

THE CROATIAN PARLIAMENT

3027

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE CONCESSIONS ACT

I hereby promulgate the Concessions Act passed by the Croatian Parliament at its session on 7 December 2012.

Class: 011-01/12-01/162

No.: 71-05-03/1-12-2

Zagreb, 12 December 2012

The President of
the Republic of
Croatia,

Ivo Josipović,
m.p.

THE CONCESSION ACT

I. GENERAL PROVISIONS

The Subject-matter of the Act

Article 1

(1) This Act regulates the procedures for the award of concessions, concession contracts, termination of concessions, legal protection in the procedures for the award of concessions, the concessions policy and other matters related to concessions.

(2) The concession is the right granted by the concession contract.

(3) There are three types of concessions, namely:

- concession for the right to exploit a common good or other goods,
- public works concession,
- public service concession.

(4) The concession contract for the right to exploit a common good or other goods is a contract the subject-matter of which is the exploitation of a common or other good defined by the law as being of interest to the Republic of Croatia.

The public works concession contract is identical to the public works contract, with the only distinction that the payment for the works consists either solely in the right to exploit such works or in this right together with payment by the concession grantor.

The public service concession contract is a contract identical to the public works contract, with the only distinction that the payment for the services consists either solely in the right to exploit such works or in this right together with payment by the concession grantor.

(5) If the subject-matter of the concession includes both works and services (mixed contracts), in the process of determining whether it is a public works concession or a public service concession, the relevant provisions of the regulation governing public procurement shall apply.

(6) The right to exploit works and/or services from paragraph 4, item 2 and 3 of this Article means also the transfer to the concessionaire of a significant part of operational risk related to the object of a public works or public service concession. It shall be deemed that the concessionaire has assumed a significant part of the operational risk if it has not been guaranteed, directly or indirectly, by the concession grantor that it shall get a return on the investment or costs resulting from the management of works and/or services which are the object of the concession. Operational risk means the risk related to the use of works or provision of services or the risk related to the availability of the infrastructure facility built or used to provide services to the final beneficiaries in accordance with the concession contract.

(7) Matters which are not regulated by this Act shall be governed, as appropriate, by special acts, and the regulation governing public procurement.

Acquis communautaire of the European Union

Article 2

This Act contains the provisions which are in accordance with the following acts of the European Union:

– Directive 2004/17/EZ EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004);

– Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004).

– Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 335, 20.12.2007).

Definitions

Article 3

For the purpose of this Act, these terms shall have the following meaning:

1. *Concession grantor* is a body or a legal person authorised to award concessions under this Act.
2. *Concessionaire* is an economic operator with whom the concession grantor has signed a concession contract.
3. *Economic operator* is a natural or legal person or group of such persons which offers on the market the execution of works and/or work, the supply of goods or the provision of services.
4. *Concession contract* is a contract concluded between the concession grantor and either the economic operator who has been selected the most advantageous tenderer or the economic operator awarded the concession upon direct request, containing stipulations on mutual rights and obligations relating to the concession awarded.
5. *Concession fee* is the fee that the concessionaire pays on the basis of the concession contract.
6. *Concessions Register* is an integrated electronic record of concession contracts awarded in the territory of the Republic of Croatia.
7. *Decision on the award of concession* is an administrative act passed by the concession grantor at the proposal of an expert commission for concessions, following an examination and evaluation of submitted tenders, or after the receipt of the request and having established the fulfilment of conditions required for concession awarding.
8. *Tenderer* is an economic operator which has submitted a tender for the award of the concession.
9. *Public works contract* means a contract within the scope of the regulation governing public procurement.
10. *Public service contract* means a contract within the scope of the regulation governing public procurement.
11. *Public private partnership* is a long-term contractual relationship within the scope of the regulation governing public private partnerships.
12. *Special act* means an act governing matters related to concessions which shall be awarded for the activities and in the areas governed by such act.
13. *Contracting entity* has the meaning within the scope of the regulation governing public procurement.

14. *Special purpose vehicle* has the meaning within the scope of the regulation governing public private partnerships.

Concession grantor

Article 4

(1) A concession grantor may be:

a) the Parliament of the Republic of Croatia, the Government of the Republic of Croatia, central state administration bodies, on behalf of the Republic of Croatia,

b) the competent bodies of local and regional self-government units, on behalf of the local and regional self-government units, and

c) legal persons authorised to award concessions under special regulations.

(2) Where either the Parliament of the Republic of Croatia or the Government of the Republic of Croatia is the concession grantor, all preparatory actions for the award of concessions regulated under Chapter II of this Act, as well as the concession award procedure regulated under Chapter III of this Act, save for adopting concession award decision or decision on the cancellation of the concession award procedure, can be carried out by the responsible ministry.

(3) The distribution of tasks from paragraph 2 of this Article shall be regulated by a special act.

(4) Where the award of concessions is conducted under the regulation governing public procurement, the concession grantor shall be the contracting authority as specified in the aforementioned regulation.

Object of the concession

Article 5

(1) A concession may be awarded in various areas and for various activities, and in particular:

1. for the exploration and/or exploitation of mineral raw materials,

2. for the exploitation of waters,

3. for the right to hunt in the state owned hunting ground and game farms,

4. on maritime domain,

5. for certain activities within protected natural areas, and for use of other protected natural resources and speleological formations,

6. in the energy sector,

7. for providing line and coastal maritime and river transport,
8. for ports,
9. for public roads,
10. for public transport,
11. for airports,
12. in the area of sports,
13. on cultural domains,
14. for utility activities,
15. in the field of public water services,
16. in the railway sector,
17. in the field of funiculars,
18. for waste management,
19. in the field of tourism,
20. in the health sector,
21. for providing television and radio media services,
22. for free zones.

(2) The exploiting of common or other goods, the carrying out of public works and the provision of public services concerning the areas and activities as described in paragraph 1 of this Article may be awarded solely on the grounds of a concession contract. Where the bodies, i.e. legal persons as described in Article 4 paragraph 1 of this Act conclude a juristic act bearing relevant elements of a concession contract as described in Article 1 paragraphs 4 to 6 of this Act with an economic operator from the areas and activities described in paragraph 1 of this Article, it shall be deemed that a concession contract has been concluded.

(3) A concession may not be awarded on forests and forest land owned by the Republic of Croatia or on other domains defined by special regulations.

(4) Special issues relating to the award of concession in the areas and for the activities referred to in paragraph 1 of this Article shall also be governed by a special act.

(5) The Croatian Parliament, on proposal of the Government of the Republic of Croatia, may declare a particular concession of a strategic interest for the Republic of Croatia

(6) Where conditions from paragraph 5 of this Article occur, the concession awarding procedure and related matters shall be governed by a special act in accordance with the provisions of this Act.

Exemptions from the Act

Article 6

(1) This Act shall not apply to:

1. the concession which is designated as classified pursuant to regulations of the Republic of Croatia or that for the implementation of which is required that the information security measures be applied pursuant to laws or other regulations of the Republic of Croatia, or in order to protect substantial interests of the Republic of Croatia;
2. the concession which is awarded pursuant to special procedural rules of international organisations;
3. the concession which is awarded in accordance with international agreements concluded by the Republic of Croatia with one or more third-party countries, signed in accordance with the Treaty on the Functioning of the European Union, and which includes works, supplies or services intended for joint implementation or use of the projects by the signatory countries;
4. the concession awarded in accordance with concluded international agreements pertaining to the deployment of troops and interventions of the Republic of Croatia, a Member State or a third country.

(2) The concession grantor shall notify the European Commission accordingly about the international agreement referred to in paragraph 1, item 3, of this Article.

(3) In the case of awarding the concession referred to in paragraph 1 of this Article, the concession grantor shall notify the ministry responsible for finance.

Article 7

The provisions of Chapter III, IV, V and VI of this Act shall not apply to concessions for the provision of television and radio media services.

Property relations

Article 8

(1) If the Republic of Croatia or the concession grantor is the owner of the immovable property where activities under the planned concession shall be operated, the person awarded the concession right shall also acquire the right to use such immovable property or the common good during the term of the concession, within the range necessary for the performance of the concession and concerning the part of the immovable property which least affects the immovable or least reduces the property value, unless it is otherwise decided by the Government of the Republic of Croatia, its delegated body or any other body authorised

by a special act to manage or make use of immovable properties owned by the Republic of Croatia.

(2) If the performance of the concession contract requires the right of way or transit for unladen vehicles or laden vehicles over the immovable property owned by the Republic of Croatia or the concession grantor, the person awarded the concession contract shall also acquire the right of way or transit for all vehicles with all loads on such immovable property, unless it is otherwise decided by the Government of the Republic of Croatia, its delegated body or any other body authorised by a special act to manage or make use of the immovable properties owned by the Republic of Croatia.

(3) During the preparatory actions, the concession grantor shall inform the delegated body that the concession shall be performed within the meaning of paragraphs 1 and 2 of this Article on the immovable property owned by the Republic of Croatia.

(4) For the acquired right to use the immovable property or easement rights referred to in paragraphs 1 and 2 of this Article, and notwithstanding the payment of the concession fee, the concessionaire shall also pay the fee for the use of immovable property in accordance with special regulations.

(5) The concessionaire's right to use an immovable property and easement right as referred to in paragraph 1 and 2 of this Article, as well as the amount of the concession fee referred to in paragraph 4 of this Article, constitute an integral part of the tendering documents in the concession award procedure.

(6) If the concession is awarded for an activity operated on an immovable property which is not owned by the Government of the Republic of Croatia nor the concession grantor, or if passage or transit of vehicles over the immovable property, which is not owned by the Government of the Republic of Croatia nor the concession grantor, is a requirement in order for the concession to be implemented, the concession grantor shall resolve property relations prior to the commencement of the concession awarding procedure.

(7) By way of derogation from paragraphs 1, 2 and 6 of this Article, the duty of the concessionaire to resolve property rights prior to concession contracting may be laid down in a special act may.

Confidentiality of documents in concession award procedures

Article 9

(1) Concession grantors shall keep and shall not disclose information contained in the documents provided by economic operators, which such economic operators have designated as confidential in accordance with special regulations.

(2) Where certain pieces of information contained in the tender documents are designated as confidential by the economic operator, it shall also indicate the legal basis for the confidentiality of such information.

(3) Economic operators may not designate as confidential information related to unit prices, amount per item, the concession fee and information contained in the tender relating to the criteria for selection of the economically most advantageous tender.

(4) The obligation of the concession grantor referred to in paragraph 1 of this Article shall not affect the application of the provisions of this Act pertaining, in particular, to the concession award decision, or the decision on the cancellation of the concession award procedure and the minutes which the concession grantor has the duty to deliver to economic operators.

II - PREPARATORY ACTIONS FOR THE AWARD OF CONCESSIONS

Article 10

(1) Preparatory actions for the award of a concession shall be considered to be all activities performed with the aim of awarding the concession, and which precede the concession award procedure.

(2) Preparatory actions shall be implemented by the concession grantor in accordance with this Act, any special act, the regulation governing public procurement, and other regulations depending on the type and object of the concession.

(3) Preparatory actions shall particularly imply the following:

- appointing an expert commission for the concession,
- preparing a concession justification study, or concession award analysis,
- estimating the concession value and
- preparing tender documents.

Concession value estimation

Article 11

(1) The concession grantor shall calculate the estimated concession value as the total value of the object of the concession, including all possible amendments to and options of the concession contract as well as the maximum value of amendments, in accordance with Article 33 of this Act, expressed in HRK, net of value added tax (VAT).

(2) The estimated concession value for the exploitation of a common or other good shall be calculated as the estimated income that the concessionaire, acting with due diligence of a prudent businessman, will earn based on the concession contract during the term of the concession, reduced by the estimated amount of the concession fee, and discounted to the net present value at the discount rate which the concession grantor shall specify, which reflects the current market estimates of the time value of money and risks which are characteristic for investments similar to the object of the concession.

(3) The estimated value of a public works concession and a public service concession shall be calculated in the manner specified in the regulation governing public procurement relative to the calculation of procurement value for public works contracts and public service contracts.

(4) In addition to the provision referred to in paragraph 3 of this Article, the estimated value of a public works concession and a public service concession shall also include the estimated profit upon the concessionaire's collection of payments from final beneficiaries of the service which is the subject-matter of the concession contract, as well as the estimated amount of all payments by the concession grantor during the term of the concession contract.

(5) The information contained in the concession justification study or concession award analysis shall be taken as a basis for the calculation of the estimated concession value.

(6) Where the concession grantor envisages compensation or payment to future concessionaires, it shall take them into consideration when calculating the estimated concession value.

(7) The estimated concession value shall be valid at the moment when the concession grantor launches the concession award procedure.

(8) When calculating the estimated concession value, market prices at the moment of calculation shall be taken into account, or the possible service price to be applied in the concession award procedure or, where applicable, the service price determined by a special act.

(9) All issues related to the calculation of the concession value which are not regulated by this Act shall be subject to the application of provisions of a special act, as appropriate.

Concession justification study

Article 12

(1) The concession justification study shall be drawn up by the concession grantor.

(2) When drawing up the concession justification study, the concession grantor may be aided by external expert advisors.

(3) The concession justification study shall in particular take account of the public interest, environmental impact, environmental protection and protection of cultural goods, financial impacts of the concession on the State budget and the budgets of local and regional self-government units, and the conformity with the economic development plans and plans for the award of concessions referred to in Article 56 of this Act.

(4)) In the case of a public service concession the value of which is less than EUR 2,000,000 expressed in Croatian currency equivalent, net of VAT, and the concession for the exploitation of a common or other good, the concession grantor may prepare a concession award analysis, instead of the concession justification study. The concession award analysis must encompass correspondingly the elements of the concession justification study as set out in Article 13 of this Act, in order to ensure that the concession award procedure apply the standards and the rules for concession awarding, as determined by this Act.

(5) In the case of a public service concession and a concession for the exploitation of a common or other good, where several concessions are awarded simultaneously for the same or similar object of the concession, the concession grantor may draw up a single concession justification study for all concessions, taking account that the study clearly define the specific characteristics and all elements which are necessary for awarding each concession.

(6) In the case of a public service concession and a public works concession with public private partnership characteristics subject to rules governing public private partnership, instead of the concession justification study, the concession grantor may draw up a draft public private partnership project in line with the rules governing public private partnerships.

(7) The draft public private partnership project referred to in paragraph 6 of this Act shall include all data and information as set out in Article 13 of this Act.

(8) All issues related to the concession justification study and the concession award analysis which are not regulated by this Act shall be regulated by a special act.

Content of the concession justification study

Article 13

(1) The concession justification study shall in particular consist of the operational summary, the general part, technical, financial, economic and legal analysis, if necessary of a study on the impact on the environment and nature, cultural goods, health and accompanying annexes, conclusion and recommendations.

(2) The operational summary of the concession justification study shall contain in particular: a description of the object and purpose/aim of the concession, a list and explanation of the regulations applied to the award of the concession, an overview of the basic conclusions of the study, information and data sources, and information about the authors of the study.

(3) The general part of the concession justification study shall contain in particular: the definition of the type and object of the concession, the definition of the works and/or services of the object of the concession, the possibility of granting concessions upon request, the possibility to subconcession, the conditions on which the works shall be executed and services provided, the principles of management and control of the concession, the schedule for the implementation of the concession award procedure and execution of the concession contract.

(4) The technical analysis of the concession justification study shall contain in particular: a description of the area/activities and/or structure for which a concession is awarded, the elaboration of technical conditions and elements related to the designing and construction and/or reconstruction, the equipping and maintenance of the structure which is the object of the concession, technical and other prerequisites for the commencement of construction, an evaluation of the capital costs and the costs of management and maintenance of the structure, and for providing services of the object of the concession.

(5) The financial and economic analysis of the concession justification study shall contain in particular: a cost-benefit analysis of the concession relative to the concession grantor's budget, or relative to the State budget and/or the budget of local and regional self-government unit,

and the financial feasibility of the concession relative to the concessionaire, in accordance with the professional standards and international standards.

(6) A legal analysis of the concession justification study shall contain in particular: a list and explanation of the regulations applied to the award of a concession, facts about and analyses of property-law issues, recommendations related to the conditions for the award of a concession, special conditions to be fulfilled by the concessionaire and the concession grantor, the reasons/conditions for and consequences of termination of the concession contract, security issues related to the concession contract performance, analyses of the financial institutions' rights and other issues regarding the concession funding, the issues concerning facility transfer from the concessionaire to the concession grantor, and the manner and conditions for settling disputes.

(7) Exceptionally, the concession justification study may contain only part of the elements referred to in paragraphs 1 through 6 of this Article, depending on the assessment of the concession grantor and in accordance with the provisions of the special act.

(8) The concession justification study or analysis of the award of a concession shall always contain the following: definition of the type and object of the concession, the estimated concession contract value, proposed minimum suitability requirements for the economic operator, the term of the concession, an explanation whether the concession has the characteristics of a public private partnership, and all other information necessary to prepare the tender documents.

Expert commission for concessions

Article 14

(1) Prior to the commencement of the concession award procedure, the concession grantor shall appoint an expert commission for concessions.

(2) The concession grantor shall appoint members of the expert commission from the legal, economics and technical profession as well as other relevant fields, depending on the object and characteristics of the concession. Expert commission members shall not necessarily be employees of the concession grantor.

(3) The expert commission shall have an odd number of members, which shall not exceed 7 members.

(4) Expert commission members shall confirm absence of either direct or indirect personal interests in any activity which may result in a conflict of personal interests and their duties as expert commission members, by signing a statement of independence to guarantee there is no conflict of interest, in line with special regulations on the prevention of the conflict of interest.

(5) In the case of a concession awarded in accordance with the regulation governing public procurement, at least one member of the expert commission shall have a valid certificate in the field of public procurement.

(6) In the case of a concession awarded in accordance with the regulation governing public procurement, the expert commission shall act as delegated representative of the contracting authority in accordance with the regulation governing public procurement.

(7) In the case of a public service concession and a concession for the exploitation of a common or other good, where several concessions are awarded simultaneously for the same or similar object of the concession, the concession grantor may set up a single expert commission for all concessions, while paying attention that the expert commission consider the specific elements of each concession.

(8) The concession grantor is obliged to inform the ministry responsible for finance of the intention to appoint an expert commission stated in this Article.

(9) The ministry responsible for finance may appoint its representative to the expert commission within ten days from the date of receipt of the notification referred to in paragraph 8 of this Article.

(10) In the case of concessions with public private partnership characteristics, the concession grantor shall request that a representative of the ministry responsible for finance be appointed as member to the expert commission.

(11) By way of derogation from paragraphs 1 through 10 of this Article, tasks of the expert commission for the concessions the object of which is providing radio and television services shall be performed by an independent regulatory body in accordance with the provisions of a special act.

(12) The tasks of the expert commission for concessions shall be the following:

1. liaison with the concession grantor while drawing up the concession justification study or the concession analysis, while establishing the conditions for awarding the concession subject to a special act, while drawing up tender documents, and in determining the suitability and selection criteria for the most advantageous tenderer,

2. analysing the public works concession and the public service concession to determine whether the concession has the characteristics of a public private partnership, as specified in Article 15 of this Act,

3. reviewing and evaluating tenders received and/or requests to participate, in accordance with the rules for the award of concessions,

4. formulating the proposal of the decision on the award of the concession or a proposal of the decision on the cancellation of the concession award procedure, and an explanation thereof,

5. notifying the competent state attorney's office on the intention to award the concession, the activity of which shall be operated on immovable property owned by the Republic of Croatia or the concession relating to a common or other good specified by law as the good of interest to the Republic of Croatia, prior to the commencement of the concession award procedure, and

6. carrying out all other activities required for the implementation of the concession award procedure.

(13) The expert commission for concessions shall keep the minutes of its work which shall be signed by all commission members.

Public works concessions and public service concession with the characteristics of a public private partnership

Article 15

(1) When assessing whether a public works concession or a public service concession has the characteristics of a public private partnership pursuant to Article 14, paragraph 12, item 2, of this Act, the expert commission shall apply the criteria laid down by the regulation governing public private partnerships as determined in the part regarding the definition of public private partnership.

(2) In the procedure referred to in paragraph 1 of this Article, the expert commission shall cooperate with the body responsible for public private partnership.

(3) Should the expert commission assess that the concession has the characteristics of a public private partnership, in addition to the provisions of this Act, the provisions of the regulations governing public private partnership shall also apply, as appropriate.

Tender documents

Article 16

(1) The concession grantor shall draw up the tender documents.

(2) In the concession award procedure, each economic operator shall be provided an equal opportunity to acquire all documents necessary to draw up a tender.

(3) The concession grantor shall set in advance the possible fee for acquiring the documents necessary to draw up a tender.

(4) The fee referred to in paragraph 3 of this Article shall be the revenue of the State budget, or the budget of the local and regional self-government units if they are the concession grantor.

(5) Information on the economic operators who have acquired the tender documents or possible additional documents shall be recorded and kept confidential until the opening of the tenders.

(6) If supplements, corrections or changes to the tender documents are necessary during the time limit for the receipt of tenders, the tender documents shall be supplemented, changed or corrected and the time limit for the receipt of tenders shall be extended accordingly.

(7) The concession grantor shall ensure access to changes and corrections referred to in paragraph 6 of this Article to all economic operators interested in participating in the concession award procedure, in the same manner as to tender documents.

(8) All other issues concerning tender documents in the case of a public service concession the value of which is estimated to be EUR 5,000,000 or more (net of VAT) in Croatian currency equivalent and the public works concessions are subject to the application of the relevant provisions of the regulations governing public procurement.

Tender documents content

Article 17

(1) Tender documents shall contain all the necessary information enabling the economic operator to draw up the request to participate and/or tender.

(2) The tender documents shall contain:

- general information (the name and seat of the concession grantor, personal identification number, telephone number, fax number, internet website, e-mail address, contact person or service, the list of economic operators with whom the concession grantor has a conflict of interest under the provisions of the regulation governing public procurement, the estimated value of concession, type of the concession),
- the information about the object of the concession (description of the object of concession, technical specifications, execution of works or the provision of services, sub-contracting terms, the time limit for the commencement of the execution of works or the provision of services, if possible, the time limit for the completion of works and provision of services, and expected duration of the concession contract),
- reasons for the exclusion, criteria for the legal and business capacity, financial, technical and professional suitability, and the information required from the economic operator as evidence of fulfilment of these criteria,
- the conditions for economic subjects' participation in the concession award procedure, which are laid down either by a special act, pursuant to Article 19 of this Act or a regulation ruling the public procurement procedure (conditions and proofs of suitability), where applicable,
- the information about the request to participate and/or tender (the content and method of drawing up, the manner of submission, the manner of determining the price or the concession fee, tender currency, if the price is not expressed in HRK, the award criterion, the language and script if the request to participate and/or the tender are not drawn in the Croatian language and Latin script, the term of validity of the tender),
- other information (information about the time of visit to the site or on-the-spot inspection of the documents supporting the tender documents, the provisions pertaining to a group of candidates or tenderers, the provisions pertaining to subcontractors, date, time and place or submission of the request to participate and/or tenders and the public opening of tenders, projects/documents that shall be returned to the candidates or tenderers after the completion of the concession award procedure, if applicable, a reference to a time limit for adopting a concession award decision, the information about the bodies from which a tenderer may obtain valid information on the obligations relating to taxes, environmental protection, employment protection provisions and working conditions which are in force in the area in

which the works are to be carried out or services are to be provided during the term of the concession contract, if applicable, the time limit for adopting a concession award decisions, if set, the time limit, manner and payment terms for the concession fee or payment by the concession grantor, the conditions and requirements to be fulfilled pursuant to special regulations or professional rules, the right to use an immovable property, easement rights and fees for an immovable property, a reference to whether customary practice (trade customs) shall apply, the name and address of the body responsible for appeal, and the information about the time limit for lodging the appeal to the tender documents, other information which the concession grantor deems necessary), and

– the type, means, conditions and time limits of a guarantee and/or security instruments to be submitted, and which is suitable for the scope and the value of the concession contract and for the object of concession, if requested, as a security to fulfil the payment obligation,

– draft concession contract,

– statement of possible changes and options of the concession contract.

(3) If, pursuant to a special regulation, the concession grantor or other body governed by a special law is entitled to either determine the price which the concessionaire will be paid by the final beneficiaries or to grant approval of the concessionaire's price list of public services, this right, as part of the provisions of the future concession contract, should be an integral part of the tender documents.

(4) When the selected most advantageous tenderer is obliged to establish a special purpose vehicle as a company with its seat in the Republic of Croatia for the purpose of performance of the concession contract, the tender documents shall specify the form of the company, the minimum original capital, obligations of the selected most advantageous tenderer relative to the establishment of the company, and other conditions, obligations and relations of the most advantageous tenderer, or concessionaire and the concession grantor.

(5) The description of the object of the concession (technical specifications) must not restrict competition in the concession award procedure.

(7) The tender documents may contain the templates of required documents, statements and other forms.

(8) In addition to the provisions of the regulations governing public procurement, the technical specifications shall be subject to special regulations, as long as they are in line with principles stated in Article 20 of this Act and principles to determine technical specifications, as set out by the regulation governing public procurement.

Tender guarantee

Article 18

(1) In the tender documents and the notice of intent to award a concession the concession grantor shall specify the tender security instruments and conditions to be submitted by the tenderer.

(2) The type and value of guarantee shall be determined depending on the particularities of the type and object of the concession, in line with the concession grantor's estimate.

(3) The expert commission referred to in Article 14 of this Act shall propose the type and value of individual guarantee.

(4) The concession grantor shall set the absolute amount of the tender guarantee expressed in currency. The tender guarantee, except in justified cases, may not exceed 5% of the estimated concession value.

(5) If the tender's term of validity expires, the concession grantor shall require the tenderer to extend the term of validity of the tender and the tender guarantee until such extended term. The tenderer shall be granted a reasonable time limit for submitting extended tender guarantee.

(6) The concession grantor shall return the tender guarantee to the tenderer immediately after the completion of the concession award procedure, and keep a copy of the guarantee.

III - THE PROCEDURE FOR THE AWARD OF CONCESSIONS

General provisions

Article 19

(1) The procedure for the award of concessions shall commence on the day of publication of the notice of intent to award a concession in the Electronic Public Procurement Classifieds of the Republic of Croatia, and shall terminate upon enforceability of the concession award decision or the decision on the cancellation of the concession award procedure.

(2) Matters related to the procedure for the award of a public service concession the estimated value of which is less than EUR 5,000,000 (net of VAT) in Croatian currency equivalent, and a concession for the exploitation of a common or other good which are not regulated by this Act, may be further regulated by a special act without prejudice to the principles of the concession award procedure laid down in Article 20 of this Act.

(3) The procedure for the award of a public service concession the estimated value of which is equal to or exceeds EUR 5,000,000 (net of VAT) in Croatian currency equivalent and a public works concession, shall be subject to the application of the provisions of the regulation governing public procurement pertaining to open, restricted, negotiated public procurement procedures with prior publication or the competitive dialogue.

(4) The concession referred to in paragraph 3 of this Article shall not be subject to the provisions of Articles 20 through 24 and 26 through 29 of this Act, with the exception of provisions described in Article 21 paragraph 7, Article 26 paragraph 6 and Article 28 paragraph 7 of this Act.

(5) The procedure for the award of concessions referred to in paragraph 3 of this Article shall not apply to concessions awarded by the contracting entity pursuing the activities in the sector of gas, heat and electricity, water supply, exploration for and extraction of oil, gas, coal and

other solid fuels, transport services, in the field of airport installations, maritime or inland ports and postal services.

(6) Without prejudice to the principles of the concession award procedure laid down in Article 20 of this Act, the provisions of this Act shall apply to the procedure for the award of concessions referred to in paragraph 5 of this Article, while certain matters related to the award of concessions may be further regulated by a special act.

(7) Exceptionally, the concession may be awarded upon request in accordance with Article 29 of this Act.

Principles of the concession award procedure

Article 20

In the procedure for the award of concessions, referred to all legal and natural persons the concession grantors shall observe the principle of the free movement of goods, the principle of freedom of establishment, the principle of the freedom of to provide services, the principle of efficiency and other fundamental principles of the Constitution of the Republic of Croatia, as well as those from the Treaty on the Functioning of the European Union, such as the principle of competition, the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency.

Notice of intent to award a concession

Article 21

(1) The concession grantor shall announce in a notice its intention to award a concession.

(2) The notice of intent to award a concession shall contain at least the following information:

1. name, address, telephone number, fax number, and e-mail of the concession grantor;

2. a) type and object of the concession,

b) nature and scope of the concession activities,

c) place of performance of the concession,

d) the term of concession,

e) the estimated value of concession;

3. a) time limit for the receipt of tenders,

b) the address where the tenders are to be sent,

c) the language/languages and script/scripts in which tenders must be drawn up;

d) place and time of public opening of the tenders.

4. reasons for the exclusion of tenderer,

5. criteria for the legal and business capacity, financial, technical and professional suitability, in accordance with provisions of a special act, and the information required from the economic operator as evidence of fulfilment of these criteria;

6. type and value of tender guarantee to be submitted by the tenderer;

7. tender award criteria;

8. name and address of the body authorized for deciding on the appeals and the information about the time limits for submitting appeals.

(3) the notice of intent to award a concession may contain other information in accordance with special acts.

(4) the notice of intent to award a concession shall refer to only one concession that is the subject-matter of the procedure, unless the concession is awarded in the health sector.

(5) if supplements, corrections or changes to the notice of intent to award a concession are necessary within time limit for the receipt of tenders, the notice shall be supplemented, corrected or changed and time limit for the receipt of tenders shall be extended accordingly.

(6) the notice of intent to award a concession and a correction to the notice of intent to award a concession shall be published using the standardised form.

(7) content and form of the standardised forms stated in paragraph 6 of this Act as well as the manner and conditions for publication thereof, shall be determined by the decree of the Government of the Republic of Croatia.

(8) the notice of intent to award a concession and a correction to the notice of intent to award a concession shall be published in the Electronic Public Procurement Classifieds of the Republic of Croatia and, after that, provided there are no modifications in the contents, they may be published in other media and on the website of the concession grantor, quoting the date of publication in the Electronic Public Procurement Classifieds of the Republic of Croatia.

Tenders

Article 22

(1) Economic operators shall submit their tenders in written within the time limit determined by the intent to award a concession, in a sealed envelope bearing reference to the concession award procedure in question, the remark "do not open" and the address of the tenderer.

(2) The time limit for the submission of tenders shall be at least 30 days from the date the notice of intent to award a concession was sent for publication in the Electronic Public Procurement Classifieds of the Republic of Croatia.

(3) When determining the time limit for the submission of tenders, the concession grantor shall take into consideration the level of complexity of the object of the concession and the objective time required to draw up the tenders.

(4) The tender submitted shall be binding to the tenderer until the expiry of the term of validity of the tender.

(5) When drawing up the tender the economic operator shall comply with the requirements and conditions referred to in the tender documents.

(6) Before the expiry of the time limit for the submission of tenders, the tenderer may modify, supplement or withdraw the tender. After the expiry of the said time limit, the tender must not be changed; it can only be clarified or added in accordance with paragraphs 6 to 9 of Article 24 of this Act.

(7) At the request of the concession grantor, the tenderer may extend the term of validity of its tender.

Public opening of tenders

Article 23

((1) In the concession award procedure the concession grantor shall conduct a public opening of tenders.

(2) The public opening of tenders shall commence at the place and at the time designated in the notice of the intention to award concessions and tender documents.

(3) The tenders shall be opened by the expert commission for concessions.

(4) The public opening of tenders may be witnessed by delegated representatives of the tenderers and other authorised persons.

(5) Only the delegated representatives of the tenderers and the expert commission for awarding the concession shall have the right to actively participate in the public opening of tenders.

(6) Minutes of the public opening of tenders shall be drawn up and without delay distributed to delegated representatives witnessing the public opening of tenders, whereas other persons shall receive the minutes only upon a written request.

(7) A tenderer may, if necessary, rely on the capacity of other economic operators, regardless of the legal nature of the relations among them.

(8) In the case referred to in paragraph 7 of this Article, a tenderer shall provide to the concession grantor proof of availability of the necessary resources to cover the entire duration of the concession award procedure and the concession contract by accepting, for example, commitments of other operators for this purpose.

(9) On conditions referred to in paragraphs 7 and 8 of this Article, a group of tenderers may rely on the capacity of the members of the group of tenderers or other operators.

Examination and evaluation of tenders

Article 24

(1) After the public opening of tenders, the expert commission shall examine and evaluate the tenders based on the conditions and criteria in the tender documents.

(2) Examination and evaluation of tenders shall be confidential until the adoption of the concession award decision or the decision on the cancellation of the concession award procedure.

(3) Minutes of the examination and evaluation of tenders shall be drawn up. Tenderers are entitled to access to the minutes and a copy thereof free of charge.

(4) Invalid tenders shall be rejected by decision of the concession grantor.

(5) Appeal against the decision referred to in paragraph 4 of this Article is not allowed. The decision referred to in paragraph 4 of this Article may be contested by appeal against the concession award decision or the decision on the cancellation of the concession award procedure.

(6) An invalid tender is a tender which does not comply with the tender documents requirements, includes provisions which the concession grantor deems harmful or the concession grantor justifiably deems that they are not in accordance with the rules of fair competition, which, in view of formal or other objective reasons, cannot be selected (a tender was received too late, a tender submitted by the tenderer who meets the exclusion criteria specified in the tender documents, a tender by the tenderer who failed to prove its suitability in accordance with the tender documents, a tender missing a tender guarantee, a tender which does not meet the needs the concession grantor has set out in the description of the object of the concession and the technical specifications, or which provides for works and/or services that clearly do not satisfy the needs of the concession grantor in relation to the object of the concession and/or conditions for operating the activity which is the object of the concession).

(7) In the process of examination and evaluation of tenders, in a reasonable time limit which shall not be shorter than five nor longer than ten days from the receipt of tenders, the concession grantor may invite tenderers to clarify or supplement in writing the documents they have submitted in accordance with Article 22 of this Act.

(8) Clarification or supplementing referred to in paragraph 7 of this Article may refer only to the ambiguities, minor defects or mistakes which are remediable.

(9) Clarification or supplementing referred to in paragraph 7 of this Article shall not result in subsequent replacement or subsequent submission of the requested documents, but only in supplementing the documents that have already been submitted.

(10) Requesting clarification or supplement referred to in paragraph 7 of this Article shall not have a discriminatory effect, unequal treatment of economic operators or be in favour of a particular economic operator in the concession award procedure.

Criteria for the selection of the most advantageous tender

Article 25

(1) The criteria for the selection of the most advantageous tender by the concession grantor shall be either:

1. economically most advantageous tender from the concession grantor's stance when it meets the criteria of the object of the concession in question, for example: quality, which includes technical merit, aesthetic, innovation, functional and environmental characteristics, running costs and management costs, cost-effectiveness, after-delivery service and technical assistance, delivery date and delivery period or period of completion of works, price of the service for the final beneficiaries, the amount of the concession fee, or

2. highest fee offered for the concession.

(2) When the most advantageous tenderer is selected based on the criterion of the most economically advantageous tender, the concession grantor shall specify in the tender documents and in the notice on the intent to award a concession the relative weighting it shall give to each of the criteria chosen to determine the most economically advantageous tender. That weighting can be expressed by setting out a range with an appropriate maximum spread. Where this is not possible due to justified reasons, the concession grantor shall indicate the criteria in descending order of importance in the notice on the intent to award a concession.

(3) When the most advantageous tenderer is selected based on the highest concession fee offered, the concession grantor shall make a reference in the tender documents and the notice of intent to award a concession about the manner of expressing the concession fee in the tenders, where the amount of the offered concession fee must be expressed in HRK as the unit sum of the offered fixed and/or variable concession fee during the term of the concession contract, discounted to the net present value at the discount rate listed in the tender documents.

(4) If the lowest concession fee which the concessionaire is obliged to pay is laid down in a special act, the concession grantor shall provide this amount in the tender documents as the amount the tenderers must exceed in their tenders.

(5) If the economically most advantageous tender is selected, the award criteria must not be discriminating and must be associated with the object of the concession.

(6) When determining the criteria for the economically most advantageous tender, the concession grantor shall take account of the elements specified in the special act, without prejudice to the principles of the concession award procedure referred to in Article 20 of this Act.

Concession award decision

Article 26

(1) The concession award decision shall be adopted by the concession grantor after the expert commission has examined and evaluated the tenders. The concession award decision is an administrative decision.

(2) Without any delay, the expert commission shall submit its recommendation concerning the decision of the most advantageous tenderer to the concession grantor, together with the minutes regarding the works, the minutes taken at the examination and evaluation of tenders and other supporting documents.

(3) By way of derogation from paragraph 1 of this Article, the concession grantor may adopt a decision on the award of a concession for the exploitation of a common or other good without the examination and evaluation of tenders, upon request of the economic operator, in accordance with Article 29 of this Act.

(4) The concession grantor shall immediately submit the concession award decision accompanied by a copy of the minutes of the examination and evaluation of tenders to each tenderer and each applicant for the award of a concession by registered mail with a return receipt or by other traceable means.

(5) The concession award decision shall be published in the Electronic Public Procurement Classifieds of the Republic of Croatia in the standardised form.

(6) The content and form of the standardised forms stated in paragraph 5 of this Article, together with the manner and conditions of publication thereof, shall be determined by the decree of the Government of the Republic of Croatia.

(7) If two or more valid tenders are ranked equally according to the selection criteria of most advantageous offer, the concession grantor shall choose the tender which was received earlier.

(8) The time limit for adopting the concession award decision must be reasonable and shall start running on the date of expiry of the time limit for the submission of tenders. Unless specified otherwise in the tender documents, the time limit for adopting the concession award decision shall be 30 days.

Content of the concession award decision

Article 27

(1) A concession award decision shall contain the following:

1. name of the concession grantor,
2. number and the date of when the decision was made,
3. name of the most advantageous tenderer selected or applicant referred to in Article 29 of this Act,
4. general rights and duties of the concession grantor and the concessionaire,

5. the type and object of concession,
6. the nature, scope and place of performance of the concession activities,
7. the term of the concession,
8. special criteria which the most advantageous tenderer or applicant selected has to fulfil during the term of the concession,
9. the amount of the concession fee or the basis for establishing the concession fee which the concessionaire will pay,
10. the time limit within which selected tenderer or the applicant must sign the concession contract with the concession grantor,
11. an explanation of reasons for choosing the most advantageous tenderer,
12. legal remedy,
13. the signature of the responsible person and stamp of the concession grantor.

(2) The concession award decision may contain other relevant data in accordance with the tender documents, the tender submitted, and the provisions of the special act.

Decision on the cancellation of the concession award procedure

Article 28

(1) The concession grantor may cancel the concession award procedure before the expiry of the time limit for the receipt of tenders if circumstances become known which, had they been known before the commencement of the concession award procedure, would have resulted in the non-publication of the notice of intent to award a concession or in the publication of a substantially different tender documents and/or notice of intent to award a concession.

(2) The concession grantor shall cancel the concession award procedure after the expiry of the time limit for the submission of tenders in the following cases:

1. if circumstances become known which, had they been known before the commencement of the concession award procedure, would have resulted in the non-publication of the notice of intent to award a concession or in the publication of a substantially different tender documents and/or notice of intent to award a concession, or
2. if no tender has been submitted by the expiry of the time limit for tender submission, or
3. if no valid tender has remained after the rejection of tenders in the concession award procedure, or
4. in other cases laid down by special acts.

(3) The concession grantor may cancel the concession award procedure if only one tender is received by the expiry of the time limit for the submission of tenders or if after the rejection of tenders in the procedure only one acceptable tender remains.

(4) In the case of circumstances referred to in paragraphs 1 to 3 of this Article, the decision on the cancellation of the concession award procedure shall be passed by the concession grantor.

(5) The concession grantor shall immediately send the decision on the cancellation of the concession award procedure together with a copy of the minutes of the examination and evaluation of the tenders to each tenderer without by registered mail with return receipt, or in some other traceable manner.

(6) The decision on the cancellation of the concession award procedure shall be published in the Electronic Public Procurement Classifieds of the Republic of Croatia in the standardised form.

(7) Content and form of the standardised forms stated in paragraph 6 of this Article shall be determined by the decree of the Government of the Republic of Croatia.

(8) A new concession award procedure may be initiated after the decision on the cancellation of the concession award procedure becomes enforceable.

Concessions upon request

Article 29

(1) A concession for the exploitation of a common or other good may exceptionally be awarded directly upon request of the economic operator:

– when necessary to the concessionaire to perform a public works concession or a public service concession contracts,

– when necessary to the economic operator, who has already signed a concession contract for mineral raw materials exploration, and in view of concluding the concession contract on the exploitation of mineral raw materials which constitute the object of explorations, in accordance with the provisions of the regulation governing the exploration and the exploitation of mineral raw materials,

– if the present or planned economic activity of the economic operator at a certain location constitutes a technological or functional unit with the object of the concession for which the request is submitted, and the concession serves only for the purpose of operating such economic activity, especially when the object of the concession is the use of waters for technological purposes and irrigation,

– when necessary to the entity delegated with the right to carry out recovery on maritime domain, in accordance with a special act.

(2) The awarding of the concession upon request referred to in paragraph 1 items 1 and 2 of this Article shall be envisaged by the tendering documents, the justification study, a public

works concession or a public service concession contract and/or a mineral raw material exploitation concession contract.

(3) A concession upon request must not be awarded with the intention of unwarranted avoidance of applying the concession award procedure laid down in this Act and applying the principles referred to in Article 20 of this Act.

(4) The request for the concession shall be submitted individually by the economic operator.

(5) The request for the concession shall contain at least the following information:

1. company name, address, telephone number, fax number and e-mail address of the applicant;

2. a) type and object of concession,

b) nature and scope of the concession activity requested,

c) place of performance of the concession requested,

d) term of concession;

3. the explanation of the reasons for submitting the request, legal, technical and financial specifications of the concession;

4. proof of fulfilling the legal, technical and financial suitability criteria assigned by a special act;

5. the relevant security instruments to guarantee obligations under the concessions contract;

6. the offered concession fee.

(6) The concession grantor shall adopt the decision to resolve the request to award concession within the time limit not longer than 60 days, starting from the day of receipt of the request.

(7) The concession grantor shall adopt a concession award decision if the following conditions have been cumulatively fulfilled:

– the all documents have been submitted as stated in the paragraph 5 of this Article,

– the applicant fulfils legal, technical and financial requirements in accordance with a special act,

– the applicant has submitted the appropriate security instruments,

– the concession fee offered is higher than or equal to the concession fee specified in a special act.

(8) Upon receipt of a request for concession, the concession grantor referred to in this Article, shall immediately inform the ministry responsible for finance and request for its opinion on

the proposal of the former along with the explanation of its decision to the concessionaire, prior to the adoption of the decision to award a concession upon request.

(9) The ministry responsible for finance shall deliver its opinion on the proposal of the concession grantor referred to in paragraph 8 of this Article within 20 days from the receipt of the proposal.

(10) Other matters related to the award of the concession upon request that are not regulated under this Act shall be regulated with a special act.

IV – CONCESSION CONTRACT

Conclusion of the concession contract

Article 30

(1) The concession contract shall not be concluded before the expiry of the standstill period, which shall last for 15 days from the date of delivery of the concession award decision to all tenderers.

(2) If the procedure of legal protection was instituted, the concession contract may be concluded when the concession award decision becomes enforceable.

(3) The concession grantor shall offer the most advantageous tenderer to conclude the concession contract no later than within 10 days from the date of expiry of the standstill period referred to in paragraph 1 of this Article, or 10 days from the date on which the concession award decision becomes enforceable.

(4) The time limit set in paragraph 3 of this Article may be extended in justifiable cases laid down in the special act, the tender documents and in accordance with Article 27, paragraph 1, item 10, of this Act.

(5) The concession contract shall be drawn up in writing and signed by the delegated person of the concession grantor and the selected most advantageous tenderer or applicant for the concession.

(6) When, in accordance with the tender documents, the concession award decision and the submitted tender, the selected most advantageous tenderer is obliged to establish a special purpose vehicle as a company with its seat in the Republic of Croatia and founded for the purpose of performance of the concession contract, the concession grantor shall sign the concession contract with the delegated person of the aforementioned company, that is with the selected most advantageous applicant until the establishment of the special purpose vehicle, provided that the time limit for such establishment is longer than the time limit for the conclusion of the contract determined in the concession award decision. The establishment of a special purpose vehicle shall occur in a reasonable time limit and no later than 6 months.

(7) Upon concluding the concession contract or the entry of the contract into force, if the former differs from the latter, the concessionaire shall become entitled to and shall assume the obligation under the concession contract.

(8) In the case the selected most advantageous tenderer withdraws from the conclusion of the concession contract or fails to submit the guarantees and instruments referred to in Article 31 of this Act within the prescribed time limits, the concession grantor may adopt a new concession award decision and offer the conclusion of the contract to the next best ranked tenderer.

(9) The law of the Republic of Croatia shall apply to the concession contract.

Concession contract performance guarantee

Article 31

(1) Prior to the conclusion or the entry into force of the concession contract, the concession grantor shall collect from the selected most advantageous tenderer or the applicant for the concession the necessary guarantees and/or security of payment instruments for the concession fee and compensation of potential damages incurred due to the non-fulfilment of obligations under the concession contract (debentures, bank guarantees, personal guarantees, bills of exchange, escrow account, etc.), in accordance with the estimated concession value.

(2) The concession contract shall not be concluded, or it shall not be put into effect unless the guarantee and/or instruments referred to in paragraph 1 of this Article are submitted to the concession grantor within the time frame prescribed in the tender documents, in accordance with a special act.

(3) Guarantees and security instruments shall be stored in an appropriate place with the concession grantor, which shall keep them during the validity of this concession contract.

(4) Guarantees and security instruments may be replaced, in accordance with the tender documents and the concession contract, and after the expiry of half term of the concession contract or after the completion of the construction stage and/or reconstruction in the case of a public works concession and a public service concession, by equivalent guarantees and instruments reduced by the value indicating the remaining value of concession, and which is calculated by the concession grantor.

(5) The concession grantor shall regularly check the validity of the security instruments.

(6) Pursuant to paragraph 5 of this Article, in the case of an invalid security instrument previously submitted, the concession grantor shall without delay require the concessionaire to deliver an appropriate new security instrument.

Expert commission for monitoring the performance of a concession contract with public private partnership characteristics

Article 32

(1) The concession grantor of a concession with public private partnership characteristics shall appoint a commission to monitor the performance of the concession contract within 60 days from the date of the conclusion of the concession contract.

(2) The commission referred to in paragraph 1 of this Article shall have at least 3 and at the most 7 members. The commission shall have a chair and vice chair. The chair shall be an employee of the concession grantor.

(3) The commission shall monitor the performance of the concession contract and the fulfilment of obligations by both contracting parties of the concession with public private partnership characteristics.

(4) The commission shall submit the minutes of the meetings to the concession grantor without delay, and shall update him/her on the performance of the concession contract and on the eventuality or the occurrence of circumstances, including those resulting from the provisions of the contract or from regulations governing the object of the concession, which have or may have either a direct or an indirect fiscal impact on the state budget or the budgets of the local and regional self-government units.

(5) At least twice a year shall the concession grantor report to the ministry responsible for finance on the monitoring concerning the implementation of obligations arising from the concession contract with public private partnership characteristics.

(6) In addition to the regular reporting, the ministry responsible for finance may require further submission of information concerning the execution of the contract from the concession grantor.

(7) The concession grantor shall reply to the request set out in paragraph 6 of this Article no longer than within 10 working days from the day the request was logged.

Content of the concession contract

Article 33

(1) The concession contract shall specify the rights and obligations of the concession grantor and concessionaire on the basis of the concession award decision, in accordance with provisions of this Act and special acts.

(2) Issues arising from the concession contract which are not regulated by this Act shall be subject to the provisions of regulations governing obligations.

(3) The concession contract must be drawn up in accordance with the tender documents, the information contained in the notice of intent to award a concession, the tender selected and the concession award decision, except in the case when the concession is awarded upon request and the contract is drawn up in accordance with the submitted application for the concession, the concession award decision and the provisions of the special act.

(4) In addition to the concession contract, the concession grantor shall have the right to conclude additional and/or tie-in contracts and/or agreements, in accordance with this Act, the tender documents, the concession award decision and the selected tender.

(5) Additional and/or tie-in contracts and/or agreements referred to in paragraph 4 of this Article shall in particular be deemed those which are concluded to secure the funds required

for the performance of the concession contract, with a prior approval of the ministry responsible for finance.

(6) All issues related to immovable and other property ownership of the object of the concession contract, as well as to issues related to immovable and other property ownership stemming from the concession contract, during and after expiry of the concession, shall be regulated by the concession contract, on the basis of the tender documents, the concession award decisions and the selected tender.

(7) All matters relating to usage, ownership and other real rights shall be governed in accordance with special acts and regulations pertaining to real rights.

Concession fee

Article 34

(1) The concessionaire shall pay a fee for the concession in the amount and in the manner stipulated in the concession contract in accordance with the provisions of a special act.

(2) If the concessionaire defaults on the payment of the concession fee in the time limit prescribed in the concession contract, each subsequent payment, regardless of the purpose of payment indicated by the concessionaire, shall be deemed to settle the debt in the order of maturity, where the amount of the charged costs shall be settled first, followed by the statutory default interest and finally the due amount of the concession fee.

(3) By way of derogation from paragraph 1 of this Article, the concession fee need not be contracted in the cases where the concession justification study or concession award analysis establishes that it is not economically justified, unless otherwise provided in the special act.

(4) The concession fee shall be paid in currency, and it may be contracted as a fixed constant amount and/or variable amount depending on the specific characteristics of the object of the concession, the principles established in the concession justifiability study or the concession award analysis, and the special act.

(5) The amount and manner of the concession fee payment shall be determined on the basis of the object of the concession, the estimated concession value, the term of the concession, risks and costs assumed by the concessionaire and the expected profit, the scope of the concession, the level of equipment and property value, as well as the level of equipment and surface area of the common, public or other good of interest to the Republic of Croatia for which the concession is awarded.

(6) The concession contract may specify adjustments in the amount and/or calculation method for the concession fee for a certain period under the concession contract, in accordance with the tender documents and the concession award decision.

(7) Concession fees shall be the revenue of the state budget and/or the budgets of local and regional self-government units as well as of legal persons referred to in Article 4 paragraph 1 item c) of this Act.

(8) The ratio of revenue distribution generated from concession fees referred to in paragraph 7 of this Article shall be specified in a special act.

(9) The concession grantor may specify in the tender documents and the concession contract that the concession fee is subject to changes based on the Consumer Price Index, in the follow-up to the market price fluctuation of the common or other good that is of interest to the Republic of Croatia and the object of the concession and/or amendments to the special act in its part regulating the amount and method of payment of the concession fee.

(10) Fines resulting from orders resulting from the monitoring process of physical and legal persons performing works for which a concession contract has not been concluded and which imply the mandatory conclusion of a concession contract, shall be deemed revenue of the state budget.

Statute on limitations

Article 35

(1) The statute on limitations period of the right to establish the payment arising from the concession fee and relative interest and the right to collect the payment arising from the concession fee and relative interest shall be five years from the day the statute started to run.

(2) The limitation period of the right to establish the payment from the concession fee and relative interest starts to run at the end of the year in which the payment from the concession fee and relative interest had to be stipulated.

(3) The limitation of the right to collect the obligation to pay the concession fee and relative interest shall start running upon expiry of one year which the person under obligation to calculate and pay the concession fee has established as the year in which payment shall be drawn, or upon expiry of the year which has been established as the year for the collection of the obligation from the concession fee and relative interest rates by the competent monitoring authority.

(4) Unless otherwise provided by this Act, the limitation of the right to establish and collect payments from the concession fee and relevant interest shall be subject to the application of the act governing obligations.

Limitation suspension

Article 36

The limitation of the right to establish or the right to collect payments from the concession fee and relevant interest shall be tolled by any proceedings taken by the competent monitoring authority aimed at the establishment or the collection of payments from the concession fee and relevant interest, which have been notified to the person under obligation for the calculation and the payment of the concession fee.

Ultimate limitation period

Article 37

The ultimate limitation period of the right to establish or collect obligations from the concession fee and interests shall be set to ten years from the day the limitation started to run for the first time.

Term of concession

Article 38

- (1) The concession contract shall be concluded for a fixed period.
- (2) The concession grantor shall determine in the concession justification study or concession award analysis, the term of the concession in the way that such term does not restrict competition more than necessary in order to ensure amortisation of the real value of concessionaire's investment and a reasonable return on investment, taking into account the costs and risks assumed by the concessionaire during the term of the concession.
- (3) The time limit for which the concession is being awarded must be determined within the framework of the scope specified in the provisions of special regulations.
- (4) The term for which the concession is awarded shall run from the day the concession contract has been signed, or from the date of entry into force of the contract if it is different from the former.
- (5) The term for which the concession is awarded may be extended if it was due to changes of the contract as stated in Articles 39 and 40 of this Act.
- (6) When it is necessary to provide for an uninterrupted concession activity for public services concession and a concession for the exploitation of a common or other good, the concession grantor shall, no less than 9 months before the expiry of the term of the concession, initiate a new procedure for the award of a concession for the same activity.

Changes to the concession contract

Article 39

- (1) The concession contract can, by the proposition of the concession grantor or concessionaire, be changed during its term only when conditions and possibilities of change were foreseen in the tender documents and concession contract in a clear, unambiguous and precise way.
- (2) The concession contract can be substantially changed:
 - in case of a threat to national security and defence of the state, environment or human health,
 - if so required by the interest of the Republic of Croatia as determined in the Croatian Parliament,
 - in other cases specified in a special act.

(3) Changes to the concession contract cannot change the type and/or the subject of the concession contract.

(4) An annex to the concession contract shall be concluded for any change to the contract preceded by a decision on changing the concession award decision.

(5) When the change to the contract implies direct or indirect, but foreseeable impact on the budget, the concession grantor shall, before signing the annex referred to in paragraph 4 of this Article, request the approval of the ministry responsible for finance.

(6) When the concession grantor has initiated the concession award procedure for public services in good time, i.e. at least 9 months before the expiry of the term of the existing concession contract, and such procedure has not been completed successfully due to justifiable reasons, the concession grantor may extend the existing concession for a period not longer than 6 months, if the following conditions are cumulatively fulfilled:

– a public service provided based on such concession is of the utmost interest to the final beneficiaries,

– an interruption to providing a public service based on the concession would threaten the beneficiaries' of this service Constitutional rights and other rights safeguarded under the law,

– the existing concessionaire accepted the rights and obligations arising from the extension of the concession contract.

(7) The concession grantor shall not be entitled to change the contract in the following instances:

– when the change is aimed at eliminating the defects in the concessionaire's performance or consequences of improper performance, where such defects may be eliminated by changing the stipulations of the contract,

– when the change is aimed at compensating the risk of price increase, where such price increase is the result of the market price fluctuation which could have a significant impact on the performance of the concession contract and from which the concessionaire has secured itself by risk hedging instruments.

Substantial changes to the concession contract

Article 40

(1) Substantial changes to the concession contract during its term shall require the implementation of a new concession award procedure and conclusion of new concession contract.

(2) Any change to the concession contract during its term shall be deemed substantial if:

– the change introduces conditions which, had they been part of the initial concession award procedure, would have allowed the selection of another tenderer instead of the one selected as

the most favourable, or would have allowed for the award of a concession contract to another tenderer,

- the change has a substantial impact on the economic balance of the concession in favour of the concessionaire,
- the change considerably extends the scope of the object of the concession to encompass goods, works or services not covered by the initial concession contract,
- the change of the concessionaire.

(3) Exceptionally to indent 4 of paragraph 2 of this Article, the change of the concessionaire, complete or partial, shall not constitute a substantial change to the concession contract when it is the result of corporative restructuring of the concessionaire, as long as this does not imply other substantial changes to the contract or is not implemented to avoid the application of this Act.

(4) Exceptionally to indent 4 of paragraph 2 of this Article, change of the concessionaire that came as a result of concession contract transfer, as stated in Article 41 of this Act, shall not be considered as substantial change to the concession contract.

(5) When the scope of change may be expressed in currency, such change shall not be deemed substantial if the value of change does not exceed 5% of the estimated concession value. In case of several successive changes, the value of changes expressed in currency shall be specified as the sum of each respective change to the concession contract.

(6) Exceptionally to paragraph 1 of this Article, concession grantor shall not require a new concession award procedure, but instead will conclude annex to the concession contract regarding the substantial changes of the concession construct which cumulatively fulfil following conditions:

- the need for change results after the conclusion of the concession contract, from the circumstances which could not have been foreseen by the concession grantor despite due diligence,
- changes cannot be technically or economically separated from the initial concession contract without causing major difficulties to the concession grantor, or changes are, although separable from the initial concession contract, strictly necessary for its performance
- the change does not alter the type and/or matter of the contract,
- when the value of change is less than 50% of the initially estimated concession value.

Transfer of the concession contract

Article 41

(1) Upon written consent by concession grantor, the concession contract may be transferred to a third person in line with paragraphs 4 and 5 of this Article, or upon settling claims that have

become due, deriving from lien over rights from the concession, in accordance to Article 42 of this Act.

(2) Transfer of the concession contract shall not demine quality and deteriorate continuity of concession contract execution.

(3) In the case of a public works concession and a public service concession, where the concessionaire is a special purpose vehicle, a change in the concessionaire's ownership or management rights, as a result of the transfer of stocks and businesses shares, cannot be implemented without the approval of the concession grantor and the ministry responsible for finance, unless the above is a result of regular stock trade on a regulated capital market or of foreclosure used as an instrument to repay the loan, granted by credit institutions to the concessionaire for the purposes of the concession contract execution, which is based on stocks or business shares, secured with a prior approval of the concession grantor.

(4) The transfer of the concession may be stipulated in the concession contract, in favour of financial institutions issuing loans to the concessionaire, for the purposes of the concession contract execution, or in the case of the concessionaire's breach of concession contract which may result in contract termination.

(5) In the case referred to in paragraph 4 of this Article, financial institutions may be authorised to transfer the concession contract to a third person, provided that such person fulfil suitability criteria of a concessionaire set out in tender documents and in the notice of intent to award the concession.

Lien over rights from the concession contract

Article 42

(1) A lien may be established over the rights from the concession contract, with consent of the concession grantor, only in favour of financial institutions to secure the claims of these institutions on the basis of the loan contract.

(2) Claims of financial institution under paragraph 1 of this Article may relate solely to financial instruments acquired for the purposes of the concession contract execution, and shall not include any other claims that financial institutions have towards the concessionaire on any other grounds.

(3) Prior to the establishment of a lien, the value of rights from the concession contract over which a lien is established must be determined.

(4) If a claim secured by lien is not settled upon becoming due, the lien creditor shall be authorised to implement the lien rights to settle the claim by transferring the concession to a third person who meets the requirements to become a concessionaire specified in the tender documents and notice of intent to award the concession, with the consent of the concession grantor.

(5) The value of the concession shall be re-evaluated at the time of claim settling, in order to determine the ratio of the concession value and the lien creditor's claim value.

(6) All matters not regulated by this Article shall be regulated by the relevant provisions of the regulations governing lien rights.

Subcontracting and subconcession

Article 43

(1) During the term of the concession contract, the concessionaire may subcontract third parties to engage in supporting activities to the concession.

(2) Any activity which is not the activity of the object of the concession but is related thereto by facilitating its operation, or is required for the successful performance thereof, shall be deemed a supporting activity.

(3) In the case of a public works concession and a public service concession, the concession grantor may do the following in the tender documents:

a) either require the concessionaire to conclude with third parties the subcontracts comprising a minimum of 30% of the total estimated concession value, enabling at the same time the tenderers to increase this percentage and indicate the minimum in the concession contract, or

b) require the tenderers to indicate in their tenders the percentage, if any, of the total estimated value of the concession which they intend to subcontract to third parties.

(4) A subcontract shall be concluded only on the basis of a concluded concession contract for exploitation of maritime domain.

(5) The concessionaire has the right to require the concession grantor permission to subconcession, provided that there are sound reasons why a subcontract referred to in paragraph 1 of this Article cannot be formed, that is, when the legal status of the immovable property being the object of the concession does not foresee ownership rights nor any other property rights, and the concessionaire's right to perform supporting activities to the concession on said immovable property may be transferred by means of a subconcession to third parties.

(6) The possibility to subconcession, shall be foreseen in the justification study to award a concession, the tender documents, the notice of intent to award a concession and the concession contract, within the framework where it can be concluded.

(7) The receipt of the request for subconcession contracting shall be notified by the concession grantor to the ministry responsible for finance together with its proposal and explanations to the decision to be presented to the concessionaire.

(8) The subconcession contract shall be submitted to the concession grantor, the relevant ministry and the ministry responsible for finance. The subconcession shall be registered in the Concessions Register.

(9) The income from subconcession fee is part of the concessionaire's income, and shall be added up to the overall income, subject to calculations of the concession fee. The subconcession fee shall be proportionate to the value of the concession awarded area.

(10) The subconcessionaire shall be entitled to the income from the performance of supporting activities on the area under subconcession, on the basis of a subconcession contract.

(11) The subconcession contract cannot be concluded for a period longer than the period stipulated for the concession contract.

(12) The provisions of this Act concerning the concessions policy shall be accordingly applied to subconcession contracting.

(13) All subconcession matters not regulated by this Act shall be regulated by the relevant Act governing the maritime domain.

V - TERMINATION OF THE CONCESSION

Methods of termination of concessions

Article 44

The concession shall terminate:

- by fulfilment of legal conditions,
- by termination of the concession contract due to public interest,
- by termination of the concession contract by consent,
- by unilateral termination of the concession contract,
- upon the finality of the court decision whereby the concession contract is annulled or cancelled,
- in the cases specified in the concession contract,
- in the cases specified in a special act.

Termination of concessions by fulfilment of legal conditions

Article 45

The concession shall terminate:

- a) upon the expiry of the period it was awarded for, unless defined differently by this Act,
- b) upon death of the concessionaire natural person or termination of the concessionaire legal, unless otherwise provided by this Act,
- c) by revoking, cancelling or declaring the annulment the concession award decision, in term after concluding concession contract.

Termination of the concession contract due to public interest

Article 46

- (1) The concession contract shall contain a provision on the concession grantor's right to unilaterally terminate the concession contract completely or partially, if it is decided by the Croatian Parliament that such termination is in public interest.
- (2) If the concession contract has been partially terminated, the concessionaire may, within 30 days from the receipt of declaration of termination issue a statement terminating the concession contract in full.
- (3) In case of termination of the concession contract pursuant to this Article, the concessionaire shall be entitled to compensation of damages in accordance with the provisions of the concession contract and the general provisions of the law of obligations.

Unilateral termination of the concession contract

Article 47

- (1) The concession grantor may terminate the concession contract unilaterally in the following instances:
 1. if the concessionaire fails to settle the concession fee for more than two consecutive times or generally pays the concession fee irregularly,
 2. if the concessionaire fails to carry out public works and/or fails to provide public services in accordance with the quality standards set for such works or services, as specified in the concession contract, special act and other regulations governing the object of the concession,
 3. if the concessionaire fails to take the measures and actions necessary for the protection of a common or public good and the protection of nature and cultural goods,
 4. if the concessionaire supplied incorrect information in the tender based on which fulfilment of suitability criteria set in the tender documents was decided,
 5. if the concessionaire fails to commence with performance of the concession contract or its part within the agreed term for reasons attributable to the concessionaire,
 6. if the concessionaire performs other action which are contrary to the concession contract or fails to perform due actions set out in the concession contract,
 7. if the concessionaire transferred its rights under the concession contract to a third party contrary to the provisions of this Act and the concession contract, and
 8. if the concessionaire fails to deliver a new appropriate security instrument, required by the concession grantor, in accordance to Article 31 paragraph 5 of this Act.
 9. in other cases in accordance with the provisions of the concession contract and the general provisions of the law of obligations.

(2) The criteria on the basis of which the concession grantor shall determine the existence of grounds for termination of the contract referred to in paragraph 1, items 2, 3, 4, 5, 6, 7 and 8 of this Article shall be laid down in the concession contract.

(3) Prior to unilateral termination of the concession contract, the concession grantor shall notify the concessionaire and financial institutions securing the funding of the concession contract execution of this intention in writing and set an appropriate time limit for the concessionaire to eliminate the grounds for termination of the contract and to explain the reasons which have led to those grounds.

(4) If the concessionaire fails to eliminate the grounds for termination of the concession contract referred to in paragraph 3 of this Article, the concession grantor shall terminate the concession contract.

(5) In case of unilateral termination of the concession contract by the concession grantor, the concession grantor shall be entitled to compensation of damages caused by the concessionaire in accordance with the general provisions of the law of obligations. Revenue from the compensation of damages caused by the actions of the concessionaire referred to in paragraph 1 of this Article shall be the revenue of the State budget or of the concession grantor if it is the unit of local or regional self-government.

(6) The concessionaire may terminate the concession contract in accordance with the general provisions of the law of obligations.

VI – LEGAL PROTECTION

Article 48

(1) The State Commission for the Supervision of Public Procurement Procedures shall be competent to decide on appeals in the concession award procedures.

(2) Legal protection in all concession award procedures laid down by this Act, shall be conducted in line with regulations governing public procurement. Legal protection in concession award procedures referred to in Article 19, paragraph 3 of this Act shall be conducted in line with provisions of regulations governing public procurement on open procedure.

Dispute resolution

Article 49

(1) Parties to the concession contract may arrange to settle disputes that arise or could arise from the concession contract by arbitration, which shall take place in the territory of the Republic of Croatia.

(2) The applicable law in the procedure referred to in paragraph 1 of this Article shall be exclusively the law of the Republic of Croatia.

(3) The rules of procedure referred to in paragraph 1 of this Article shall be specified in accordance with the act governing arbitration.

(4) If the parties have not arranged to settle disputes by arbitration, the commercial court according to the seat of the concession grantor shall be the sole competent body.

VII – CONCESSIONS POLICY

Concessions policy

Article 50

(1) The concessions policy implemented by the ministry responsible for finance, for the purpose of this Act, shall represent all measures and activities aimed at establishing and maintaining an efficient system for the award of concessions, and especially the supervision of the concession contract execution, the keeping of the Concessions Register, the participation of representatives of the ministry responsible for finance in the concession award procedure, the monitoring over the implementation of concession contracts with public private partnership characteristics, trainings and alignment with international concessions standards.

(2) Once a year, the ministry responsible for finance shall submit to the Government of the Republic of Croatia a report for the previous year on the implemented concessions policy referred to in paragraph 1 of this Article.

Control of carrying out of obligations assumed under the concession contract

Article 51

(1) The concession grantor shall continuously monitor the work of the concessionaire and the carrying out of obligations under the concession contract, including regular monitoring of the execution of payment of the concession fee if it was set in the concession contract, and payment of all other obligations resulting from the carried out control by the inspection services and other competent bodies.

(2) During the term of the concession contract, the concession grantor shall maintain special documents related to the activities of the concessionaire, at least by collecting and analysing standard financial statements at annual level, and it shall keep records of all affiliated companies of the concessionaire.

(3) The concession grantor shall submit to the ministry responsible for finance by 1 June of the current year a report for the preceding year on the concession and activities of the concessionaire, and in particular with respect to:

- the payment of the concession fee,
- actions taken related to the control of concessionaire's activities,
- initiated debt enforcement measures for the concession fee and other monetary obligations pursuant to the findings/decision of the inspection and other services,
- terminated concession contracts and those whose termination is under way,

- business activities of the concessionaire when it is a special purpose vehicle,
- performance of the subcontracts and contracts with such property concluded by the concessionaire, which are related to the concession contract, and
- other significant information about the performance of the concession contract.

(4) The report referred to in paragraph 3 of this Article shall be submitted in the form which the ministry responsible for finance shall publish on its internet website.

(5) The concession grantor shall keep the documents related to a certain concession until the expiry of the concession concerned. After the expiry of the concession, the concession documents shall be kept in accordance with the regulations governing the keeping of archival documents.

(6) The concession grantor shall provide all required information about a specific concession within 10 days from the date of receipt of the request by the ministry responsible for finance.

(7) The concession grantor shall notify the competent state attorney's office of any breach of contractual provisions in accordance with the scope of work and the provisions of regulations governing the activities of state attorney's offices.

(8) In the case referred to in paragraph 7 of this Article, the concession grantor shall inform the ministry responsible for finance on the actions taken at the latest within 15 days from the date of receipt of the request.

(9) The concession grantor shall be held responsible for the full and timely payment collection of the concession fee.

(10) The concession grantor, when it is not at the same time the income beneficiary from the concession fee, shall submit to the income beneficiary the documents on the basis of which the income beneficiary may set up a record of debts in its business books.

(11) In the case where the concessionaire defaults on the payment of obligations for the concession fee which represents income of the income beneficiary referred to in paragraph 10 of this Article, he shall notify the concessionaire for the purpose of implementing debt enforcement measures.

Article 52

(1) Within the framework of the concessions policy, the ministry responsible for finance may independently, without any request from the concession grantor, but with the prior verification of which measures and actions referred to in Article 51, paragraph 9, of this Act have been implemented by the concession grantor, initiate the control procedure through its inspection services in respect of the concessionaire which fails to carry out the obligations under the concession contract and special regulations, and within the scope of the ministry responsible for finance.

(2) The ministry responsible for finance may also initiate the control procedure referred to in paragraph 1 of this Article at the request of the concession grantor in the cases referred to in Article 53, paragraph 4.

(3) The control referred to in paragraphs 1 and 2 of this Article implies control of the subcontracts and contracts with such properties concluded by the concessionaire, which are related to the concession contract.

(4) Control activities referred to in paragraphs 1 and 2 of this Article shall be carried out by the inspectors of the ministry responsible for finance in accordance with the regulation on the internal organisation of the ministry responsible for finance.

(5) In conducting control activities referred to in paragraphs 1 and 2 of this Article, the inspectors of the ministry responsible for finance shall have the authority to:

1. examine the documents on accounting, material and financial business of the concessionaires with respect to legality, purposefulness and due calculation and timely payment of the concession fees, and execution of other obligations to the credit institutions when the concessionaire is a special purpose vehicle and when such obligations were assumed for the purpose of financing the concession contract.

2. carry out other procedures and actions in accordance with the provisions of the regulations on general administrative procedure, of the general tax regulation and special acts, pertaining to the tasks of controlling the calculation and payment of the concession fees.

(6) Inspectors referred to in paragraph 5 of this Article shall carry official identity cards issued by the minister of finance.

(7) The format and content of the official identity card shall be specified in a regulation by the minister of finance.

(8) The concession grantor shall cooperate with the controlling bodies in the implementation of all types of control procedures related to the execution of the obligations of the concessionaire assumed under the concession contract.

(9) Upon a filed or any other report, the ministry responsible for finances can carry out control procedures over natural and legal persons, suspected of performing activities that need being awarded a concession, without such concession.

Article 53

(1) The control procedure from Article 52 of this Act shall commence with the delivery of the order to the responsible person of the concessionaire.

(2) The order referred to in paragraph 1 of this Article shall contain:

1. name of the issuing body, number and date of the act,

2. name and last name or name of the subject of control,

3. object of control,
4. period to be included in the control,
5. date of commencement of control,
6. name and last name of officials authorised to carry out the control,
7. signature of the authorised person.

(3) Objection against the order referred to in paragraph 2 of this Article shall not be allowed.

(4) By way of derogation from paragraph 1 of this Article, the control procedure may commence without the delivery of the order if:

1. the responsible person of the concessionaire evidently avoids order delivery,
2. there is justified concern that certain evidence will not be able to be presented or its presentation will be challenging.

Article 54

(1) The provision of the regulation on general administrative procedure shall apply to administrative matters referred to in Articles 51 and 52 of this Act.

(2) The provisions of the general tax regulation shall apply to certain matters in the procedure which are specific to the administrative area of concession fees.

(3) If an inspector of the ministry responsible for finance establishes in the control procedure that the concessionaire failed to calculate or calculated a lower amount, failed to pay or paid a lower amount of the concession fee, he shall pass a decision ordering payment of the established debt for the concession fee.

(4) Appeal against the decision referred to in paragraph 3 of this Article is allowed. The appeal shall be decided by the competent second instance authority, pursuant to a regulation on internal organisation of the Ministry of Finance.

Article 55

(1) In accordance with the concessions policy and the competence of the ministry responsible for finance, the concession grantor shall notify the ministry responsible for finance of any irregularities and measures undertaken in written form and in due time, not later than 30 days from the date the irregularity was noted or the measure undertaken.

(2) If the concessionaire is requested by the concession grantor or the ministry responsible for finance to verify the fulfilment of obligations under the concession contract or to provide other important information on the compliance with the concession contract, it shall act upon such a request within 10 days from the date of its receipt.

(3) In case the request referred to in paragraph 2 of this Article is not fulfilled, the concession grantor shall undertake all legal actions in accordance with the provisions of the concession contract and authority of the concession grantor, and the provisions of this Act.

(4) In case of failure to fulfil the obligations under the concession contract, which includes regular payment of the concession fee, the concession grantor may request the inspection service of the ministry responsible for finance to initiate the control procedure if the measures it took did not yield results, provided that it notifies about the measures and actions taken the competent inspection service referred to in this paragraph.

(5) The concession grantor shall notify the ministry responsible for finance on the undertaken measures referred to in paragraph 4 of this Article within 10 days from the date the measures were taken, and shall regularly report on all procedures which were initiated during the implementation of the aforementioned measures.

Plan for the award of concessions

Article 56

(1) The concession grantors shall submit annual and mid-term (three-year) plans for the award of concessions to the ministry responsible for finance.

(2) Before the end of the current calendar year, the concession grantor shall draft an annual plan for the award of concessions falling under its competence for the following calendar year using the standard form published by the ministry responsible for finance on its internet website.

(3) The annual plan for the award of concessions shall be in line with the mid-term (three-year) plan for the award of concessions.

(4) In case of discrepancy between the annual plan and the mid-term (three-year) plan for the award of concessions, the concession grantor shall deliver to the ministry responsible for finance an explanation concerning the discrepancy when it submits the data on the annual plan for the award of concessions.

(5) The annual plan for the award of concessions shall contain:

a) the planned number of concessions,

b) envisaged types and objects of the concession,

c) periods for which certain concessions are planned to be granted,

d) the legal basis for the award of concessions,

e) the estimated annual fee for the respective concession,

f) a list of concession contracts which expire in the year to which the plan pertains with a note for which concessions a repeated concession award procedure is planned, and with an explanation of the reasons for the possible not planning of the award of a new concession.

(6) The concession grantor shall deliver the annual plan for the award of concessions referred to in paragraph 1 of this Article to the ministry responsible for finance by the end of the third quarter of the current year.

(7) The ministry responsible for finance may, where appropriate, require the concession grantor to submit additional data in the period of ninety days from the day of receipt of the data referred to in paragraph 5 of this Article.

(8) Apart from the annual plan referred to in paragraphs 2 through 7 of this Article, the concession grantor shall, at the request of the ministry competent for finance, submit a mid-term (three-year) plan for the award of concessions from its scope of competence, with clearly stated economic effects of the implementation of the future concession contracts, in compliance with the relevant regulations governing public finance and the preparation, evaluation and implementation of investment projects.

(9) In the mid-term (three-year) plan for the award of concessions, a reference shall be made to economic and other areas where concessions are planned to be granted, buildings to be built and activities which shall be carried out pursuant to the concessions, the planned expenditure for concessions and income from the concessions, and the assessment of the expected economic benefit from the planned concessions.

(10) The mid-term (three-year) plan may contain other elements which are significant for the implementation of an effective concessions policy.

(11) In the procedure for submitting the data referred to in paragraphs 8 and 9 of this Article, the concession grantor must, in a transparent manner, demonstrate the compliance of the plan for the award of concessions with the economic development framework and individual projects, in accordance with the public interest, according to the provisions of this Act.

(12) In addition to the information referred to in paragraphs 1 through 11 of this Article, the concession grantor shall deliver other information concerning the existing concessions and their date of expiry in the current calendar year or the following period upon request by the ministry responsible for finance.

Concessions Register

Article 57

(1) The Concessions Register shall be kept by the ministry responsible for finance.

(2) The concession grantors are obliged to use the Concessions Register web application.

(3) The Concessions Register is public.

(4) In accordance with paragraph 3 of this Article, public information is considered to be:

– name of the concession grantor,

– personal identification number of the concession grantor,

- name of the concessionaire,
- personal identification number of the concessionaire,
- date of signing, i.e. of the entry into force of the concession contract,
- the term of the concession,
- expiry date of the concession,
- type of the concession,
- the name of the concession,
- the area where the concession is performed,
- the amount and/or method of calculation of the concession fee.

(5) The keeping of the Concessions Register means the collecting and recording of the information from the concession contracts and related documents, the storing of data and database management, providing access to the data, and protecting the database and the documents stored in the archive.

(6) The concession grantor shall be obliged to contribute to the keeping of the Concessions Register through continuous monitoring and joint participation in its operation with the ministry responsible for finance.

(7) The ministry responsible for finance shall regularly report to the concession grantor about all actions it failed to take and noncompliance with the Concessions Register.

(8) The concession grantor shall comply with the instructions of the ministry responsible for finance, and within a period of seven days report to the ministry responsible for finances about any changes to the particular concession contract.

(9) Concession grantors shall submit the notifications about and changes to the concession contract for entry into the Concessions Register in electronic and/or written form.

(10) Concession grantors shall report to the ministry responsible for finance any notification warning the concessionaire about the noticed noncompliance with the obligations under the concession contract.

(11) The concession grantor and the concessionaire shall act in compliance with the requirements of the ministry responsible for finance, complying with the time limits stipulated in the provisions of the Concessions Register ordinance.

(12) The minister of finance shall adopt an ordinance on the Concessions Register.

(1) The concession grantor shall deliver the concession contract to the ministry responsible for finance within 10 days from the day of its signing, for the entry into the Concessions Register.

(2) The concession grantor shall report to the ministry responsible for finance any change to the concession contract, for the entry into the Concessions Register. The manner of reporting shall be set out in the ordinance on the Concessions Register.

(3) The concession grantor shall report on any change of debt relating to the concession fee and report it to the ministry responsible for finance for entry into the Concessions Register.

VIII - PENAL PROVISIONS

Article 59

(1) A fine in the amount of HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence on the legal person referred to in Article 4 paragraph 1 item c) of this Act, authorised to grant concessions by special regulations if it fails to pay the concession fee in full or in due time (Article 51 paragraph 9).

(2) A fine in the amount of HRK 5,000.00 to HRK 10,000.00 shall be imposed for the offence referred to in paragraph 1 of this Article on the person of the concession grantor responsible for these offence, or body that concluded the concession contract and is competent for the concession contract execution.

Article 60

(1) A fine in the amount of HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence on the legal person referred to in Article 4 paragraph 1 item c) of this Act, authorised to grant concessions by special regulations, which contrary to the provisions of this Act and special regulations governing individual concessions, either fails to submit or fails to submit in good time the information for the entry into the Concessions Register to the ministry responsible for finance. (Article 57, paragraphs 8 to 11).

(2) A fine in the amount of HRK 5,000.00 to HRK 10,000.00 shall be imposed for the offence referred to in paragraph 1 of this Article on the person of the concession grantor responsible for this offence, or body that concluded the concession contract and is competent for the concession contract execution.

Article 61

(1) A fine in the amount of HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence on the concessionaire if he fails to pay the concession fee. (Article 34, paragraph 1).

(2) A fine in the amount of HRK 5,000.00 to HRK 10,000.00 for an offence referred to in paragraph 1 of this Article shall be imposed on the responsible person of the concessionaire – legal person.

IX – TRANSITIONAL AND FINAL PROVISIONS

Article 62

(1) The procedures for the award of concessions launched before the entry into force of this Act, and court or other procedures conducted in relation to these shall be concluded pursuant to the provisions of regulations which were in force by the day this Act entered into force.

(2) Control procedures for calculating and paying the concession fee that commenced before the entry into force of this Act shall be concluded pursuant to the provisions of regulations which were in force by the day this Act entered into force.

(3) The concession grantor who has concluded a concession contract prior to the enforcement of the Concession Act (OG n. 125/08) not bearing reference to security instruments, shall request the concessionaire to present the appropriate security instruments for the remaining period of the concession contract within 60 days from the entry into force of this Act.

(4) The deadline for submission of appropriate instruments set out in paragraph 3 of this Article shall be 60 days from the receipt of the concession grantor's request.

(5) The concession contract shall be terminated if the concessionaire fails to present the appropriate instrument within the time limit referred to in paragraph 4 of this Article.

(6) The concession grantor who has concluded a concession contract with public private partnership characteristics prior to the entry into force of this Act, shall appoint a commission for monitoring the performance of the aforementioned contract within a period of 40 days from the entry into force of this Act, pursuant to Article 32 of this Act.

(7) On the day of accession of the Republic of Croatia to the European Union, the monetary amount referred to in Article 19 paragraphs 2 and 3 of this Act shall be replaced by the value determined by the European Commission and published in the European Union's Official Gazette.

Article 63

(1) The concession grantor shall initiate the procedure for the entry into the land register of all concession contracts relating to immovable property which have not been entered in the land register, within the period of one year from the entry into force of this Act.

(2) The concession grantor shall notify the ministry competent for finance of the procedure for entry in the land register referred to in paragraph 1 of this Act, and within the period of 10 days from the beginning of the procedure for the purpose of recording the data in the Concessions Register.

Article 64

(1) On the day this Act shall enter into force, the Concessions Act (Official Gazette 125/08) shall cease to have effect.

(2) The Government of the Republic of Croatia shall adopt a decree referred to in Article 21, paragraph 7, Article 26, paragraph 6 and Article 28, paragraph 7 of this Act within a period of 60 days from the date of entry into force of this Act.

(3) The minister of finance shall adopt the ordinances referred to in Article 52, paragraph 7, and Article 57, paragraph 12, of this Act within a period of 60 days from the date of entry into force of this Act.

(4) The Ordinance on setting up and keeping the Concessions Register (Official Gazette 09/09 and 22/12) shall remain in force until the entry into force of the ordinance referred to in Article 57, paragraph 12 of this Act.

Article 65

This Act shall be published in the Official Gazette and it shall enter into force on the eighth day after its publication in the Official Gazette, save for the provisions of Article 6, paragraph 2 of this Act, which shall enter into force on the date of the accession of the Republic of Croatia to the European Union.

Class: 302-01/12-01/05

Zagreb, 7 December 2012

THE CROATIAN PARLIAMENT

The President of
the Croatian
Parliament

Josip Leko, m.p.