

CONSOLIDATED TEXT OF ACT

No. 139

of 14 March 2006

on Concession Contracts and Concession Procedure (the Concession Act), as amended by Act no. 30/2008 Coll., Act no. 110/2009 Coll., Act no. 227/2009 Coll. and Act no. 417/2009 Coll.

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

TITLE ONE

GENERAL PROVISIONS

Scope and Essential 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 regulations¹⁾. This Act, in addition, incorporates relevant regulations of the European Communities²⁾.

(2) Provisions of § 16(3) through § 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 performed³⁾, 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 contracting 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 Contracts³⁾, in respect of contracts pursuant to § 1(2).

¹⁾ E.g. § 18a through § 18f of Act no. 13/1997 Coll., on Roads, as amended

²⁾ 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

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

§ 2

Granting Authority

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

- (a) the Czech Republic⁴⁾,
- (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 thereof⁵⁾,
- (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 secret⁶⁾ or the publication of concession documentation could endanger confidentiality of classified information,
- (b) they are concession contracts, which are accompanied by special security measures⁷⁾ in accordance with separate legal regulations or the protection of essential interests of the State’s security so requires⁸⁾,
- (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,

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

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

⁶⁾ Act no. 412/2005 Coll., on the Protection of Classified Information and Security Clearance

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

⁸⁾ 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 amended.

- (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 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 regulations⁹⁾,
- (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 regulations¹⁰⁾.
- (i) they have as their subject-matter the research, development and innovations services^{10a)} other than those where the research, development and innovation service provided is wholly remunerated by the grantor and the benefits accrue exclusively to the grantor for its use.

§ 3a

Principles of Procedure by Grantor

The grantor shall be obligated, while acting under this Act, to comply with the principles of transparency, equal treatment and non-discrimination.

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.

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

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

^{10a)} Act no. 130/2002 Coll., on Aid to Research, Experimental Development and Innovations from Public Funds and on Amendments to Certain Related Acts (the Research, Experimental Development and Innovations Aid Act), as amended

(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, however, such a grantor shall be obligated to comply with the principles referred to in § 3(a).

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.

(3) The relevant provisions of the Act on Public Contracts on electronic means and electronic tools 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 advantage 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 provisions on the selection of the most suitable tender of the Act on Public Contracts shall be applicable to the notice of the selection of a concessionaire by analogy.

(3) Relevant provisions of the Act on Public Contracts shall apply by analogy to the submission of objections, the manner of settlement thereof and on the ban to conclude a concession contract.

(4) 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 person¹¹⁾ 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 the financial threshold set forth by implementing legal regulation, the principal object of which are public works (hereinafter referred to as “the above-the-threshold public works concession contract”), the grantor is entitled to

- (a) require the concessionaire to subcontract a minimum of 30% of the estimated value of public works 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 estimated percentage of the total value of public works, 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 public works concession contract, and

¹¹⁾ § 66a of the Commercial Code

(b) intends to subcontract to a third party a proportion of works, where the value of the proportion is equal to or greater than the financial threshold set forth by implementing legal regulation and if the conditions for the use of negotiating procedure without publication under the Act on Public Contracts³⁾ 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) the persons which can exert a dominant influence on the concessionaire and the persons over which the concessionaire¹¹⁾ can exert a dominant influence, shall not be considered a third party; a comprehensive list of such persons shall be part of the 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 wills 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 regulations¹²⁾, 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 to 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

¹²⁾ Act no. 563/1991 Coll., on Accounting, as amended

- 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 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 regulations¹³⁾ in the case of a concession project involving another grantor.

(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 regulations¹³⁾.

(2) Legal effects of the concession contract shall come into force by the approval thereof 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

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

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

(2) In exercising supervision over compliance with this Act the Office shall

- (a) grant interim measures,
- (b) take decisions on whether the contracting entity has proceeded in compliance with this Act,
- (c) order corrective measures, and inflict sanctions,
- (d) examine administrative delicts,
- (e) conduct a check on practices of the grantor under separate legal regulation¹⁴⁾; it shall be without prejudice to competence of other bodies conducting such checks under separate legal regulations^{14a)},
- (f) discharge other tasks, where separate legal regulation so lays down.

§24a

Initiation of Proceedings

Proceedings on the review of practices of the contracting entity shall be initiated with the Office upon a written proposal by the complainant (hereinafter referred to as “the petitioner”) or *ex officio*.

§ 24b

Proposal

(1) The proposal may be filed against all practices of the grantor that breach or could breach the principles pursuant to § 3(a) and as a consequence of which the rights of the petitioner risk being harmed or have been harmed, and in particular, against:

- (a) tender conditions,
- (b) content of the concession notice,
- (c) exclusion of an economic operator from the concession procedure,
- (d) decision on the selection of the most suitable tender,
- (e) use of a certain type of the concession procedure.

(2) Following the conclusion of a concession contract, only the proposal against the conclusion of a concession contract without prior publication of a concession notice or against the breach of a ban to conclude such a concession contract, may be filed.

(3) The proposal shall, besides general essentials applicable to the submission¹⁵⁾, contain precise identification of the grantor, what action is considered to be an alleged infringement of the law as a consequence of which the rights of the petitioner have been harmed or risk to be harmed, relevant evidence, and what the petitioner claims. In addition to the evidence of payment of the deposit pursuant to § 24c, and in the case of a proposal sent out to the Office prior to the conclusion of a concession contract, the evidence of the delivery of objections to the grantor shall be supplemented to the proposal sent out to the Office.

¹⁴⁾ Act no. 552/1991 Coll., on State Control, as amended

^{14a)} E.g., Act no. 166/1993 Coll., on Supreme Audit Office, as amended

¹⁵⁾ § 37(2) of the Rules of Administrative Procedure

(4) The proposal shall be delivered to the Office and in duplicate to the grantor, within 10 calendar days from the date of receipt by the petitioner of the decision under which the grantor has not complied with the objections. The proposal to impose a ban on the performance of the contract pursuant to § 24b(2) shall be delivered solely to the Office within 30 calendar days from the date when the grantor made known the concession award notice in a manner referred to in § 31(3), including the statement of the reasons for the conclusion of a concession contract without publication of the concession notice, however, not later than within 6 months following the conclusion of such a concession contract.

(5) Where the grantor has failed to settle the objections pursuant to §12(4), the proposal to order corrective measures may be delivered to the Office and the grantor not later than within 25 calendar days from the date of dispatch of the objections by the petitioner.

(6) The grantor shall be obligated to forward to the Office its representation to the received proposal within 7 days from the delivery thereof. It shall forward such a representation accompanied by the relevant documentation of a concession contract. In the case of the proposal to ban the performance of a contract, the contracting entity shall be obligated to send simultaneously the copy of such a concession contract to the Office and indicate, if applicable, the grounds to carry on with the performance of the contract within the meaning of § 25(3).

§ 24c

Deposit

(1) On filing the proposal, the petitioner shall pay to the bank account of the Office a deposit amounting to 1 % of the estimated value of the object of a concession contract, however, not less than CZK 50,000 and not more than CZK 2,000,000. In the case of the proposal to impose a ban on the performance of a concession contract, the petitioner shall be obligated to deposit CZK 100,000. The Office shall make known its bank account details at its Internet address.

(2) The deposit shall be the revenue of the State budget, if the Office suspends the proceedings initiated upon the proposal pursuant to § 25(4)(a) by its final ruling; otherwise, the Office shall refund the deposit to the petitioner, together with interest accrued, not later than within 30 days from the date it learned of the entry of the ruling into legal force. The deposit shall, in addition, be refunded to the petitioner in case that the Office, together with the rejection of the proposal pursuant to § 25b(4)(a), takes decision on committing an administrative delict pursuant to § 27(1).

§ 24d

Parties to Proceedings

The grantor shall be the party to the proceedings, and in the proceedings initiated upon a proposal, the petitioner shall be another party to the proceedings; where the subject of the proceedings consists in the review of the decision taken on the selection of the most suitable tender, the selected economic operator shall be the party to the proceedings as well.

§ 24e

Interim Measure

(1) Prior to the award of the ruling in the administrative proceedings initiated pursuant to § 24a, to the indispensable extent and upon a proposal by a party to the proceedings or *ex officio*, to maintain the purpose of the proceedings, the Office is entitled to grant the following interim measure:

- (a) to impose a ban to conclude a concession contract in the concession procedure, or
- (b) to suspend the concession procedure.

(2) The proposal to grant interim measure, apart from general essentials of the submission, shall contain precise identification of the grantor, what action is considered to be an infringement of the law, as a consequence of which the rights of the petitioner are at immediate risk of being harmed, relevant evidence, and what the petitioner by means of the interim measure claims. Where the proposal lacks prescribed essentials, the Office shall not grant any interim measure.

(3) The Office shall set aside the interim measure as soon as the grounds, for which it was granted, have passed; otherwise, it shall cease to apply on the date of entry of the ruling pursuant to § 25 into legal force.

(4) The appeal against the ruling on the interim measure shall not have any suspensive effect.

§ 24f

Suspension of Proceedings

The Office shall suspend the initiated proceedings, unless

- a) the proposal contains prescribed essentials pursuant to § 24b(3) or § 24e(2) and unless the petitioner completes them within the time limit set forth by the Office,
- b) the submission of a proposal is accompanied by the payment of the deposit at a rate set forth pursuant to § 24c(1) and the petitioner fails to make the deposit even within the additional period of time fixed by the Office,
- c) the proposal is delivered to the Office and the grantor within the time limits set forth pursuant to § 24b(4),
- d) the proposal has been submitted by an authorized person,
- e) the proposal has been filed against the procedure that the grantor is obligated to comply with under this Act in a concession procedure, or
- f) in the proceedings initiated *ex officio*, the grounds to impose a corrective measure pursuant to § 25 or to inflict a sanction pursuant to § 27 or § 27a have been established.

§ 25

Corrective Measure and Ineffectiveness of Contracts

(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 selection of the most suitable tender,

and where the concession contract has not yet been concluded, the Office shall grant a corrective measure by setting aside the concession procedure or a particular action taken by the grantor.

(2) The Office by its ruling based on the proposal pursuant to § 24(b) shall impose a ban to perform the concession contract, where the grantor commits an administrative delict pursuant to

a) § 27(1)(c), except for the cases where the grantor has published a voluntary notice expressing its intention to conclude a contract pursuant to § 31(3) and has proceeded in compliance with § 12(4) and § 12(5), or

(b) § 27(1)(a) and simultaneously an administrative delict pursuant to § 27(1)(d).

(3) The Office shall not impose a ban on the performance of a contract pursuant to § 25(2) where it finds out that the grounds which merit particular consideration require that the effects of the concession contract should be maintained. The economic interest in the effectiveness of the concession contract may be only considered as such a ground, if in exceptional circumstances ineffectiveness of such a concession contract would lead to disproportionate consequences. Economic interests directly linked to the concession contract concerned, in particular the costs resulting from the delay in the execution of the concession contract, the costs resulting from the launching of a new concession procedure, the costs resulting from the change of the economic operator performing the concession contract and the costs of the legal obligations resulting from the ineffectiveness of the concession contract, shall not constitute the grounds which merit particular consideration requiring that the effects of the concession contract should be maintained.

(4) The Office shall reject the proposal, if

(a) it fails to establish the grounds to impose a corrective measure pursuant to § 25(1) or § 25(2), or

(b) the grounds to impose a corrective measure pursuant to § 25(2) have been established, however, the grantor proves the accomplishment of the grounds which merit particular consideration requiring that the effects of the contract should be maintained pursuant to § 25(3).

(5) The concession contract shall be ineffective by the reason of failure to comply with the procedure under this Act only in the cases, where the Office imposes a ban on the performance thereof pursuant to § 25(2).

§ 26

Costs of Proceedings

(1) Unless stipulated otherwise by this Act, the Office and the parties to the proceedings shall bear their own costs of the proceedings.

(2) The ruling of the Office pursuant to § 25(2) shall, in addition, contain a decision concerning the obligation of the grantor to pay the costs of administrative proceedings (hereinafter referred to as “the costs of proceedings”). The costs of proceedings shall be paid out by a lump sum set forth by implementing legal regulation.

(3) For the reasons, which merit particular consideration, the obligation to pay the costs of proceedings pursuant to § 26(2) may be waived in full or in part.

(4) The provisions of the Act on Public Contracts shall, in addition, be applicable to the costs of proceedings.

§ 27

Administrative Delicts Committed by Grantors

(1) The grantor commits an administrative delict by

- (a) failing to comply with the procedure laid down by this Act, where such a procedure has substantially affected or could have affected the selection of the most suitable tender, and concluding the concession contract,
- (b) failing to discharge the obligation for publication laid down by this Act or discharging it at variance with § 31(4),
- (c) concluding the concession contract without publishing the concession notice pursuant to § 31(4),
- (d) concluding the concession contract in contradiction with the ban to conclude such a contract pursuant to § 12(4) and § 12(5) or contrary to an interim measure pursuant to § 24e(1),
- (e) setting aside the concession procedure at variance with § 6(2),
- (f) failing to produce or keep the documentation of a concession procedure pursuant to § 33, or
- (g) rejecting objections in contradiction with § 12(4) and/or proceeding contrary to § 12(4) in settling such objections.

(2) For committing an administrative delict, the Office shall impose a fine up to

- (a) 5 % of the estimated value of the subject-matter of the concession contract, as regards an administrative delict pursuant to § 27(1)(a), § 27(1)(c) or § 27(1)(d),
- (b) CZK 10,000,000, as regards an administrative delict pursuant to § 27(1)(b), § 27(1)(e), § 27(1)(f) or § 27(1)(g).

(3) The tariff rate of the fine pursuant to § 27(2) shall be doubled, if the grantor commits repeatedly any of the administrative delicts pursuant to § 27(1). The administrative delict shall be committed repeatedly, where less than 5 years have elapsed from the date when the ruling to impose a fine for such an administrative delict came into legal force and the same administrative delict has been committed again.

§ 27a

Administrative Delicts Committed by Economic Operators

(1) The economic operator commits an administrative delict by producing information or evidence to demonstrate the fulfilment of qualifications, which fails to be in conformity with the facts and has had or could have had impact on the assessment of qualifications of such an economic operator in a concession procedure.

(2) The fine equal to or less than CZK 10,000,000 and a ban on the performance of concession contract for the period of 3 years shall be imposed for committing an administrative delict pursuant to § 27a(1).

(3) A ban on the performance of concession contract shall be understood as the ban to participate in a concession procedure and the ban to perform such a concession contract, where the estimated revenue of a concessionaire is less than CZK 20,000,000, net of value added tax. The period of 3 years for which the ban to execute public contracts shall be imposed, shall start running as from the date when the ruling pursuant to § 27a(2) by way of which the ban to execute public contracts has been imposed, came into legal force.

§ 27b

Common Provisions on Administrative Delicts

(1) The legal person shall not be liable for an administrative delict where it proves that it has deployed all efforts that could be reasonably required to avert a breach of a legal obligation.

(2) In establishing fine assessment on the legal person, gravity of the administrative delict shall be taken into account, in particular, the manner how it was committed, consequences thereof and circumstances under which it was committed. Where the ban to execute the contract pursuant to § 25(2) has been imposed, the extent of the hitherto performance of such a contract shall be taken into account, too.

(3) Liability of a legal person for an administrative delict shall expire where the Office fails to institute the relevant proceedings within 5 years from the date when it learned of it, however, not later than within 10 years from the date of committing it.

(4) The administrative delicts under this Act shall be examined in the first instance by the Office.

(5) The provisions of this Act on liability and recourse of the legal person shall be applicable to liability for practices, which occurred in the course of the pursuit of business activities by a natural person or in direct relation thereto.

§ 28

Duty of Confidentiality and Protection of Trade Secrecy

(1) The staff of the Office as well as those who have been entrusted with discharging tasks pertaining to competence thereof shall be obligated to maintain confidentiality of all facts that they have learned while fulfilling their occupational duties. The duty of confidentiality shall not apply, if the persons concerned give testimony of such facts to law enforcement authorities or in the proceedings before the court or, where appropriate, if they are invited by such authorities or the court to submit a written representation^{15a)}. The duty of confidentiality on the part of the staff of the Office shall be without prejudice to the disclosure of data and information by the Office under separate legal regulation^{15b)}.

^{15a)} Act no. 141/1961 Coll., on Penal Court Proceedings (the Penal Code), as amended

^{15b)} E.g., Act no. 337/1992 Coll., on the Administration of Taxes and Charges, as amended, Act no. 106/1999 Coll., on Free Access to Information, as amended

(2) Where the Office learns of the fact that constitutes the subject of trade secrecy, it shall be obligated to take measures to avoid a breach of trade secrecy.

§ 29

Publication of Office Final Rulings

The Office shall continuously publish its final rulings under this Act at its Internet address.

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,¹⁴⁾ 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, in addition, submit the request for the opinion on the conclusion or alteration of a concession contract 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 public 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 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 Communities¹⁶⁾ 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 implementing legal regulation.

(3) The grantor is entitled to publish the notice expressing its intention to conclude a contract in the cases where it has not been obligated to publish a concession notice.

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

§ 31a

Black List of Persons Banned to Execute Concession Contracts

(1) Legal persons or self-employed entrepreneurs that have been imposed a ban to execute concession contracts on pursuant to § 27a(2), shall be enrolled on the black list of persons banned to perform concession contracts (hereinafter referred to as “the black list”). The black list shall be maintained by the Ministry.

(2) The Office shall notify without delay the Ministry of the entry into force of the ruling by way of which a ban to perform concession contracts has been imposed on pursuant to § 27a(2), indicate identification data of a legal person or a self-employed entrepreneur that is to be enrolled on the black list based on this ruling, and state the date on which the exercise of

¹⁶⁾ Commission Regulation (EC) No 1564/2005

the ban to execute concession contracts starts to run and the date on which it ceases to run. The Ministry shall record such data into the black list not later than within 5 working days from the date of delivery of the Office communication.

(3) The black list shall be accessible to the general public, namely in the manner allowing for a remote access, too.

§ 32

Register of Concession Contracts

(1) The Ministry for Regional Development shall maintain the Register of Concession Contracts. The Register shall be accessible to the general 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 identification number of a person (as amended by Act no. 227/2009 Coll. and effective as from 1st July 2010), as regards a grantor,
- (b) business name or name, the registered office, legal form, and the identification number of a person (as amended by Act no. 227/2009 Coll. and effective as from 1st July 2010), 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 identification number of a person (as amended by Act no. 227/2009 and effective as from 1st July 2010), 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 the 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 Decree to implement § 4, § 21, § 31(2), and § 32(4).

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

(3) The Government shall issue Executive Order to implement § 14(1) and § 15(1)(b).

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

Selected Provisions of Amendments

Art. II of Act no. 30/2008 Coll.

Transitional Provisions

Concession procedures initiated before the date of entry of this Act into effect, shall be concluded under Act no. 139/2009 Coll., on Concession Contracts and Concession Procedure (the Concession Act) in the wording effective by the date of the entry of this Act into effect.

Art. IV Act no. 417/2009 Coll.

Transitional Provisions

1. Concession procedures, proceedings on the review of practices of a contracting entity by the Office and proceedings on inflicting a sanction initiated before the date of entry of this Act into effect, shall be completed under hitherto legal regulations.
2. In proceedings on the review of practices of a contracting entity and in proceedings on inflicting a sanction, which have been initiated after the date of entry of this Act into effect and concession procedures, which follow up the concession procedures initiated before the date of entry of this Act into effect, shall be conducted under hitherto legal regulations. The proposal to initiate proceedings pursuant to the first sentence shall be subject to payment under hitherto legal regulations.