

**ACT**  
**No. 139**  
of 14 March 2006  
**on Concession Contracts and Concession Procedure (the Concession Act)**

The Parliament has adopted the following Act of the Czech Republic:

**TITLE ONE**  
**GENERAL PROVISIONS**

**Scope and Basic Terms**

§ 1

**Scope**

(1) This Act provides for the conditions and procedure of the granting authority when concluding concession contracts within the framework of cooperation between such granting authorities and other entities, unless such conditions and procedure are provided for otherwise under separate legal regulations<sup>1)</sup>. This Act, in addition, incorporates relevant regulations of the European Communities<sup>2)</sup>.

(2) Provisions of § 16(3) to § 16(5), § 18, § 19, § 21 through § 23, and § 30 of this Act shall, in addition, apply to contracts on the basis of which the above-the-threshold public contracts under the Act on Public Contracts are performed<sup>3)</sup>, if

- (a) the contract is concluded for a definite period, namely of not less than five years and
- (b) the economic operator bears certain economic risks attaching to the performance of such a public contract which are usually borne by a granting entity.

(3) For purposes of this Act, a ‘concession procedure’ shall be understood as an award procedure, a ‘concession contract’ a contract on the basis of which the public contract is performed, a ‘concessionaire’ a selected tenderer, a ‘concession dialogue’ a competitive dialogue, and an ‘estimated revenue of the concessionaire’ an estimated value of the public contract under the Act on Public Contracts<sup>3)</sup>, in respect of contracts pursuant to § 1(2).

§ 2

**Granting Authority**

(1) For purposes of this Act, a granting authority (hereinafter referred to as “the grantor”) shall be understood as:

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<sup>1)</sup> E.g. § 18a to § 18f of Act no. 13/1997 Coll., on Roads, as subsequently amended.

<sup>2)</sup> 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.

Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement.

<sup>3)</sup> Act no. 137/2006 Coll., on Public Contracts.

- (a) the Czech Republic<sup>4)</sup>,
- (b) a State allowance organisation,
- (c) a territorial self-governing unit or an allowance organisation in respect of which such a territorial self-governing unit executes the function of the founder thereof<sup>5)</sup>,
- (d) another legal person, if
  1. it was established or set up for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
  2. it is financed, for the most part, by the State or by another grantor, or it is subject to the management supervision of the State or another grantor, or having an administrative, managerial or supervisory board, more than half of whose members are appointed or elected by the State or by another grantor.

(2) An association formed by grantors or by a grantor and other persons for the purpose of joint procedure intended to select a concessionaire shall be, in addition, considered to be a grantor, where at least one of the members of such an association is the grantor referred to in § 2(1). In such a case, those persons, prior to the initiation of a concession procedure, shall conclude an agreement in writing, where they have their mutual rights and obligations relating to a concession procedure provided for and relations to third parties clarified.

### § 3

#### **General Exclusions from the Scope of Application of the Act**

This Act shall not apply to contracts concluded by grantors, if

- (a) the subject-matter thereof is declared officially secret<sup>6)</sup> or the publication of concession documentation could endanger confidentiality of classified information,
- (b) they are concession contracts, which are accompanied by special security measures<sup>7)</sup> in accordance with separate legal regulations or the protection of essential interests of the State's security so requires<sup>8)</sup>,
- (c) conclusion thereof is governed by particular procedural rules and they are concluded in pursuance of an international agreement relating to the stationing of foreign troops in the territory of the Czech Republic or the sending of the armed forces of the Czech Republic to the territory of other States that is binding on the Czech Republic and that was promulgated in the Collection of Laws or in the Collection of International Treaties,
- (d) the rules given by particular procedures of international organisations are applicable to the conclusion thereof,
- (e) they are concluded by the grantor in pursuance of an international agreement concluded between the Czech Republic and one or more non-Member States of the European Union and intended for joint implementation or exploitation of services or public works by the

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<sup>4)</sup> Act no. 219/2000 Coll., on the Property of the Czech Republic and Acting Thereof in Legal Relations, as subsequently amended.

<sup>5)</sup> Act no. 250/2000 Coll., on Budgetary Rules of Territorial Budgets, as subsequently amended.

<sup>6)</sup> Act no. 412/2005 Coll., on the Protection of Classified Information.

<sup>7)</sup> E.g. Act no. 239/2000 Coll., on the Integrated Rescue System and on Amendments to Certain Other Acts, as subsequently amended, Act no. 240/2000 Coll., on Crisis Management and on Amendments to Certain Other Acts (the Crisis Act), as subsequently amended; Act no. 241/2000 Coll., on Economic Measures for States of Crisis and on Amendment to Certain Related Acts, as subsequently amended, Act no. 153/1994 Coll., on Intelligence Services of the Czech Republic, as subsequently amended.

<sup>8)</sup> E.g. Act no. 110/1998 Coll., on Security of the Czech Republic, as amended by Constitutional Act no. 300/2000 Coll., Act no. 222/1999 Coll., on Arrangements for Defence of the Czech Republic, as subsequently amended.

- contractual parties; the Czech Republic shall communicate the conclusion of such an agreement to the Commission of the European Communities,
- (f) they have as their subject-matter services provided by the Czech National Bank in relation to the exercise of its competence under separate legal regulations<sup>9)</sup>,
  - (g) they have as their subject-matter the execution of public telecommunications networks, or
  - (h) they have as their subject-matter the obligation of a public service under separate legal regulations<sup>10)</sup>.

## **TITLE TWO CONCESSION PROCEDURE**

### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **§ 4**

Prior to initiating a concession procedure, the grantor shall ascertain the estimated value of the subject-matter of a concession contract, and the estimated total revenue of the concessionaire ensuing from the performance of the concession contract (hereinafter referred to as “the estimated revenue of a concessionaire”); the manner of calculation of the estimated value of the subject-matter of the concession contract and the estimated revenue of the concessionaire shall be laid down by the implementing legal regulation.

##### **§ 5**

(1) The grantor shall select the concessionaire for the conclusion of a concession contract in a concession procedure.

(2) The grantor shall not be obligated to comply with this Title of the Act, where the estimated revenue of the concessionaire amounts to less than CZK 20,000,000, net of value added tax.

### **CHAPTER II**

#### **CONCESSION PROCEDURE**

##### **§ 6**

##### **Initiation of Concession Procedure**

(1) The concession procedure shall be initiated by publication of a concession notice.

(2) The grantor is entitled to set aside the concession procedure, where it retained such a right in the notice pursuant to § 6(1). Over and above, relevant provisions of the Act on Public Contracts on setting an award procedure aside, including grounds for such a cancellation, shall be applicable.

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<sup>9)</sup> Act no. 6/1993 Coll., on the Czech National Bank, as subsequently amended.

<sup>10)</sup> E.g. § 19 of Act no. 111/1994 Coll., on Road Transport, as subsequently amended.

(3) The relevant provisions of the Act on Public Contracts on electronic means shall apply by analogy to electronic communication in the course of a concession procedure.

## § 7

(1) The concession notice shall be the invitation to an unlimited number of economic operators to submit their requests to participate in such a concession procedure and to demonstrate fulfilment of required qualifications; the notice shall be made known pursuant to § 31. Where the procedure pursuant to § 7(5)(a) is applied, the grantor shall indicate in the notice partial criteria for the evaluation of tenders, relative weightings thereof included; where the procedure pursuant to § 7(5)(b) is applied, the grantor shall indicate preliminary partial criteria, relative weightings thereof included.

(2) The time limit for the delivery of a request to participate in concession procedure shall be not less than 52 days from the date of publication of a concession notice.

(3) The provisions of the Act on Public Contracts on qualifications, the demonstration thereof as required by the grantor from economic operators, and on their exclusion, shall apply by analogy to the assessment of qualifications of economic operators and the exclusion thereof.

(4) The grantor is entitled to limit the number of economic operators that have demonstrated the fulfilment of qualifications, if it was indicated in a concession notice, including the indication of criteria for such a limitation; in such a case, it shall invite not less than 3 economic operators to submit their tenders or to participate in the concession dialogue.

(5) Following the assessment of qualifications of economic operators, and, where appropriate, a reduction of the number thereof, the grantor shall

- (a) invite the economic operators that have demonstrated the fulfilment of qualifications to submit their tenders (§ 8), adding that the tenders may be subject to further negotiations (§ 9), or
- (b) invite the economic operators that have demonstrated the fulfilment of qualifications economic operators to participate in the concession dialogue (§ 10), the purpose of which is to develop one or more suitable alternative solutions of a concession project; following the selection of one or more alternative suitable solutions, the grantor shall act upon the provisions of § 7(5)(a).

(6) Where the grantor acts upon the provisions of § 7(5)(b), it shall indicate such a fact in the concession notice.

## § 8

### **Invitation to Submit a Tender**

(1) In case that the grantor does not negotiate with the economic operators about the tenders submitted by them, the written invitation to submit a tender pursuant to § 7(5)(a) shall, at least, contain:

- (a) concession documentation or conditions for the supply thereof; provisions of the Act on Public Contracts on contract documentation shall apply by analogy to the scope of concession documentation,

- (b) the time limit for the submission of tenders, which shall be not less than 40 days from the date of dispatch of the invitation to submit tenders; unless the grantor dispatches to the economic operator the total of background materials necessary to produce a tender together with the invitation to submit tenders or where such tenders may be submitted only following the visit to the site of performance, the grantor shall extend the time limit for the submission of tenders accordingly,
- (c) address to which the tenders must be sent and
- (d) the information on the language in which the tender must be drawn up and submitted.

(2) Where the grantor takes a decision to negotiate about the tenders submitted pursuant to § 7(5)(a), the written invitation under § 8(1) shall, in addition, include:

- (a) the manner of negotiations about the tenders, in particular whether such negotiations will be conducted with all economic operators simultaneously or separately,
- (b) the manner of selection of the economic operators for further negotiations, where the grantor takes a decision to reduce the number thereof in successive stages; § 7(4) the sentence following the semi-colon shall apply by analogy.

(3) Relevant provisions of the Act on Public Contracts shall apply by analogy to the time limits, technical specifications, classification of the subject-matter of a concession contract, supply of concession documentation to the economic operators, additional information on the award conditions, and the visit to the site of performance.

(4) Relevant provisions of the Act on Public Contracts shall apply by analogy to the submission of tenders and the content thereof.

## § 9

### **Negotiations about Tenders**

(1) When the grantor makes a decision to conduct further negotiations about the tenders, it shall invite all economic operators that have not been excluded from the participation in the concession procedure to negotiate about the tenders.

(2) Provisions of the Act on Public Contracts on negotiations about tenders in individual stages of negotiated procedure with publication shall apply by analogy to the course of such negotiations; provisions of the Act on Public contracts shall apply by analogy to the modification of a draft concession contract.

## § 10

### **Invitation to Participate in Concession Dialogue**

(1) A written invitation to participate in the concession dialogue pursuant to § 7(5)(b) shall, at least, contain:

- (a) description of the subject of negotiations, which includes especially the indication of the needs and requirements of the grantor concerning the subject-matter of a concession contract,
- (b) data on the venue and time of negotiations,
- (c) information on the language of negotiations.

(2) Provisions of the Act on Public Contracts on the course of the competitive dialogue shall apply by analogy to the procedure of the grantor in developing a suitable solution in the concession dialogue.

(3) The grantor shall notify in writing all economic operators that have been invited to participate in the concession dialogue of its completion, and it shall simultaneously invite them to submit their tenders; in the invitation pursuant to § 8, the grantor shall, in addition, indicate partial criteria for the evaluation of tenders, relative weightings thereof included.

## § 11

### **Assessment and Evaluation of Tenders**

(1) Relevant provisions of the Act on Public Contracts shall apply by analogy to the opening of envelopes with tenders and to the evaluation commission.

(2) Relevant provisions of the Act on Public Contracts shall apply by analogy to the assessment and evaluation of tenders and the economic advantageousness of the tender shall be, at the same time, the sole criterion for the selection of a concessionaire.

## CHAPTER III

### SELECTION OF CONCESSIONAIRE

## § 12

(1) Based on the results of the concession procedure, the grantor shall select the economic operator, whose tender was evaluated as the most economically advantageous one, to conclude a concession contract with.

(2) The grantor shall dispatch the concession grant advice note to all economic operators that have not been excluded from the participation in the concession procedure, not later than within 5 days from the date of selection of such a concessionaire.

(3) The concession grant advice note shall include

- (a) identification data of economic operators that have not been excluded from the concession procedure,
- (b) the outcome of the evaluation of tenders, including their ranking, the elements that were subject to evaluation and data on the evaluation of tenders in the framework of individual evaluation criteria,
- (c) justification of the selection of a concessionaire, where the grantor selected the concessionaire without complying with the suggestion of the evaluation commission.

(4) Relevant provisions of the Act on Public contracts shall be applied by analogy to the submission of objections against the decision of the grantor on the selection of a concessionaire and against the decision on the exclusion from the participation in the concession procedure.

(5) Provisions of the Act on Public Contracts on the conclusion of a contract shall apply by analogy to the conclusion of a concession contract.

## § 13

### **Conclusion of Concession Contract in Specific Case**

The grantor is entitled to conclude a concession contract with a legal person which did not participate in the concession procedure, instead of the selected economic operator, if

- (a) such an option was indicated in the tender of the selected economic operator, including the legal form, the minimum subscribed capital proposed, the ownership structure suggested, and the envisaged composition of the bodies of such a person,
- (b) the grantor or selected economic operator can exert a dominant influence, whether directly or indirectly, over that person<sup>11)</sup> at the time of the conclusion of such a contract,
- (c) the object of activities thereof consists in the performance of the subject-matter of such a concession contract, and
- (d) it fulfils basic qualifications.

## CHAPTER IV

### SUBCONTRACTING

## § 14

(1) In the case of a concession contract with the estimated value of its subject-matter equal to or larger than CZK 165,288,000, the principal object of which is the execution of a work (hereinafter referred to as “the above-the-threshold works concession contract”), the grantor is entitled to

- (a) require the concessionaire to subcontract a minimum of 30% of the estimated value of the work to third parties; the minimum percentage shall be specified in the concession contract, or
- (b) request the economic operator to specify in the tender the percentage of the total value of the work, which it intends to award to third parties.

(2) The grantor shall indicate the requirements pursuant to § 15(1) in the concession notice.

## § 15

(1) The concessionaire that

- (a) is not the grantor under the Act on Public Contracts, in respect of the above-the-threshold works concession contract, and
- (b) intends to subcontract to a third party a proportion of works, where the value of the proportion is equal to or greater than CZK 165,288,000 and if the conditions for the use of negotiating procedure without publication under the Act on Public Contracts<sup>3)</sup> were not otherwise met, it shall make known such an intention by way of a notice adding that time limit for the submission of tenders shall be not less than 40 days from the date of the invitation to submit tenders. For publication of the notice the concessionaire shall use the standard form under directly applicable regulation of the European Communities.

(2) For purposes of § 15(1) persons which can exert a dominant influence on the concessionaire and persons over which the concessionaire<sup>11)</sup> can exert a dominant influence shall not be considered a third party; a comprehensive list of such persons shall be part of the

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<sup>11)</sup>§ 66a of Commercial Code.

request to participate in the concession procedure. The economic operator, and following the conclusion of a concession contract the concessionaire, shall update such a list without delay thereafter any changes in their relations occur.

### **TITLE THREE**

#### **CONCESSION CONTRACT**

##### § 16

(1) Under a concession contract, the concessionaire undertakes to provide services or, in addition, execute a work and the grantor pledges to allow the concessionaire to enjoy benefits resulting from the provision of such services or from the exploitation of the executed work, or, if appropriate, together with partial payment.

(2) The concessionaire shall bear a substantial proportion of risks attaching to the enjoyment of benefits from the provision of services or the exploitation of the executed work; the distribution of the other risks between the grantor and the concessionaire shall be laid down in the concession contract.

(3) The concession contract shall set out:

- (a) the grounds on the basis of which the contract may be terminated prior to the expiry of its term, and
- (b) delimitation of the legal relations of the contractual parties concerning the assets designed for the performance of a concession contract, including the rules for arrangements between them in the case of termination of the contract pursuant to § 16(3)(a).

(4) The concession contract may be concluded only for a definite period.

(5) The concession contract shall be in writing and the expressions of will of contractual parties shall appear on the same deed.

(6) The concession contract shall, in addition, be governed by relevant provisions of the Commercial Code.

##### § 17

(1) The grantor shall be entitled to conclude concession contracts unless it is excluded under separate legal regulations.

(2) The concessionaire shall conclude neither any other concession contracts concerning the subject-matter of the concession contract, nor any proportion thereof.

##### § 18

The grantor shall be entitled to allow the concessionaire in the concession contract to levy charges on the users for provided services only in case the grantor was vested with the right to levy such charges on the users itself.

##### § 19



(1) While concluding concession contracts, the grantors may bind themselves to provide future performance, which is not covered by the current budget of the grantor at the time of the conclusion of such a concession contract.

(2) If the grantor keeps accounts under separate legal regulations<sup>12)</sup>, the concessionaire shall establish its chart of accounts so that the statement of final balances contain, in addition, a breakdown of items according to activities related to the subject-matter of a concession contract, as well as according to the other activities taken up by the grantor. The concessionaire shall indicate its expense and revenue accounts in the chart of accounts related to activities linked to the subject-matter of a concession contract on the one hand, and to other activities taken up by the concessionaire, on the other hand. The factual delimitation of the content of such accounts shall be set forth by the concessionaire's internal rules.

(3) The grantor shall be liable to the users of a service for damage attributable to the concessionaire in direct conjunction with the provision of a service to users.

## **TITLE FOUR**

### **MAJOR CONCESSION CONTRACTS**

#### § 20

(1) Where the estimated revenue of a concessionaire is equal to or greater than the amounts referred to in § 20(2), the grantor shall act, in addition, upon this Title of the Act.

(2) This Title shall apply to

- (a) the Czech Republic, a State allowance organisation or another legal person pursuant to § 2(1)(d), where the Czech Republic in relation to such a person is in the position pursuant to § 2(1)(d)(item 2), if the estimated revenue of a concessionaire is equal to or greater than CZK 500,000,000,
- (b) a self-governing region, the Capital City of Prague, allowance organisations in respect of which they exercise the function of founders thereof, or another legal person pursuant to § 2(1)(d), where the self governing region or the Capital City of Prague in relation to such a person is the position pursuant to § 2(1)(d)(item 2), if the estimated revenue of a concessionaire is equal to or greater than CZK 250,000,000,
- (c) a municipality with the population over 100,000, inhabitants, an allowance organisation in respect of which it exercises the function of the founder thereof, or another legal person pursuant to § 2(1)(d), where the municipality in relation to such a person is in the position pursuant to § 2(1)(d)(item 2), if the estimated revenue of a concessionaire is equal to or greater than CZK 200,000,000,
- (d) a municipality with the population between 25,000 and 100,000 inhabitants, an allowance organisation in respect of which it exercises the function of the founder thereof, or another legal person pursuant to § 2(1)(d), where the municipality in relation to such a person is in the position pursuant to § 2(1)(d)(item 2), if the estimated revenue of a concessionaire is equal to or greater than CZK 100,000,000,
- (e) a municipality with the population of less than 25,000, an allowance organisation in respect of which it exercises the function the founder thereof, or another legal person pursuant to § 2(1)(d), where the municipality in relation to such a person is in the position

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<sup>12)</sup> Act no. 563/1991 Coll., on Accounting, as subsequently amended.

- pursuant to § 2(1)(d)(item 2), if the estimated revenue of a concessionaire is equal to or greater than CZK 50,000,000, and
- (f) another grantor, if the estimated revenue of a concessionaire is equal to or greater than CZK 100,000,000.

## § 21

### **Concession Project**

(1) The grantor, prior to the initiation of a concession procedure, or in case that provisions of § 7(5)(b) are applied, prior to the issue of the invitation to submit tenders, shall ascertain drawing up of the concession project.

(2) ‘Concession project’ shall be understood as basic delimitation of the activity which is to be the subject-matter of a concession contract, basic description of economic conditions and legal relations resulting from the performance of the concession contract, as well as an economic assessment of the advantageousness of the pursuit thereof by the concession contract; particulars of the concession project shall be laid down by implementing legal regulations.

## § 22

### **Approval of Concession Project**

(1) The concession project shall be approved not later than prior to the initiation of a concession procedure or, in case that the provision of § 7(5)(b) are applied, prior to the issue of the invitation to submit tenders.

(2) The approved concession project shall be background material for drawing up concession documentation.

- (3) The decision on the approval of a concession project shall be taken by
- (a) the Government, in the case of a concession project involving the Czech Republic, State allowance organisations or other legal persons in accordance with § 2(1)(d), where the Czech Republic in relation to such a person is in the position of a grantor pursuant to § 2(1)(d)(item 2),
  - (b) a self-governing region council, in the case of a concession project involving the self-governing region, allowance organisations in respect of which the self-governing region performs the function of the founder thereof, or other legal persons in accordance with § 2(1)(d), where the self-governing region in relation to such a person is in the position of a grantor pursuant to § 2(1)(d)(item 2),
  - (c) a municipal council, in the case of a concession project involving the municipality, allowance organisations in respect of which the municipality performs the function of the founder thereof, or other legal persons in accordance with § 2(1)(d), where the municipality in relation to such a person is in the position of a grantor pursuant to § 2(1)(d)(item 2),
  - (d) a body deciding on management of assets under separate legal regulations<sup>13)</sup> in the case of a concession project involving another grantor.

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<sup>13)</sup> E.g. § 5(2)(b) of Act no. 6/1993 Coll., on the Czech National Bank, as subsequently amended.

(4) Failure by the grantor to comply with the provisions of § 22(1) or 22(2) shall be without prejudice to the validity of the contract.

## § 23

### **Approval of Concession Contract**

- (1) The concession contract concluded by
- (a) the Czech Republic, a State allowance organisation or another legal person pursuant to § 2(1)(d), where the Czech Republic in relation to such a person is in the position of a grantor in accordance with § 2(1)(d)(item 2), shall be approved by the Government;
  - (b) a self-governing region, an allowance organisation in respect of which the self-governing region exercises the function of the founder thereof, or another legal person pursuant to § 2(1)(d), where the self-governing region in relation to such a person is in the position of a grantor in accordance with § 2(1)(d)(item 2), shall be approved by the relevant self-governing region council,
  - (c) a municipality, an allowance organisation in respect of which the municipality exercises the function of the founder thereof, or another legal person pursuant to § 2(1)(d), where the municipality in relation to such a person is in the position of a grantor in accordance with § 2(1)(d)(item 2), shall be approved by the relevant municipal council,
  - (d) another grantor, shall be approved by a body deciding on management of assets of the grantor under separate legal regulations<sup>13)</sup>.

(2) Validity of the concession contract shall be conditional on its approval pursuant to § 24(1).

(3) Unless a concession contract is approved, the grantor shall set aside the concession procedure.

(4) In the case of a modification of the concession contract, which leads to the increase of the estimated revenue of the concessionaire by more than 20% or in the wake of which the estimated revenue of the concessionaire equals or exceeds the amounts referred to in § 20(2), the provisions of § 23(1) and 23(2) shall apply.

## **TITLE FIVE**

### **SUPERVISION OVER COMPLIANCE WITH THE ACT**

## § 24

### **Supervision by the Office for Protection of Competition**

(1) Supervision over compliance with this Act shall be exercised by the Office for Protection of Competition (hereinafter referred to as “the Office”).

(2) The Office shall

- a) take decisions, whether the grantor has complied with this Act,
- b) order corrective measures,
- c) impose penalties for administrative delicts.

(3) Relevant provisions of the Act on Public Contracts shall apply to the computation of costs of proceedings.

## **Corrective Measure**

### § 25

(1) If the grantor fails to comply with any procedure set forth by this Act and such a procedure has or could have substantially affected the evaluation of tenders, and where the contract has not yet been concluded, the Office is entitled to cancel the act taken by the grantor.

(2) Provisions of separate legal regulations shall not be prejudiced thereby<sup>14)</sup>.

### § 26

(1) The Office shall indicate in its corrective measure, whether the time limit for which economic operators remain bound by their tenders is suspended, and a period of time for which it is suspended.

(2) The proceeding to impose a corrective measure shall be initiated upon request made by a complainant or by virtue of office; relevant provisions of the Act on Public Contracts shall apply by analogy to the conditions of the initiation of the proceeding, payment of a security deposit included, otherwise Rules of Administrative Procedure shall apply.

(3) Only the grantor shall be a party to the proceeding to impose a corrective measure; the complainant shall be a party thereto if such a proceeding has been initiated upon its request. The concessionaire shall be a party to such a proceeding, where the subject thereof consists in the review of selection of such a concessionaire.

(4) The appeal against the imposition of a corrective measure shall not have a suspensory effect.

### § 27

## **Administrative Delicts**

(1) The grantor shall commit an administrative delict by

- a) failing to comply with the procedure laid down by this Act for the approval of a concession project pursuant to § 22,
- b) failing to comply with the procedure laid down by this Act for the selection of a concessionaire, namely where such a procedure has or could have substantially affected the selection of a concessionaire pursuant to § 12,
- c) failing to comply with the procedure laid down by this Act for the approval of a major concession contract pursuant to § 23(1) or 23(4),
- d) setting aside the concession procedure unless the conditions pursuant to § 6(2) were met,
- e) failing to produce or keep documentation relating to the concession procedure pursuant to § 33, or
- f) failing to fulfil obligations pursuant to § 31(1) or 31(2).

(2) The administrative delict pursuant to § 27(1)(a), § 27(1)(b) or § 27(1)(c) may be subject to a fine of up to 5 % of the estimated revenue of the concessionaire and the

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<sup>14)</sup> E.g., Act no. 552/1991 Coll., on State Control, as subsequently amended.

administrative delict pursuant to § 27(1)(d) to § 27(1)(f) may be subject to a fine of up to CZK 10,000,000.

(3) Administrative delicts shall be examined in the first instance by the Office.

(4) Fines shall be levied and recovered by the Office. The revenue from the fines shall constitute the revenue of the State budget.

## § 28

(1) The grantor shall not be liable for an administrative delict, if it proves to have exercised all efforts, which could have been reasonably required to avert such a breach of legal obligation.

(2) In fixing the amount of the fine, the gravity of such an administrative delict shall be taken into account, in particular the manner how it was committed and consequences thereof and circumstances under which the delict was committed.

(3) The grantor's liability for an administrative delict shall lapse if the Office fails to initiate the proceeding within 5 years from the date when the Office became aware of it, however, not later than within 10 years from the date of committing thereof.

## § 29

### **Common Provisions on Supervision**

The Office shall publish its final rulings in a manner allowing for remote access thereto.

## **TITLE SIX**

### **COMMON AND FINAL PROVISIONS**

#### **CHAPTER I**

#### **COMMON PROVISIONS**

## § 30

### **Budgetary Supervision by Ministry of Finance**

(1) To conclude a concession contract by a territorial self-governing unit, by an allowance organisation in respect of which the territorial self-governing unit exercises the function of the founder thereof, or by another legal person in accordance with § 2(1)(d), where the territorial self-governing unit in relation to such a person is in the position in accordance with § 2(1)(d)(item 2) (hereinafter referred to as "the applicant"), and to make an alteration thereof, the applicant shall be obligated to apply for a prior opinion of the Ministry of Finance (hereinafter referred to as "the opinion"). Validity of the concession contract shall be conditional on the delivery of such an opinion on the conclusion or an alteration of the concession contract and its examination in the course of the approval of such a concession contract or such an alteration thereof. Where a suggested alteration of a concession contract does not relate to the selected terms of the concluded concession contract pursuant to § 30(2), the alteration of the concession contract shall not be subject to the request for such an opinion.

(2) The request for an opinion on the conclusion of a concession contract or an alteration thereof in accordance with § 30(1) shall contain, in addition to general terms,<sup>15)</sup> selected terms of the concession contract or a modification thereof, an economic analysis of impacts of such a concession contract or an alteration thereof on the economic standing of the applicant, including data on the applicant's indebtedness, which are necessary to assess the applicant's capability to sustain obligations under the concession contract; the essentials of the content of such a request shall be laid down by implementing legal regulation. When assessing the request, the Ministry of Finance shall not be entitled to evaluate any facts other than those conclusive for the assessment of such a request pursuant to § 30(4).

(3) The territorial self-governing unit shall submit the request for the opinion on the conclusion or alteration of a concession contract also on behalf of the other applicants referred to in § 30(1).

(4) The Ministry of Finance shall assess the request for the opinion in view of any potential impacts of the accepted obligations, contained in a concession contract and their influence on economic standing of the applicant or international obligations of the Czech Republic.

(5) Unless the Ministry of Finance delivers its opinion within 60 days from the date delivery, it shall apply that the Ministry of Finance has no objections to the conclusion or alteration of the concession contract.

## § 31

### **Publication**

(1) The concession notice, in the case of above-the-threshold works concession contracts, and the notice of the concessionaire pursuant to § 15(1) shall be published in the Information System on Public Contracts under the Act on Public Contracts and, in addition, in the Official Journal of the European Union through the Office for Official Publications of the European Communities. For the publication of notices, the standard form under the directly applicable regulation of the European Communities<sup>16)</sup> shall be used.

(2) In respect of the other concession contracts, the concession notice shall be published only in the information system pursuant to § 31(1). For publication of a notice, the standard form shall be used, containing, in particular, identification data of a grantor, a brief description of the concession project, and criteria for the selection of a concessionaire; particulars on the content of the standard form shall be laid down by the implementing legal regulation.

(3) In respect of publication, relevant provisions of the Act on Public Contracts shall apply.

## § 32

### **Register of Concession Contracts**

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<sup>15)</sup> § 37(2) of Act no. 500/2004 Coll., Administrative Code.

<sup>16)</sup> Commission Regulation (EC) No 1564/2005.

(1) The Ministry for Regional Development shall maintain the Register of Concession Contracts. The Register shall be accessible to the public and shall be part of the Information System on Public Contracts under the Act on Public Contracts.

(2) The following data shall be recorded in the Register:

- (a) business name or name, the registered office, legal form, and the registration number, as regards a grantor,
- (b) business name or name, the registered office, legal form, and the registration number, as regards a concessionaire, where it is a legal person,
- (c) name and surname or, if appropriate, business name, date of birth, place of business or, if appropriate, permanent residence, if it is different from the place of business, and the registration number, as regards a concessionaire, where it is a natural person,
- (d) basic delimitation of the subject-matter of a concession contract,
- (e) estimated value of the subject-matter of a concession contract and the estimated revenue of a concessionaire,
- (f) permission to levy charges on the users, and the amount thereof, or, where appropriate, the manner of fixing such charges or limits thereof, if such a permission ensues from the concession contract,
- (g) duration of the concession contract,
- (h) date of conclusion of a concession contract.

(3) The grantor shall convey to the Ministry for Regional Development data pursuant to § 32(2) within 30 days from the date of entry of the concession contract into effect; the grantor shall act by analogy in the case of adjustments relating to the entered data.

(4) For purposes of § 32(3), the grantor shall make use of the standard form under implementing legal regulations.

(5) The Ministry for Regional Development shall enter the data pursuant to § 32(2) in the Register of Concession Contracts within 30 days from the date of furnishing thereof by the grantor, and it shall withdraw these data from the Register of Concession Contracts at the date of termination of a concession contract.

## § 33

### **Keeping Documentation**

(1) The grantor shall keep documentation of a concession procedure for a period of 5 years following the expiry of the term of a concession contract or from the date of setting aside the concession procedure. The documentation of a concession procedure shall be understood as the totality of all documents in paper form and on data carriers, the production thereof is required under this Act in the course of a concession procedure or, where appropriate, following its closure, including complete texts of tenders of all economic operators, the concession contract and the total of alterations thereof.

## CHAPTER II

### FINAL PROVISIONS

## § 34

### **Authorising Provisions**

(1) The Ministry for Regional Development, in cooperation with the Ministry of Finance, shall issue a decree to implement § 4, § 21, § 31(2), and § 32(4).

(2) The Ministry of Finance shall issue decree to implement § 30(2).

### **TITLE SEVEN**

### **ENTRY INTO EFFECT**

#### **§ 35**

This Act shall enter into effect on the first day of the third calendar month following the date of its promulgation.

**Zaorálek**, autograph

**Klaus**, autograph

**Paroubek**, autograph