical specifications mean, in the case of public-private partnership contracts for works, the ensemble of technical directions, comprised especially in the document attached to the selection notice, defining the required characteristics for a certain material, product and good and which allow the characterizing hereof, so that they correspond to the use desired by the public partner. Among these characteristics, the levels of ecological performance, design for all the types of use (including the access of persons with disabilities) and the evaluation of the conformity, performance, safety or dimensions, including the procedures referring to quality assurance, terminology, symbols, tests and testing methods, packaging, labelling, as well as the process and methods of production, are included. The characteristics include, as well, the norms for designing and calculating works, testing, control and reception conditions of works, as well as the techniques and methods of construction and all the other conditions with technical character which the contracting authority is able to foresee, by general or specific regulations, in what finished works are concerned and in what the materials or their elements are concerned;

b) technical specification means, in the case of public-private partnership contracts for goods and public-private partnership contracts for services: a specification mentioned in a document defining the required characteristics for a product or service, such as the levels of quality, ecological performance, design for all the types of uses (including the access of persons with disabilities) and the evaluation of the conformity, performance, use of the product, safety or dimensions hereof, including the indications applicable to the product in what the name under which is sold is concerned,

terminology, symbols, tests and testing methods, packaging and labelling, instructions for use, process and methods of production, as well as the procedures of evaluating conformity;

2. standard means a technical specification, approved by an assigned standardization body, for repeated or permanent use, not compulsory and which falls in one of the following categories:

- international standard: a standard adopted by an international standardization body and made available to the public;

- European standard: a standard adopted by a European standardization body and made available to the public;

- national standard: a standard adopted by a national standardization body and made available to the public;

3. European technical approval means the favourable technical appraisal of the capability of use of a certain product for a determined purpose, based on the fulfilment of the basic requirement for construction, based on the inherent characteristics of the said product and on the conditions set for application and use. The European technical approval is issued by a body designated for this purpose by the member state;

4. common technical specification means any technical specification elaborated in accordance with a procedure recognized by the member states and published in the Official Journal of the European Communities;

5. technical reference means any product elaborated by European standardization bodies, other than the official standards, in accordance with the a procedure adapted to the evolution of the requirements of the market.

ANNEX 2

(Appendix no. 1 to the Government Decision no. 34/2009)

Maximum number of posts = 1845 posts

(excluding dignitaries and the posts pertaining to the minister's cabinet)

ORGANIZATIONAL STRUCTURE of the Ministry of Public Finance

NOTE (CTCE)

The organizational structure of the Ministry of Public Finance, is provided in the Official Gazette of Romania, Part I, no. 833 from December 13, 2010, at Page 29, (see the associated image).