

LAW 100 19 May 2016

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LAW No. 100 of 19 May 2016 on works concessions and service concessions

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• PARLIAMENT

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The Parliament of Romania hereby adopts this Law. + Chapter I General Provisions + Section 1 Subject Matter. Purpose. Principles + Article 1 This Law regulates the procedure for awarding works concession contracts and services concession contracts, the legal regime applicable to such contracts, as well as certain specific aspects relating to their performance. + Article 2(1) The purpose of this Act is: a) to promote competition amongst economic operators; ... b) to ensure that resources are used efficiently, economically and effectively; ... c) to ensure the integrity of the procedure for the award of works and services concession contracts; ... [d\) to provide the legal framework for the award of works and services concession contracts. \(on 22 December 2017, point \(d\) of paragraph \(1\) of Article 2, Section 1, Chapter I was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017\) ...](#) (2) The principles underlying the award of works and services concession contracts are: a) non-discrimination; ... b) equal treatment
equal treatment; ... c) mutual recognition; ... d) transparency; ... e) proportionality; ... f) accountability.....+
Article 3 This Act is without prejudice to the responsibility of central, county and local authorities to decide on the best way to manage the execution of works or the provision of services, in order to ensure a high level of quality, safety and accessibility, equal treatment and the promotion of universal access to public services, as well as users' rights in relation thereto, in accordance with the applicable legal provisions. + Article 4 This Act does not apply to services of general interest of a non-economic nature. + Section 2 Definitions + Article 5(1) For the purposes of this Act, the terms and expressions set out below shall have the following meanings: [a\) goods ancillary to the works and services covered by the concession contract – goods made available to the concessionaire by the contracting authorities/entities, provided that they are necessary for the execution of the works or the provision of the services; \(on 13 July 2020, subparagraph \(a\) of paragraph \(1\) of Article 5 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) b) candidate – any economic operator who has submitted an application to
or who has been invited to participate in a concession award procedure;c) the concessionaire's
total
turnover of the concessionaire – the turnover generated by the concessionaire over the entire duration of the concession contract, excluding VAT; ... d) concessionaire – an economic operator to whom a concession has been awarded;e) concessions –
contracts
for works or services;f) works – the result of a set of works
[building or civil engineering structures which can fulfil an economic or technical function in their own right; \(on 28 July 2022, Point \(f\) of Paragraph \(1\), Article 5, Section 2, Chapter I was amended by Point 1, Article III of Law No. 256 of 21 July 2022, published in the Official Gazette No. 744 of 25 July 2022\)](#)(g) works concession contract – a contract for consideration, treated under the law as an administrative act, concluded in writing, whereby one or more contracting authorities/entities entrust the execution of works to one or more economic operators, in which the consideration for the works consists either exclusively of the right to exploit the result of the works covered by the contract, or of that right accompanied by a payment; (on 13 July 2020, subparagraph g) of paragraph (1) of Article 5 was amended by [Point 2, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#)h)
service concession contract – a contract for consideration, treated as an administrative act under the law, concluded in writing, whereby one or more contracting authorities/entities entrust the provision and management of services, other than the execution of works as provided for in point (g), to one or more economic operators, where the consideration for the services consists either exclusively of the right to operate the services covered by the contract, or of that right accompanied by a payment; (on 13 July 2020, point (h) of paragraph (1) of Article 5 was amended by [Point 2, Article III of](#)

EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (i) long-term contract – a concession contract concluded for a term of at least 5 years, covering the duration of the works, if it includes a component consisting of the execution of works, as well as the duration of the provision of services, determined in such a way as to enable the contractor to make a reasonable profit; (On 28 July 2022, subparagraph (i) of paragraph (1), Article 5, Section 2, Chapter I was amended by Point 1, Article III of Law No. 256 of 21 July 2022, published in the OFFICIAL GAZETTE No. 744 of 25 July 2022) ... j) the costs of investments made – the costs of carrying out the investments required throughout the duration of the concession (which include, where applicable, the costs involved in modifying existing structures); ... k) costs relating to the operation of the works or services – the costs of operating and maintaining the works or services, costs borne by the concessionaire during the term of the contract; ... l) CPV – the reference nomenclature for public procurement, adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV); ... m) concession document – the concession notice, the tender documentation, and any supplementary document issued by the contracting authority/entity or to which it refers in order to describe or establish the elements of the concession or the award procedure; (on 13 July 2020, Point (m) of Paragraph (1) of Article 5 was amended by Point 3 of Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (n) tender documentation – the concession document setting out the requirements, criteria, rules and other information necessary to ensure that economic operators are provided with complete, accurate and explicit information regarding the requirements of the contracting authority/entity or the elements of the concession, the subject matter of the contract and the conduct of the award procedure, including the technical specifications or descriptive document, the proposed contractual terms, the formats and manner of submission of documents by candidates/tenderers, information on the general obligations applicable to candidates/tenderers, and the feasibility study; (on 13 July 2020, Point (n) of Paragraph (1) of Article 5 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (o) exclusive rights – rights granted by a competent authority through any legislative or administrative act the effect of which is to restrict the exercise of a relevant activity, as set out in Annex No. 2, to a single entity and which affects the ability of other entities to carry out such an activity; ... p) special rights – rights granted by a competent authority through any legislative or administrative act the effect of which is to limit the exercise of a relevant activity, as set out in Annex 2, to two or more entities and which substantially affects the ability of other entities to carry out such an activity; ... q) the execution of works – means either the execution alone, or both the design and execution of works in connection with one of the activities set out in Annex 1, or exclusively the execution, or both the design and execution of a works project, or the realisation by any means of a works project that meets the requirements laid down by the contracting authority/entity which exercises a decisive influence over the type or design of the works project; (on 28 July 2022, Point (q) of Paragraph (1), Article 5, Section 2, Chapter I was amended by Point 1, Article III of Law No. 256 of 21 July 2022, published in the Official Gazette No. 744 of 25 July 2022) ... (r) financial close – the point at which the concessionaire has concluded the financing agreements with the financing institutions, with a view to obtaining the financial resources necessary for the implementation of the concession; ... s) public undertaking – a legal person carrying out economic activities over which a contracting authority within the meaning of Article 9 exercises, directly or indirectly, as a result of ownership rights, financial holdings or specific rules laid down in the instrument establishing that undertaking, a dominant influence; the presumption of the exercise of dominant influence applies in any situation where, in relation to such a person, one or more contracting authorities within the meaning of Article 9 are, directly or indirectly, in at least one of the following situations: they hold the majority of the subscribed capital, hold control of the majority of the voting rights attached to the shares issued by the undertaking, or can appoint more than half of the members of its board of directors, management body or supervisory body; ... t) civil engineering works – the construction works referred to in classes 45.21, 45.23, 45.24 and 45.25 of Annex 1, with the exception of those relating to the construction of buildings; ... u) electronic means – electronic processing equipment, including digital compression and storage of data transmitted, sent and received by cable, radio, optical means or other means electromagnetic; ... v) tenderer – any economic operator who has submitted a tender in an award procedure; ... w) tender – the legal document by which the economic operator expresses its intention to enter into a legal commitment under a concession contract, comprising a financial proposal and a technical proposal, and which, together with the relevant provisions of the tender documentation, sets out the terms on which the concession contract is to be concluded; ... x) economic operator - any natural or legal person, whether governed by public or private law, or any group or association of such persons, including any temporary association formed between two or more of these entities, which lawfully offers on the market the execution of works, the supply of products or the provision of services, and which is established in: (i) a Member State of the European Union; ... (ii) a Member State of the European Economic Area (EEA); ... (iii) third countries that have ratified the World Trade Organisation (WTO) Agreement on Government Procurement (GPA), in so far as the works concession contract and the services concession contract awarded fall within the scope of the annexes to the European Union's Appendix I to that Agreement; ... (iv) third countries which are in the process of acceding to the European Union; ... (v) third countries which do not fall within the scope of point (iii), but which are signatories to other international agreements under which the European Union is obliged to grant free market access in the field of public procurement; ... (as at 5 April 2021, subparagraph (x) of paragraph (1), Article 5, Section 2,

Chapter I was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 25 of 31 March 2021, published in the OFFICIAL GAZETTE No. 346 of 5 April 2021) ... (y) public-law bodies – any entities, other than those referred to in Article 9(a), which cumulatively fulfil the following conditions: they are established to meet needs in the general interest, of a non-commercial or non-industrial nature, irrespective of their form of incorporation or organisation; they have legal personality; and they are financed, for the most part, by the authorities referred to in Article 9(a) or by other public-law bodies, or are subordinate to, under the authority, coordination or control of an authority referred to in Article 9(a) or of another body governed by public law; or more than half of the members of the board of directors or of the management or supervisory body are appointed by an authority referred to in Article 9(a) or by another body governed by public law; ... (z) persons with decision-making powers – the head of the contracting authority/entity, members of the contracting authority's/entity's decision-making bodies involved in the award procedure, as well as any other persons within the contracting authority/entity who may influence the content of the concession documents and/or the conduct of the award procedure; (On 13 July 2020, subparagraph (z) of paragraph (1) of Article 5 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... aa) written – any set of words or figures that can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means; ... bb) services of general interest of a non-economic nature – services provided without consideration, such as those constituting the traditional prerogatives of the state, namely the police, the judiciary and compulsory social security schemes, as well as other services that may be classified as non-economic in nature, in accordance with the criteria set out in the case law of the Court of Justice of the European Union; ... cc) Electronic Public Procurement System (SEAP) – refers to the public-utility IT system, accessible via the internet at a dedicated address, used for the purpose of conducting concession contract award procedures by electronic means; ... dd) request to participate – a request submitted by the economic operator together with the documents required to meet the qualification requirements in the first stage of a dialogue procedure competitive; ... (ee) technical specifications – requirements, specifications and technical characteristics that enable each service or work to be described objectively, in a manner appropriate to meeting the needs of the contracting authority/entity; (on 13 July 2020, Point (ee) of paragraph (1) of Article 5 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (ff) Member State – any Member State of the European Union or of the European Economic Area; ... (gg) subcontractor – any economic operator who is not a party to a concession contract and who carries out certain parts or elements of the works or services, being liable to the contracting authority for the organisation and execution of all the stages necessary for this purpose. The provision of machinery or the supply of materials/goods under a concession contract is not considered subcontracting for the purposes of this Act; (on 30 August 2021, subparagraph (gg) of paragraph (1), Article 5, Section 2, Chapter I was amended by Point 1, Article III of ORDINANCE No. 3 of 25 August 2021, published in the OFFICIAL GAZETTE No. 821 of 27 August 2021) ... hh) user charge – a charge paid directly by end-users for the service provided by the concessionaire; ... ii) TFEU – the Treaty on the Functioning of the European Union; ... jj) Treaties – the Treaty on European Union and the Treaty on the Functioning of the European Union; ... kk) days – calendar days, unless expressly stated to be working days(2) The time limits set out in this Act shall be calculated in accordance with the following rules: (a) when calculating a time limit expressed in days, months or years from a specific event, act or action, the date on which that event, act or action occurs shall not be taken into account;(b) subject to the provisions of points (a) and (d) being applied as appropriate, a time limit expressed in days shall begin to run at the start of the first hour of the first day of the period and shall end at the expiry of the last hour of the last day of the period; ... c) subject to the provisions of points (a) and (d) being applied accordingly, a period expressed in months or years shall commence at the start of the first hour of the first day of the period and shall end at the expiry of the last hour of the day which is the day in the last month or year corresponding to the day on which the period began to run; if, in the case of a period expressed in months or years, there is no day in the month in which the period ends that corresponds to the day on which the period began to run, the period ends at the end of the last hour of the last day of that month;(d) if the last day of a period expressed in days, months or years is a public holiday, a Sunday or a Saturday, the period shall end at the end of the last hour of the next working day;e) when calculating a time limit expressed in working days , the provisions of points (a), (b) and (d) shall apply mutatis mutandis, with the exception that non-working days falling within the period shall not be taken into account. ... + Section 3 Scope + Paragraph §1. Operational risk + Article 6(1) The award of a works or services concession always involves the transfer to the concessionaire of a significant part of the operational risk of an economic nature, in connection with the operation of the works and/or services in question.(2) A significant part of the operational risk is deemed to have been transferred where the estimated potential loss borne by the concessionaire is not negligible.(3) Operational risk is risk which cumulatively meets the following conditions: a) it is generated by events beyond the control of the parties to the concession contract; ... b) it involves exposure to market fluctuations;c) as a result of assuming the operational risk, the concessionaire is not guaranteed, under normal operating conditions, the recovery of the costs of the investments made and the costs associated with the operation of the works or services(4) For the purposes of paragraph (3), the operational risk may consist of: a) either the demand risk – the risk relating to the actual demand for the works or services that are the subject of the works or services concession; (b) or supply risk – the risk relating

to the provision of
the works or services covered by the works concession or the services concession, in particular the risk that

the provision of services will not meet demand. Supply risk may be divided into construction risk and operational risk relating to the availability of services where construction and operation constitute the two main phases of the concession project; (on 28 July 2022, subparagraph (b) of paragraph (4), Article 6, paragraph §1. , Section 3, Chapter I was amended by [Point 2, Article III of Law No. 256 of 21 July 2022, published in the Official Gazette No. 744 of 25 July 2022](#)) ... (c) or both risks, namely demand and supply risks. ... + Article 7(1) In any situation where a contracting authority or entity intends to carry out a project by awarding a long-term contract, covering either the execution of works and the operation of the result of those works, or the provision, management and operation of services, the contracting authority/entity is obliged to draw up a feasibility study demonstrating the necessity and appropriateness of carrying out the project in this manner. (on 13 July 2020, Paragraph (1) of Article 7 was amended by [Points 3 and 5, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (2) The provisions of paragraph (1) shall also apply where the long-term project involves the establishment of a company whose shareholders are the economic operator, on the one hand, and the contracting authority or entity, on the other. (on 13 July 2020, Paragraph (2) of Article 7 was replaced by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (3) Repealed. (On 4 June 2018, paragraph (3) of Article 7, Section 3, Chapter I was repealed by [Point 1, Article III of EMERGENCY ORDINANCE No. 45 of 24 May 2018, published in the OFFICIAL GAZETTE No. 459 of 4 June 2018](#)) (4) By decision, the Government may determine, where appropriate, that the supporting study provided for in paragraph (1) shall be examined and approved by a competent authority, having regard to the public interest of the project. + Article 8(1) Through the feasibility study referred to in Article 7(1), the contracting authority/entity is required to assess whether the award of the contract involves the transfer of a significant part of the operational risk to the economic operator. (On 13 July 2020, paragraph (1) of Article 8 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (2) Where, as a result of the analysis referred to in paragraph (1), the contracting authority/entity finds that a significant part of the operational risk, as defined in Article 6, will be transferred to the economic operator, the contract shall be deemed to be a concession contract, and the provisions of this Act shall apply. (on 13 July 2020, Paragraph (2) of Article 8 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (3) Where, following the analysis provided for in paragraph (1), the contracting authority or entity finds that a significant part of the operational risk, as defined in Article 6, will not be transferred to the economic operator, the contract in question shall be deemed to be a public procurement contract or a sectoral contract, as the case may be. (On 13 July 2020, paragraph (3) of Article 8 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Paragraph §2. Contracting authorities/entities (on 13 July 2020, the title of Paragraph 2, Section 3, Chapter I was amended by [Point 2, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Article 9 The following shall be deemed contracting authorities for the purposes of this Act: (a) central or local public authorities and institutions; ... b) bodies governed by public law; ... c) associations comprising at least one contracting authority as referred to in points (a) or (b). ... + Article 10(1) The following entities shall be regarded as contracting entities for the purposes of this Act, provided that they carry out one of the activities set out in Annex 2 and award a concession contract for the performance of one of those activities: a) contracting authorities; ... b) public undertakings; ... (c) any legal persons, other than those referred to in points (a) and (b), operating on the basis of exclusive or special rights granted for the purpose of carrying out one of the activities set out in Annex 2.....(2) By way of exception, the following do not constitute exclusive or special rights within the meaning of Article 5(1) (o) and (p), rights granted through procedures in which adequate publicity was ensured and in which the granting of those rights was based on objective criteria, such as: (a) award procedures involving the publication of a notice of participation or a prior invitation to a competitive tendering procedure, as provided for in the Public Procurement Act, the law on sectoral procurement or in [Government Emergency Ordinance No. 114/2011](#) on the award of certain public procurement contracts in the fields of defence and security, approved with amendments and additions by [Law No. 195/2012](#), or in this Act;.....(b) procedures ensuring an adequate level of prior transparency in the granting of authorisations based on objective criteria, as provided for in [the Electricity and Natural Gas Act No. 123/2012](#), as subsequently amended and supplemented, [Government Emergency Ordinance No. 13/2013](#) on postal services, approved with amendments and additions by [Law No. 187/2013](#), [the Petroleum Law No. 238/2004](#), as subsequently amended and supplemented, or Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and No 1107/70;(c) any other procedures organised on the basis of objective criteria which ensure an adequate level of prior transparency and for which appropriate publicity has been provided. ... + Paragraph §3. Value threshold and method of calculating the estimated value of a works concession or a services concession + Article 11(1) The award procedures provided for in this Act shall apply to works concessions or services concessions whose value, excluding VAT, is equal to or greater than the value threshold of 26 960 556 lei.* (on 4 June 2018, Paragraph (1) of Article 11, Section 3, Chapter I was amended by [Point 2, Article III of EMERGENCY ORDINANCE No. 45 of 24 May 2018, published in the OFFICIAL GAZETTE No. 459 of 4 June 2018](#)) Note ...

* Delegated Regulations (EU) No 2025/2150, No 2025/2151 and No 2025/2152 of the European Commission, amending Directives 2014/25/EU, 2014/23/EU and 2014/24/EU of the European Parliament and of the Council, concerning the amounts of the new thresholds applicable in public procurement procedures at national level. These amendments to the aforementioned Directives shall apply from 1 January 2026 to all procedures launched after that date. The Regulations are binding in their entirety and directly applicable in all Member States. These amendments are made by the European Commission and are of a regular nature.

Thus, from 1 January 2026, the new thresholds will be as follows:

Article 11(1) of Law No 100/2016 – for works and/or services concessions – from 27,334,460 lei (5,538,000 EUR) will be reduced to 26,960,556 lei (EUR 5 404 000) Note ...

According to the Commission Communication on the corresponding values of the thresholds laid down in Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council for the period 2026–2027, published in the Official Journal of the European Union, Part C, on 23 October 2025, the corresponding values of the thresholds laid down in Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, expressed in national currencies other than the euro, are as follows:

80 000 EUR	CZK	Czech koruna	1 995 040
	DKK	Danish krone	596,800
	HUF	Hungarian forint	31,664,480
	PLN	Polish zloty	344,800
	RON	Romanian leu	399,120
	SEK	Swedish krona	908,080
140,000 EUR	CZK	Czech koruna	3,491,320
	DKK	Danish krone	1,044,400
	HUF	Hungarian forint	55,412,840
	PLN	Polish zloty	603,400
	RON	Romanian leu	698,460
	SEK	Swedish krona	1,589,140
216,000 EUR	CZK	Czech koruna	5,386,608
	DKK	Danish krone	1,611,360
	HUF	Hungarian forint	85,494,096
	PLN	Polish zloty	930 960
	RON	Romanian leu	1,077,624
	SEK	Swedish krona	2,451,816
432,000 EUR	CZK	Czech koruna	10,773,216

	DKK	Danish krone	3,222,720
	HUF	Hungarian forint	170,988,192
	PLN	Polish zloty	1,861,920
	RON	Romanian leu	2,155,248
	SEK	Swedish krona	4,903,632
750,000 EUR	CZK	Czech koruna	18,703,500
	DKK	Danish krone	5,595,000
	HUF	Hungarian forint	296,854,500
	PLN	Polish zloty	3,232,500
	RON	Romanian leu	3,741,750
	SEK	Swedish krona	8,513,250
1,000,000 EUR	CZK	Czech koruna	24,938,000
	DKK	Danish krone	7,460,000
	HUF	Hungarian forint	395,806,000
	PLN	Polish zloty	4,310,000
	RON	Romanian leu	4,989,000
	SEK	Swedish krona	11,351,000
5,404,000 EUR	CZK	Czech koruna	134,764,952
	DKK	Danish krone	40,313,840
	HUF	Hungarian forint	2,138,935,624
	PLN	Polish zloty	23,291,240
	RON	Romanian leu	26,960,556
	SEK	Swedish krona	61,340,804

Note ...

Delegated Regulations (EU) No 2023/2510, No 2023/2497, No 2023/2495 and No 2023/2496 of the European Commission amending Directives 2009/81/EC, 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council, concerning the amounts of the new thresholds applicable in public procurement procedures at national level. These amendments to the aforementioned Directives entered into force on 1 January 2024 and apply to all procedures launched after that date. The Regulations are binding in their entirety and directly applicable in all Member States. These amendments are made by the European Commission and are of a regular nature.

Thus, from 1 January 2024, the new thresholds will be as follows:

Article 11(1) of Law No 100/2016 – for works and/or services concessions – from 26 093 012 lei (5 382 000 EUR) will be increased to 27 334 460 lei (EUR 5,538,000) Note ...

According to the Commission Communication on the corresponding values of the thresholds laid down in Directives 2014/23/EU, 2014/24/EU, 2014/25/EU and 2009/81/EC of the European Parliament and of the Council, published in the Official Journal of the European Union, Part C, No. 902 of 16 November 2023, the amounts corresponding to the thresholds laid down in Directives 2014/23/EU, 2014/24/EU, 2014/25/EU and 2009/81/EC, expressed in national currencies other than the euro, are as follows:

EUR 80 000	BGN	New Bulgarian leva	156 464
	CZK	Czech koruna	1,955,200
	DKK	Danish krone	595,344
	HUF	Hungarian forint	30,628,000
	PLN	New Polish zloty	370,968
	RON	New Romanian leu	394,864
	SEK	Swedish krona	865,008
143,000 EUR	BGN	New Bulgarian lev	279,679
	CZK	Czech koruna	3,494,920
	DKK	Danish krone	1,064,177
	HUF	Hungarian forint	54,747,550
	PLN	New Polish zloty	663,105
	RON	New Romanian leu	705 819
	SEK	Swedish krona	1,546,202
221,000 EUR	BGN	New Bulgarian lev	432,232
	CZK	Czech koruna	5,401,240
	DKK	Danish krone	1,644,638

	HUF	Hungarian forint	84,609,850
	PLN	New Polish zloty	1,024,799
	RON	New Romanian leu	1,090,812
	SEK	Swedish krona	2,389,585
443,000 EUR	BGN	New Bulgarian lev	866,419
	CZK	Czech koruna	10,826,920
	DKK	Danish krone	3,296,717
	HUF	Hungarian forint	169,602,550
	PLN	New Polish zloty	2,054,235
	RON	New Romanian leu	2,186,559
	SEK	Swedish krona	4,789,982
750,000 EUR	BGN	New Bulgarian lev	1,466,850
	CZK	Czech koruna	18,330,000
	DKK	Danish krone	5,581,350
	HUF	Hungarian forint	287,137,500
	PLN	New Polish zloty	3,477,825
	RON	New Romanian leu	3,701,850
	SEK	Swedish krona	8,109,450
1,000,000 EUR	BGN	New Bulgarian lev	1,955,800
	CZK	Czech koruna	24,440,000
	DKK	Danish krone	7,441,800
	HUF	Hungarian forint	382,850,000
	PLN	New Polish zloty	4,637,100
	RON	New Romanian leu	4,935,800

	SEK	Swedish krona	10,812,600
5,538,000 EUR	BGN	New Bulgarian lev	10,831,220
	CZK	Czech koruna	135,348,720
	DKK	Danish krone	41,212,688
	HUF	Hungarian forint	2,120,223,300
	PLN	New Polish zloty	25,680,260
	RON	New Romanian leu	27,334,460
	SEK	Swedish krona	59,880,179

(2) Works concessions or service concessions whose value is below the threshold specified in paragraph (1) shall be awarded, in accordance with the general principles set out in Article 2(2), under the conditions and in accordance with the procedures laid down in the methodological rules for the application of the provisions of this Act. + Article 12(1) The value of a works concession or a services concession is the total turnover of the concessionaire generated during the term of the contract, excluding VAT, in return for the works and services covered by the concession, as well as for the goods ancillary to those works and services. (2) The value of a works concession or a services concession shall be estimated by the contracting authority/entity prior to the commencement of the award procedure and shall be valid at the time of the commencement of the award procedure through the submission for publication of the concession notice or the notice of intent in the case of a concession for social services or other specific services, as set out in Annex No.

3. (on 13 July 2020, Paragraph (2) of Article 12 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) For the purposes of paragraph (1), where the value of the works concession or services concession at the time of the award of the concession contract exceeds its estimated value at the time of the commencement of the award procedure by more than 20 per cent, the estimate resulting at the time of the award of the concession contract shall be deemed to be the valid estimate. + Article 13(1) The contracting authority/entity shall calculate the estimated value of the works concession or services concession using an objective method to be specified in the tender documentation, taking into account, in particular, the following: (on 13 July 2020, the introductory part of paragraph (1), Article 13 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the value of any form of option or extension of the term of a works concession or a services concession; ... (b) revenue from the payment of fees and fines by users of the works/services, other than those collected on behalf of the contracting authority/entity; (on 13 July 2020, Point (b) of Paragraph (1) of Article 13 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (c) payments or any financial benefits, in any form, made by the contracting authority/entity or by any other public entity in favour of the concessionaire, including compensation for the fulfilment of public service obligations and public investment grants; (on 13 July 2020, Point (c) of Paragraph (1) of Article 13 was amended by Point 3 of Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (d) the value of grants or any financial benefits, in any form, received from third parties for the performance of the works concession or the services concession; ... (e) the revenue from the sale of any assets forming part of the works concession or the services concession, in accordance with the legal provisions relating to the legal regime governing public property; ... f) the value of all goods and services made available to the concessionaire by the contracting authorities/entities, provided that these are necessary for the performance of the works or the provision of the services; (on 13 July 2020, subparagraph f) of paragraph (1) of Article 13 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (g) any prize or payment awarded to candidates/tenderers (2) The contracting authority/entity shall not be entitled to use a specific method of

calculation of the estimated value of a works concession or a services concession with a view to avoiding the application of the award procedures provided for in this Act. (On 13 July 2020, paragraph (2) of Article 13 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the MONITORUL)

OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The contracting authority shall not be entitled to divide a works concession or a services concession in such a way as to circumvent the procedures laid down in this Act, except in cases justified by objective reasons. + Article 14(1) Where a proposed works project or a proposed service may result in the award of concession contracts in separate lots, the estimated value of the works concession or the services concession shall be determined by taking into account the estimated total value of all the lots. (on 28 July 2022, Paragraph (1) of Article 14, Section 3. , Section 3, Chapter I was amended by Point 3, Article III of Law No. 256 of 21 July 2022, published in the Official Gazette No. 744 of 25 July 2022) (2) Where the estimated total value of all lots is equal to or greater than the value threshold provided for in Article 11(1), the award procedures provided for in this Act shall apply to the award of each lot. + Paragraph §4. Revision of the value threshold + Article 15(1) The value threshold set out in Article 11(1) shall be revised by the European Commission in accordance with the relevant rules and procedures laid down in Article 9 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.(2) From the date of entry into force of any value threshold revised by the European Commission in accordance with the relevant rules and procedures laid down in Article 9 of Directive 2014/23/EU of the European Parliament and of the Council, the value threshold provided for in Article 11(1) or any previously revised threshold shall be replaced by the threshold thus revised, and any reference or mention within this Act to the threshold provided for in Article 11(1) shall be understood as a reference or mention to the corresponding threshold thus revised.(3) The National Agency for Public Procurement, hereinafter referred to as ANAP, shall publish on its website the value threshold set by the European Commission in accordance with the relevant rules and procedures laid down in Article 9 of Directive 2014/23/EU of the European Parliament and of the Council, on the date of its entry into force. + Section 4 Duration of works concessions or service concessions + Article 16(1) The duration of concession contracts shall be limited, in order to avoid distortion of competition. The contracting authority/entity shall estimate the duration of the concession on the basis of the works or services required. (as at 13 July 2020, Paragraph (1) of Article 16 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) For works concessions or service concessions with an estimated duration of more than 5 years, the maximum duration of the concession may not exceed the time reasonably estimated to be necessary for the concessionaire to generate a minimum revenue enabling the recovery of the costs of the investments made, the costs associated with the operation of the works or services, and a reasonable profit. + Section 5 Rules for the award of mixed contracts + Paragraph §1. Mixed contracts + Article 17(1) Contracts covering both works concessions and services concessions shall be awarded in accordance with the provisions of this Act applicable to the type of concession that characterises the main purpose of the contract.(2) In the case of mixed concessions covering both social services or other specific services, as set out in Annex 3, and other services, the main purpose of the contract shall be determined on the basis of the higher of the estimated values of the respective services. + Article 18(1) In the case of mixed contracts covering both elements to which the provisions of this Act apply and other elements to which the provisions of other legislative acts apply, where the various parts of the contract are objectively separable, the contracting authority/entity shall have the right to choose between awarding separate contracts for the separate parts and awarding a single contract. (as at 13 July 2020, Paragraph (1) of Article 18 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) Where, in accordance with the provisions of paragraph (1), the contracting authority/entity chooses to award separate contracts for the separate parts, the legal regime and the legislative act applicable to the award of each of these separate contracts shall be those determined in accordance with the characteristics of each part in question. (as at 13 July 2020, Paragraph (2) of Article 18 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) Where, in accordance with the provisions of paragraph (1), the contracting authority/entity chooses to award a single contract, except where the provisions of paragraph (4) or Article 19 apply, the award of the mixed contract shall be carried out in accordance with the provisions of this Act, regardless of the value of the parts which, if they were included in separate contracts, would be subject to a different legal regime, and regardless of the legislative act that would apply to those parts. (on 13 July 2020, Paragraph (3) of Article 18 was replaced by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) In the case of mixed contracts covering both elements of concessions and elements of public procurement, within the meaning of the Public Procurement Act, or of sectoral procurement, within the meaning of the Sectoral Procurement Act, the mixed contract shall be awarded in accordance with the provisions of the Public Procurement Act or the Sectoral Procurement Act, as applicable.(5) In the case of mixed contracts which cover both elements to which the provisions of this Act apply and other elements to which the provisions of other legislative acts apply, and where the various parts of the contract are not objectively separable, the contract shall be awarded in accordance with the legislative act applicable to the main subject-matter of the contract.(6) For the purposes of paragraph (5), where a mixed contract involves both elements of a service concession and elements of a supply contract, the main subject-matter shall be determined on the basis of the highest estimated value of the relevant services or goods. + Paragraph §2. Mixed contracts involving defence or security aspects + Article 19(1) In the case of mixed contracts covering both elements of a works concession or a service concession to which the provisions of this Act apply, and procurements or other elements to which the provisions of Government Emergency Ordinance No. 114/2011 apply,

as amended and supplemented by [Law No. 195/2012](#), or by other legislative acts or memoranda issued pursuant to [Article 20\(3\) of Government Emergency Ordinance No. 114/2011](#), as amended and supplemented by [Law No. 195/2012](#), and the various parts of a particular mixed contract are objectively separable, the contracting authority/entity has the right to choose between awarding separate contracts for the separate parts and awarding a single contract. (as at 13 July 2020, Paragraph (1) of Article 19 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020](#), published in the [OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (2) Where, in accordance with the provisions of paragraph (1), the contracting authority/entity chooses to award separate contracts for the separate parts, the legal regime and the legislative act applicable to the award of each of these separate contracts shall be those determined in accordance with the characteristics of each part in question. (as at 13 July 2020, Paragraph (2) of Article 19 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020](#), published in the [OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (3) Where, in accordance with the provisions of paragraph (1), the contracting authority/entity chooses to award a single contract, the following criteria shall apply in determining the legal regime and the legislative act applicable to the award of that contract, provided that the award of a single contract is justified by objective reasons: a) where part of the contract is subject to legislative acts or memoranda issued pursuant to [Article 20\(3\) of Government Emergency Ordinance No. 114/2011](#), as amended and supplemented by [Law No. 195/2012](#), the contract may be awarded without applying the provisions of this Act; ... b) where part of the contract is subject to the provisions of [Government Emergency Ordinance No 114/2011](#), approved with amendments and additions by [Law No 195/2012](#), the contract may be awarded either in accordance with the provisions of this Act or with the provisions of [Government Emergency Ordinance No. 114/2011](#), approved with amendments and additions by [Act No. 195/2012](#). ... (on 13 July 2020, Paragraph (3) of Article 19 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020](#), published in the [OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (4) Where, in relation to a particular contract, both the provisions of paragraph (3)(a) and those of paragraph (3)(b) are applicable, the provisions of paragraph (3)(a) shall apply. (5) The decision to award a single contract may not be taken by the contracting authority/entity for the purpose of exempting certain contracts from the application of the provisions of this Act or of [Government Emergency Ordinance No. 114/2011](#), approved with amendments and additions by [Act No. 195/2012](#). (On 13 July 2020, Paragraph (5) of Article 19 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020](#), published in the [OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (6) In the case of mixed contracts covering both elements of a concession to which the provisions of this Act apply, and procurements or other elements to which the provisions of [Government Emergency Ordinance No. 114/2011](#), approved with amendments and additions by [Act No. 195/2012](#), or of other legislative acts/memoranda issued pursuant to [Article 20\(3\) of Government Emergency Ordinance No 114/2011](#), approved with amendments and additions by [Law No 195/2012](#), and the various parts of a particular mixed contract are not objectively separable: (a) the contract may be awarded without applying this Act, where the contract includes elements relating to the situations provided for in Article 346 of the TFEU; or, otherwise, ... (b) the contract may be awarded in accordance with the provisions of this Act or of [Government Emergency Ordinance No. 114/2011](#), as amended and supplemented by [Act No. 195/2012](#). ... + Paragraph §3. Works concessions or service concessions covering both the activities set out in Annex 2 and other activities + Article 20(1) By way of derogation from the provisions of Article 18, in the case of contracts covering both activities set out in Annex 2 and other activities, contracting entities shall have the right to choose between awarding separate contracts for the distinct parts and awarding a single contract. (2) Where, in accordance with paragraph (1), contracting entities choose to award separate contracts, the legal regime and the relevant legislation applicable to the award of each of these contracts shall be determined by the characteristics of each activity in question. (3) Where, in accordance with the provisions of paragraph (1), contracting entities choose to award a single contract, the provisions of Article 21 shall apply. By way of exception, if one of the activities involves defence and security matters, the provisions of Articles 22 and 23 shall apply. (4) The decision to award a single contract or several separate contracts may not be taken by the contracting entity for the purpose of exempting the award of a contract or contracts from the application of the provisions of this Act, the Public Procurement Act or the Sectoral Procurement Act. + Article 21(1) In the case of contracts covering several activities set out in Annex 2, as well as other activities, the applicable legal regime and legislative act shall be determined on the basis of the main activity. (2) In the case of contracts for which it is objectively impossible to determine the main activity, the applicable legal regime and legislative act shall be determined by applying the following criteria: (a) if one of the activities is subject to the provisions of this Act applicable to contracting authorities, and the other is subject to the provisions applicable to contracting entities, the contract shall be awarded in accordance with the provisions of this Act applicable to contracting authorities; ... b) if one of the activities is subject to this Act and the other activity is subject to the Public Procurement Act, the contract shall be awarded in accordance with the provisions of the Public Procurement Act; ... c) if one of the activities falls within the scope of this Act, whilst the other activity does not fall within the scope of this Act, the Public Procurement Act or the Sectoral Procurement Act, the contract shall be awarded in accordance with the provisions of this Act. ... + Paragraph §4. Works concessions or service concessions covering both activities set out in Annex 2 and activities involving defence or security aspects + Article 22(1) By way of derogation from the provisions of Article 19, in the case of contracts covering both activities set out in Annex 2 and activities involving defence or security aspects, contracting entities shall have the right to choose between awarding separate contracts for the distinct parts and

award a single contract. (2) Where, in accordance with the provisions of paragraph (1), contracting entities choose to award separate contracts, the legal regime and the legislative act applicable to the award of each of these contracts shall be those determined by the characteristics of each activity in question. (3) Where, in accordance with the provisions of paragraph (1), contracting entities choose to award a single contract, the provisions of Article 23 shall apply, provided that the award of a single contract is justified on objective grounds. (4) The decision to award a single contract or several separate contracts may not be taken by the contracting entity for the purpose of exempting a contract or contracts from the application of the provisions of this Act or [of Government Emergency Ordinance No 114/2011](#), approved with amendments and additions by [Act No 195/2012](#). + Article 23(1) In the case of contracts covering an activity falling within the scope of this Act and another activity falling within the scope of the legislative acts/memoranda issued pursuant to [Article 20\(3\) \(3\) of Government Emergency Ordinance No. 114/2011](#), as amended and supplemented by [Law No. 195/2012](#), contracts may be awarded without applying the provisions of this Act. (2) In the case of contracts covering an activity falling within the scope of this Act and another activity falling within the scope [of Government Emergency Ordinance No. 114/2011](#), as amended and supplemented by [Act No. 195/2012](#), contracts may be awarded in accordance with the provisions of this Act or with the provisions [of Government Emergency Ordinance No. 114/2011](#), approved with amendments and additions by [Act No. 195/2012](#). (3) In the case of contracts referred to in paragraph (2), which include procurements or other elements governed by the legislative acts/memoranda issued pursuant to [Article 20\(3\) \(3\) of Government Emergency Ordinance No. 114/2011](#), as amended and supplemented by [Law No. 195/2012](#), contracts may be awarded without applying the provisions of this Act. (4) The provisions of paragraph (2) shall not affect the thresholds and exceptions provided for in [Government Emergency Ordinance No. 114/2011](#), as amended and supplemented by [Law No. 195/2012](#). + Section 6 Special situations + Paragraph §1. Social services and other specific services + Article 24 In the case of the award of a concession relating to social services and other specific services, as set out in Annex 3, the obligation to apply this Act is limited to the provisions of Article 63(2) and Article 66(2). + Paragraph §2.

Reserved concessions + Article 25(1) [The contracting authority/entity is entitled to stipulate that participation in the award procedure is permitted only to authorised sheltered workshops as provided for in Law No 448/2006 on the protection and promotion of the rights of persons with disabilities, as republished, with subsequent amendments and additions, and social integration enterprises as provided for in Law No. 219/2015 on the social economy, or to stipulate that the performance of concession contracts must take place within the framework of sheltered employment programmes, provided that at least 30 per cent of the employees involved in these authorised sheltered workshops, social integration enterprises or sheltered employment programmes are persons with disabilities or disadvantaged persons.](#) (2) Where the contracting authority/entity decides to apply the provisions of paragraph (1), this decision must be explicitly stated in the concession notice or, in the case of concessions for social services and other specific services referred to in Article 24, in the notice of intent. (On 13 July 2020, Article 25 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Paragraph §3. Research and development services + Article 26 This Act applies to service concession contracts whose subject matter is the provision of research and development services falling under the CPV codes ranging from 73000000-2 to 73120000-9, 73300000-5, 73420000-2 or 73430000-5, provided that all of the following conditions are met: (a) [the results are intended exclusively for the contracting authority or entity, for its own use in the performance of its own activities;](#) (On 13 July 2020, point (a) of Article 26 was amended by [Point 4, Article III of EMERGENCY ORDINANCE No 114 of 9 July 2020, published in the OFFICIAL GAZETTE No 614 of 13 July 2020](#)) ... b) [the service provided is remunerated in full by the contracting authority/entity.](#) (On 13 July 2020, point (b) of Article 26 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) ... + Chapter II Exemptions + Section 1 [Exemptions applicable to works concessions or service concessions awarded by contracting authorities/entities \(on 13 July 2020, The title of Section 1 of Chapter II was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) + Article 27(1) This Law shall not apply to: (a) [service concessions awarded to a contracting authority within the meaning of Article 9 or to a contracting entity within the meaning of Article 10\(1\)\(a\), or to an association thereof, on the basis of an exclusive right granted under legislative or administrative acts, in accordance with the principles of the TFEU;](#) (on 13 July 2020, Point (a) of paragraph (1) of Article 27 was amended by [Point 11, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) ... (b) [service concessions awarded to an economic operator on the basis of an exclusive right granted in accordance with the principles of the TFEU and with the legal acts of the European Union establishing common rules on market access, applicable to the activities set out in Annex No 2;](#) ... c) [air transport service concessions granted on the basis of an operating licence within the meaning of Regulation \(EC\) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community;](#) ... (d) [concessions for public passenger transport services, within the meaning of Regulation \(EC\) No 1370/2007 of the European Parliament and of the Council.](#) (2) By way of derogation from the provisions of paragraph (1)(b), where legal acts of the European Union which

Where common rules on market access applicable to the activities set out in Annex 2 do not provide for specific transparency obligations relating to those activities, the provisions of Article 66(3) shall apply. ANAP is required to inform the European Commission of any exclusive rights granted for the pursuit of any of the activities set out

in Annex 2, within one month of the granting of the right in question. + Article 27¹ This Act shall not apply to the award of contracts which do not involve payments to the contractor and under which the contractor is remunerated on the basis of regulated tariffs, calculated so as to cover all costs and investments incurred by the contractor for the provision of public services corresponding to the activities referred to in Annex 2. (On 4 June 2018, Section 1 of Chapter II was supplemented by Point 3, Article III of EMERGENCY ORDINANCE No. 45 of 24 May 2018, published in the OFFICIAL GAZETTE No. 459 of 4 June 2018) + Section 2 Exemptions applicable to works concessions or service concessions organised in accordance with international rules + Article 28(1) This Act shall not apply to concession contracts which the contracting authority or entity is obliged to award in accordance with award procedures different from those provided for in this Act, as laid down by a legal instrument creating obligations under public international law, concluded in accordance with treaties between Romania and one or more third countries or their subdivisions, or international organisations, concerning works, products or services intended for the joint implementation or operation of a project by the signatories. (on 13 July 2020, Paragraph (1) of Article 28 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) Contracting authorities/entities are required to inform ANAP of the agreements referred to in paragraph (1) existing within their sphere of activity, concluded in accordance with the treaties. (On 13 July 2020, paragraph (2) of Article 28 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) ANAP is required to communicate to the European Commission the information received in accordance with paragraph (2). (4) This Law shall not apply to concession contracts awarded by the contracting authority or entity in accordance with the procurement rules laid down by an international organisation or an international financial institution, where the concession contracts in question are fully financed by that organisation or institution. (on 13 July 2020, Paragraph (4) of Article 28 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (5) In the case of concession contracts co-financed for the most part by an international organisation or an international financial institution, the parties shall agree on the applicable award procedures. (6) This Act shall not apply to concession contracts involving matters of defence and national security which the contracting authority or entity awards to an international organisation. (On 13 July 2020, Paragraph (6) of Article 28 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 3 Exemptions applicable to works concessions or service concessions involving defence and security matters + Article 29(1) This Act applies to the award of works concessions or service concessions in the field of defence and security, with the exception of the situations provided for in Article 21 and Article 22(a), (c), (d) and (f) of Emergency Ordinance No. 114/2011, approved with amendments and additions by Law No. 195/2012. (2) This Act shall not apply to works concessions or service concessions in the field of defence and national security which are not exempted under the provisions of paragraph (1), insofar as the protection of the State's essential security interests cannot be guaranteed solely by less intrusive measures, such as the imposition of requirements to safeguard the confidentiality of information made available by the contracting authority or entity during an award procedure in accordance with the provisions of this Act. (On 13 July 2020, paragraph (2) of Article 29 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) This Law shall not apply to works concessions or service concessions in the field of defence and security where at least one of the following conditions is met: (a) the award and performance of the concession contract constitute state secrets, in accordance with the legal provisions on the protection of classified information; ... (b) the award and performance of the concession contract require the imposition, in accordance with the relevant legal provisions, of special security measures to protect essential national security interests, provided that these cannot be guaranteed by less intrusive measures, such as the requirements set out in paragraph (2). ... + Section 4 Exemptions applicable to service concession contracts + Article 30(1) This Act shall not apply to service concession contracts having as their subject matter: (a) the purchase or lease, by any financial means, of land, existing buildings, other immovable property or rights thereto; ... (b) the purchase, development, production or co-production of programme material for audiovisual media services, awarded by media service providers, or contracts for broadcasting time or the supply of programmes awarded to media service providers; ... (c) arbitration, mediation and other forms of alternative dispute resolution; ... d) any of the legal services referred to in paragraph (3); ... e) financial services relating to the issue, sale, purchase or transfer of securities or other financial instruments, in accordance with the provisions of Article 4(1)(50) of Regulation No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, services provided by central banks and operations carried out with the European Financial Stability Facility and the European Stability Mechanism; ... (f) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments ; ... g) civil defence, civil protection and hazard prevention services, provided by non-profit organisations and falling under CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, with the exception of ambulance services for the transport of

patients; ... h) lottery services within the meaning of [Government Emergency Ordinance No 77/2009](#) on the organisation and operation of games of chance, approved with amendments and additions by [Law No 246/2010](#), as subsequently amended and supplemented

(2) For the purposes of paragraph (1)(b): (a) the terms 'audiovisual media service' and 'media service provider' shall have the meanings set out in [Article 1\(1\) and \(12\) of the Broadcasting Act No. 504/2002](#), as subsequently amended and supplemented; (b) the term 'programme' covers both programmes within the meaning set out in [Article 1\(4\) of Law No. 504/2002](#), as subsequently amended and supplemented, included in a television programme service, as well as programmes included in a radio programme service and programme material, and the term 'programme material' has the same meaning as the term 'programme'.

.....(3) The legal services falling the subject of paragraph (1)(d) are as follows: (a) the representation of a client by a lawyer within the meaning of [Law No. 51/1995](#) on the organisation and practice of the legal profession, as republished, with subsequent amendments, in arbitration or mediation proceedings conducted before a national arbitration or mediation tribunal in Romania or in another state, or before an international arbitration or mediation tribunal, or in judicial proceedings before the courts or national public authorities in Romania or in another state, or before the courts or international institutions;

(b) legal assistance and advice provided by a lawyer, in advance or in preparation for any of the proceedings referred to in point (a), or where there are concrete indications and a high probability that the case in relation to which the legal assistance and advice is provided will be the subject of such proceedings;

(c) services for the certification and authentication of documents which are provided by notaries public in accordance with the law;

(d) legal services provided by trustees or by receivers or other legal services provided by entities appointed by a national court or which are appointed in accordance with statutory provisions to carry out specific tasks under the supervision and control of the courts; ...

e) services provided by bailiffs. ... + Section 5 Specific exemptions in the field of electronic communications + Article 31(1) This Act shall not apply to concession contracts whose main purpose is to enable contracting authorities to provide or operate public electronic communications networks or to provide one or more electronic communications services to the public.

(2) For the purposes of paragraph (1), the terms 'public electronic communications network' and 'electronic communications service' shall have the meanings set out in [Article 4\(1\)\(9\) and \(10\) of Government Emergency Ordinance No 111/2011](#) on electronic communications, approved with amendments and additions by [Law No 140/2012](#), as subsequently amended and supplemented. + Section 6 Exemptions applicable to works concessions or service concessions awarded for the performance of a relevant activity in a third country + Article 32 This Act shall not apply to works concessions or service concessions awarded by contracting authorities/contracting entities for the purpose of carrying out the relevant activities set out in Annex 2 in a third country, provided that the performance of those activities does not involve the physical use of a network or geographical area within the European Union. (On 13 July 2020, Article 32 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 7 Exemptions applicable to works concessions or service concessions awarded to an affiliated undertaking + Article 33(1) This Law shall not apply to the award of concession contracts: (a) by a contracting entity to an affiliated undertaking; (b) by an association of several contracting authorities or entities, set up solely for the purpose of carrying out an activity set out in Annex 2, of an undertaking affiliated to one of the relevant contracting authorities or entities. (on 13 July 2020, subparagraph (b) of paragraph (1) of Article 33 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020).....

(2) The provisions of paragraph (1) shall apply: a) in the case of a service concession, only if at least 80 per cent of the total average turnover in the field of services provided by the affiliated undertaking over the last three years derives from the provision of such services to the contracting entity or to other undertakings with which it is affiliated; (b) in the case of a works concession, only if at least 80 per cent of the average total turnover in the field of works carried out by the affiliated undertaking over the last three years derives from the execution of such works for the contracting entity or for other undertakings with which it is affiliated ...

(3) For the purposes of the provisions paragraphs (1) and (2), an affiliated undertaking means any legal person carrying out economic activities which, in accordance with the legal provisions on the consolidation of accounts, falls within the scope of consolidation of the contracting authority/entity, or any legal person carrying out economic activities which is in any of the following situations: (a) the contracting authority/entity exercises, directly or indirectly, a dominant influence over it; ... (b) it exercises, directly or indirectly, a dominant influence over a contracting authority/entity;

.....(c)

) together with the contracting entity, is, directly or indirectly, under the dominant influence of another person carrying out economic activities, by virtue of ownership, a financial interest or the rules governing its activities For the concept of 'dominant influence', the provisions of Article 5(1)(s) shall apply as appropriate. (as at 13 July 2020, Paragraph (3) of Article 33 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020)

(4) Where, depending on the date on which an affiliated undertaking was established or commenced operations, turnover figures are not available for the last three years, it shall be sufficient for the undertaking to demonstrate that the turnover referred to in paragraph (2)(a) or (b) is credible, in particular by using business forecasts.

(5) Where more than one undertaking affiliated to the contracting entity with which it forms an economic group provides identical or similar services or works, the percentages set out in paragraph (2) shall be calculated by taking into account

the total turnover resulting from the provision of services or the execution of works by those

affiliated undertakings. (6) Contracting authorities/entities are required to provide ANAP or the European Commission, upon request, with any information concerning the undertakings and concession contracts to which the provisions of paragraphs (1) and (3) have been deemed applicable. (On 13 July 2020, paragraph (6) of Article 33 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 8: Exemptions applicable to works concessions or service concessions awarded to an association of several contracting authorities/entities or to a contracting authority/entity that is part of such an association (on 13 July 2020, The title of Section 8 of Chapter II was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 34(1) This Law shall not apply to the award of concession contracts: (a) by a consortium of several contracting authorities/entities, established solely for the purpose of carrying out an activity set out in Annex No. 2, to one of those contracting authorities/entities; (on 13 July 2020, Point (a) of paragraph (1) of Article 34 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (b) by a contracting authority or entity to a consortium of contracting authorities or entities of which it is itself a member, established solely for the purpose of carrying out an activity set out in Annex 2. (on 13 July 2020, Point (b) of paragraph (1) of Article 34 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (2) The provisions of paragraph (1) shall apply only if the consortium was established to carry out the activity in question for a period of at least 3 years, and the legal instrument by which the consortium was established provides that the contracting authorities/entities concerned shall form part of that consortium for a period of at least 3 years. (On 13 July 2020, paragraph (2) of Article 34 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) Contracting authorities/entities are required to provide ANAP or the European Commission, upon request, with any information regarding concession contracts to which the provisions of paragraph (1) are deemed to apply. (as at 13 July 2020, Paragraph (3) of Article 34 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 9 Exemptions concerning activities directly exposed to competition + Article 35 This Act shall not apply to works concessions or service concessions awarded by contracting authorities or entities where it has been established that the activity in question is directly exposed to competition, in accordance with the provisions of the law on sectoral procurement. (On 13 July 2020, Article 35 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 10 Exemptions applicable to works concessions or service concessions concluded between public sector entities + Article 36(1) This Act shall not apply to concession contracts awarded by a contracting authority within the meaning of Article 9 or a contracting entity within the meaning of Article 10(1)(a) to a legal person governed by private or public law, provided that all of the following conditions are met: (as at 13 July 2020, the introductory part of paragraph (1) of Article 36 was amended by Point 7, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the contracting authority or entity in question exercises over the legal person concerned a control similar to that which it exercises over its own departments or services; (on 13 July 2020, Point (a) of Paragraph (1) of Article 36 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (b) more than 80 per cent of the activities of the controlled legal person are carried out for the purpose of fulfilling the tasks entrusted to it by the relevant contracting authority or entity that controls it, or by other legal persons controlled by that contracting authority or entity within the meaning of Article 9; (on 13 July 2020, Point (b) of Paragraph (1) of Article 36 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (c) there is no direct private participation in the capital of the controlled legal person, with the exception of shareholdings which do not confer control or a right of veto, but whose existence is required by law, in accordance with the treaties, and which do not exercise a decisive influence over the controlled legal person.....(2) For the purposes of paragraph (1)(a), the contracting authority within the meaning of Article 9 shall be deemed to be or the contracting entity within the meaning of Article 10(1)(a) exercises over a legal person a control similar to that which it exercises over its own departments or services, where it exercises a decisive influence over both the strategic objectives and the important decisions of the controlled legal person; such control may also be exercised by another legal person, itself controlled in the same manner by the contracting authority within the meaning of Article 9 or by the contracting entity in question. (on 13 July 2020, Paragraph (2) of Article 36 was amended by Point 8, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The provisions of paragraph (1) shall also apply where a controlled legal person, which is a contracting authority within the meaning of Article 9 or a contracting entity within the meaning of Article 10(1)(a), awards a works concession or a services concession to the contracting authority/entity that controls it or to another legal person controlled by the same contracting authority/entity, provided that there is no direct private participation in the capital of the legal person to which the works concession or services concession is awarded, with the exception of shareholdings which do not confer control or a right of veto, but whose existence is required by law, in accordance with the Treaties, and which do not exert a decisive influence

on the controlled legal person. (On 13 July 2020, Paragraph (3) of Article 36, Section 10, Chapter II was amended by Point 9, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) This Act shall not apply to concession contracts awarded to a legal person governed by private or public law by a contracting authority within the meaning of Article 9 or a contracting entity within the meaning of Article 10(1)(a) which does not exercise control over that legal person within the meaning of paragraph (1), where all of the following conditions are met: (on 13 July 2020, the introductory part of paragraph (4) of Article 36 was amended by Point 7, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the contracting authority within the meaning of Article 9 or the contracting entity within the meaning of Article 10(1)(a) exercises, jointly with other contracting authorities/entities, over the legal person in question a control similar to that which it exercises over its own departments or services; (on 13 July 2020, subparagraph (a) of paragraph (4) of Article 36 was amended by Points 2 and 8, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... b) more than 80 per cent of the activities of that legal person are carried out for the purpose of fulfilling the tasks entrusted to it by the contracting authorities/entities that control it or by other legal persons controlled by the same contracting authorities/entities; (as at 13 July 2020, subparagraph (b) of paragraph (4) of Article 36 was amended by Points 1 and 2, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... c) there is no direct private participation in the capital of the controlled legal person, with the exception of shareholdings which do not confer control or a right of veto, but whose existence is required by law, in accordance with treaties, and which do not exercise a decisive influence over the controlled legal person.....(5) For the context of paragraph (4)(a), contracting authorities within the meaning of Article 9 or contracting entities within the meaning of Article 10(1)(a) exercise joint control over a legal person if all of the following conditions are met: (on 13 July 2020, the introductory part of paragraph (5) of Article 36 was amended by Point 10, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the decision-making bodies of the controlled legal person shall be composed of representatives of all participating contracting authorities/entities, with the same person being entitled to represent several or all of the participating contracting authorities/entities; (on 13 July 2020, subparagraph (a) of paragraph (5) of Article 36 was amended by Points 1 and 6, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (b) contracting authorities/entities are able to jointly exercise a decisive influence over the strategic objectives and major decisions of the controlled legal person; (on 13 July 2020, subparagraph (b) of paragraph (5) of Article 36 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) c) the controlled legal person does not pursue interests contrary to those of the contracting authorities/entities contracting authorities or entities that control it. (As at 13 July 2020, Point (c) of Paragraph (5) of Article 36 was amended by Point 6, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020)(6) This Act shall not apply to concession contracts concluded exclusively between two or more contracting authorities within the meaning of Article 9 or contracting entities within the meaning of Article 10(1)(a), provided that all of the following conditions are met: (as at 13 July 2020, Paragraph (6) of Article 36 was amended by Point 11, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the contract establishes or implements cooperation between the participating contracting authorities/entities, with the aim of ensuring that the public services which they are required to provide are delivered with a view to achieving common objectives; (on 13 July 2020, subparagraph (a) of paragraph (6) of Article 36 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020)b) the implementation of cooperation is based exclusively on considerations of public interest; c) the participating contracting authorities/entities carry out on the open market less than 20 per cent of the activities covered by the cooperation. (On 13 July 2020, subparagraph (c) of paragraph (6) of Article 36 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (7) The percentages set out in paragraph (1)(b), paragraph (4)(b) and paragraph (6)(c) shall be determined on the basis of the average total turnover or an appropriate alternative indicator based on the activity carried out, such as the costs incurred by the legal person or the contracting authority within the meaning of Article 9, or the contracting entity within the meaning of Article 10(1)(a), as applicable, in relation to services, products and works during the three years preceding the award of the concession contract. (on 13 July 2020, Paragraph (7) of Article 36 was amended by Point 8, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (8) Where, in the situation provided for in paragraph (7), due to the date on which the legal person or the contracting authority within the meaning of Article 9 or the contracting entity within the meaning of Article 10(1)(a), as applicable, was established or commenced operations, or as a result of the reorganisation of its activities, the turnover or another appropriate alternative indicator based on the activity carried out, such as costs, is not available for the last 3 years or is no longer relevant, the percentages set out in paragraph (1)(b), paragraph (4)(b) and paragraph (6)(c) may be determined using estimation methods, in particular by using business forecasts. (On 13 July 2020, paragraph (8) of Article 36 was amended by Point 8, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Chapter III Rules for participation in the award procedure + Section 1 Economic operators +

Article 37(1) Economic operators who, under the law of the State in which they are established, are entitled to carry out a specific activity falling within the scope of a works or services concession may not be rejected solely on the grounds that, under the law of the Member State in which the contract is awarded, they are required to be natural persons or legal persons.(2) Legal persons or other entities established in another form of organisation provided for by law may be required to indicate, in their tenders or requests to participate, the names and relevant professional qualifications of the natural persons responsible for the performance of the contract in question. + Article 38 In the performance of concession contracts, economic operators are required to comply with the applicable obligations in the environmental, social and labour relations fields, as laid down by legislation adopted at European Union level, by national legislation, by collective agreements or by international treaties, conventions and agreements in these fields. + Article 39(1) Economic operators as defined in Article 5(1)(x) are entitled to participate in the award procedures provided for in Article 50(1) and (2), in any of the capacities of tenderer, candidate, supporting third party or subcontractor.(2) The contracting authority/entity shall exclude from the award procedure any natural or legal person, acting as an individual tenderer, joint tenderer, candidate, supporting third party or subcontractor, who does not fall within the definition set out in Article 5(1)(x), without it being necessary to verify compliance with the provisions of Articles 79–81. (On 5 April 2021, Article 39 of Section 1, Chapter III was amended by Point 2, Article III of EMERGENCY ORDINANCE No. 25 of 31 March 2021, published in the OFFICIAL GAZETTE No. 346 of 5 April 2021) + Article 40(1) The contracting authority/entity shall not have the right to require economic operators participating jointly in the award procedure to adopt or establish a specific legal form for the submission of a tender or request to participate.(2) By way of derogation from the provisions of paragraph (1), the contracting authority/entity is entitled to require economic operators to whom the concession contract has been awarded to adopt or establish a specific legal form, provided that this has been stated in the concession notice and the tender documentation and in so far as such a change is necessary for the proper performance of the concession contract. (3) The contracting authority/entity may specify in the tender documentation, where necessary, the manner in which economic operators are to meet the requirements relating to economic and financial standing or technical and professional capacity, as well as certain specific conditions concerning the performance of the concession contract, in the event of joint participation in the award procedure, provided that this is justified by objective and proportionate grounds. (On 13 July 2020, Article 40 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 2 Confidentiality + Article 41(1) Without prejudice to the other provisions of this Act or to the legal provisions concerning free access to information of public interest, or to other legislative acts governing the activities of the contracting authority/entity, the contracting authority/entity is obliged not to disclose information contained in the technical proposal, elements of the financial proposal and/or price/cost justifications submitted by economic operators which they have indicated and proven to be confidential, insofar as such information constitutes: personal data, technical or trade secrets, or is protected by an intellectual property right. Confidentiality applies only to data/information identified and proven to be personal data, technical or trade secrets, or protected by an intellectual property right. (on 13 July 2020, Paragraph (1) of Article 41, Section 2, Chapter III was amended by Point 12, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The provisions of paragraph (1) do not affect the obligations of the contracting authority/entity set out in Articles 66 and 91, nor do they affect the publication of non-confidential parts of concession contracts concluded, including any subsequent amendments. (On 13 July 2020, paragraph (2) of Article 41 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The contracting authority/entity may impose requirements on economic operators aimed at protecting the confidentiality of the information it makes available throughout the entire award procedure. (as at 13 July 2020, Paragraph (3) of Article 41 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) Economic operators shall indicate and substantiate within the tender which information in the technical proposal, elements of the financial proposal and/or price/cost justifications are confidential because they constitute: personal data, technical or trade secrets, or are protected by an intellectual property right. The information identified by economic operators in the technical proposal and/or price/cost justifications as being confidential must be accompanied by evidence establishing its confidential nature; such evidence shall form an annex to the tender, failing which the provisions of paragraph (1) shall not apply. (On 13 July 2020, Article 41 of Section 2, Chapter III was supplemented by Point 13, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 3 Rules on the avoidance of conflicts of interest + Article 42 During the course of the award procedure, contracting authorities/entities are obliged to take all necessary measures to prevent, identify and remedy situations of conflict of interest, with a view to avoiding distortion of competition and ensuring the transparency of the award procedure and the equal treatment of all candidates and tenderers. (On 13 July 2020, Article 42 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 43 For the purposes of this Act, a conflict of interest means any situation in which members of the staff of the contracting authority or entity who are involved in the conduct of the award procedure or who may

whose outcome they influence, and who have, directly or indirectly, a financial, economic or other personal interest which could be perceived as compromising their impartiality or independence in the context of the award procedure. (On 13 July 2020, Article 43 was amended by [Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Article 44(1) Situations that may give rise to a conflict of interest include any circumstances that could lead to the emergence of a conflict of interest in accordance with the provisions of Article 43, such as the following, by way of example: (a) the participation in the process of verifying/evaluating requests to participate or tenders by persons holding shares, stakeholders, or shares in the subscribed capital of one of the tenderers/candidates, proposed third-party supporters or subcontractors, or of persons who are members of the board of directors/management or supervisory body of one of the tenderers/candidates, proposed third-party supporters or subcontractors; ... (b) the participation in the process of verifying/evaluating requests to participate or tenders by a person who is a spouse, relative or relative by marriage up to and including the second degree to persons who are members of the board of directors, management or supervisory body of one of the tenderers/candidates, supporting third parties or proposed subcontractors; ... (c) the participation in the process of verifying or evaluating requests to participate or tenders by a person in respect of whom it is established, or in respect of whom there are reasonable grounds to believe, that they may have, directly or indirectly, a personal, financial, economic or other interest, or are in any other situation likely to affect their independence and impartiality during the evaluation process; ... (d) a situation where the individual tenderer/consortium tenderer/candidate/proposed subcontractor/supporting third party has, as members of its board of directors/management or supervisory body and/or as significant shareholders or partners, persons who are a spouse, relatives or relatives by marriage up to and including the second degree, or who have commercial relations with persons holding decision-making positions within the contracting authority/entity; (on 13 July 2020, Point (d) of paragraph (1) of Article 44 was replaced by [Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) ... (e) the situation where the tenderer/candidate has nominated, amongst the key persons designated to perform the contract, persons who are a spouse, relative or relative by marriage up to and including the second degree, or who have commercial relations with persons holding decision-making positions within the contracting authority/entity. (on 13 July 2020, Point (e) of paragraph (1) of Article 44 was amended by [Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) ... (2) For the purposes of paragraph (1)(d), 'significant shareholder or partner' means a person who exercises rights attached to shares which, taken together, represent at least 10 per cent of the share capital or confer on the holder at least 10 per cent of the total voting rights at the general meeting. + Article 45 The successful tenderer with whom the contracting authority or entity has concluded the concession contract shall not be entitled to enter into or conclude any other agreements concerning the provision of services, directly or indirectly, for the purpose of performing the concession contract, with natural or legal persons who were involved in the process of verifying or evaluating the requests to participate or tenders submitted in the context of an award procedure, or with employees or former employees of the contracting authority or entity with whom the latter has terminated contractual relations following the award of the concession contract, for a period of at least 12 months from the conclusion of the contract, on pain of the rescission or termination of the concession contract by operation of law. (On 13 July 2020, Article 45 was amended by [Points 3 and 4 of Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Article 46(1) Where the contracting authority/entity identifies a situation that may give rise to a conflict of interest in accordance with the provisions of Article 43, it shall take the necessary steps to determine whether that situation constitutes a conflict of interest and shall provide the candidate/tenderer in that situation with a statement of the reasons which, in the opinion of the contracting authority/entity, are likely to give rise to a conflict of interest.(2) In the case referred to in paragraph (1), the contracting authority/entity shall request the candidate/tenderer to submit their views on the situation in question.(3) Where, following the application of the provisions of paragraphs (1) and (2), the contracting authority determines that a conflict of interest exists, the contracting authority/entity shall take the necessary measures to eliminate the circumstances that gave rise to the conflict of interest, including measures such as: replacing the persons responsible for evaluating/verifying tenders/requests to participate, where their impartiality is compromised, where possible, or excluding the tenderer/candidate who has a relationship with persons holding decision-making positions within the contracting authority/entity. (On 13 July 2020, Article 46 was amended by [Points 3 and 4 of Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Article 47 The contracting authority/entity is required to specify in the concession documents the names of the persons holding decision-making positions within the contracting authority/entity. (On 13 July 2020, Article 47 was amended by [Points 3 and 4 of Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Section 4 Rules applicable to communications + Article 48(1) Unless the use of electronic means is mandatory under the provisions of this Act, any communication, request, information, notification and the like shall be transmitted by one of the following means of communication: a) electronic means; ... (b) post or fax; ... (c) verbal communication, including by telephone; ... (d) personal delivery against signature (2) The means of communication chosen must be non-discriminatory, generally available and must not restrict economic operators' access to the award procedure. (3) Where electronic means of communication are used, the tools and devices employed, as well as their technical characteristics, must ensure interoperability with off-the-shelf products in

the field of information and communications technology. (4) Verbal communication, including by telephone, may be used for communications other than those concerning the essential elements of an award procedure, provided that the main elements of the content of the verbal communication are recorded in writing. (5) For the purposes of paragraph (4), the essential elements of the award procedure include the concession documents, requests to participate and tenders. (6) The content of oral communications with tenderers which could have a significant impact on the content and evaluation of tenders shall be recorded by appropriate means, such as minutes, audio recordings or summaries of the main elements of the oral communication. + [Article 49\(1\) The contracting authority/entity shall ensure the protection of data integrity and the confidentiality of tenders/requests to participate in all operations relating to the communication, transmission and storage of information.](#) (2) The contracting authority/entity shall only take note of the content of tenders and requests to participate from the date set for their opening. (On 13 July 2020, [Article 49 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Chapter IV Rules on the award of concession contracts + Section 1 General principles applicable to award procedures + [Article 50\(1\) The contracting authority/entity shall award the concession contract through one of the following award procedures: \(a\) open tender; ... \(b\) competitive dialogue.](#)

.....(at 13 July 2020, Paragraph (1) of Article 50 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (2) By way of derogation from the provisions of paragraph (1), the contracting authority/entity may use negotiation without publication of a concession notice as the award procedure, in accordance with the provisions of Articles 64 and 65. (On 13 July 2020, Paragraph (2) of Article 50 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (3) During the award procedure, the contracting authority/entity shall not, in a discriminatory manner, provide information that may favour certain candidates or tenderers over others. (On 13 July 2020, Paragraph (3) of Article 50 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Section 2 Open tender + [Article 51\(1\) An open tender is initiated by submitting a concession notice for publication, in accordance with the provisions of Article 63, through which the contracting authority/entity invites economic operators to submit tenders. \(as at 13 July 2020, Paragraph \(1\) of Article 50 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) (2) The open tender procedure shall, as a rule, be conducted in a single stage, by electronic means, in which case only economic operators registered with SEAP may submit a tender. (on 10 September 2022, Paragraph (2) of Article 51, Section 2, Chapter IV was amended by [Point 1, Article III of Law No. 208 of 11 July 2022, published in the Official Gazette No. 697 of 12 July 2022](#)) (3) The contracting authority/entity may stipulate in the concession notice and the tender documentation that the open tender procedure is to be conducted in two stages, in accordance with the provisions of Articles 52–54: (on 13 July 2020, the introductory part of Paragraph (3), Article 51 was replaced by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (a) the first stage – the submission of tenders drawn up in accordance with the information and requirements set out in the tender documentation, accompanied by documents demonstrating compliance with the qualification and selection criteria established by the contracting authority/entity; (on 13 July 2020, [Point \(a\) of Paragraph \(3\) of Article 51 was amended by Point 3 of Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#))b) stage — negotiations to improve admissible tenders and the evaluation of the improved tenders, by applying the award criteria.

Note ...

By [DECISION No. 221 of the CONSTITUTIONAL COURT of 2 June 2020](#), published in the OFFICIAL GAZETTE No. 594 of 7 July 2020, the plea of unconstitutionality regarding the provisions of [Government Emergency Ordinance No. 23/2020](#) amending and supplementing certain legislative acts affecting the public procurement system was upheld, and it was found that [Government Emergency Ordinance No. 23/2020](#) is unconstitutional in its entirety.

Pursuant to [Article 147 of the CONSTITUTION OF ROMANIA, republished](#) in the OFFICIAL GAZETTE No. 767 of 31 October 2003, the provisions of laws and ordinances in force, as well as those of regulations, which are found to be unconstitutional, cease to have legal effect 45 days after the publication of the Constitutional Court's decision if, within that period, Parliament or the Government, as the case may be, does not bring the unconstitutional provisions into line with the provisions of the Constitution. During this period, the provisions found to be unconstitutional are suspended by operation of law.

Consequently, with effect from 7 July 2020, the provisions of [Government Emergency Ordinance No. 23/2020](#) amending and supplementing certain legislative acts affecting the public procurement system are suspended by operation of law and will cease to have legal effect from 21 August 2020, unless the legislature intervenes to amend the contested provisions.

Since the provisions of [Emergency Ordinance No. 23/2020](#) are suspended by operation of law, in accordance with the above, the amendment introduced by [point 3 of Article III of this legislative act](#) to subparagraphs (a) and (b) of paragraph (3) of Article 51 of Law No. 100/2016 is suspended by operation of law with effect from 7 July 2020, and shall become inapplicable with effect from 21 August 2020, unless the legislature intervenes to amend the contested provisions(4) Where it chooses to apply the open tender procedure with a negotiation stage, the contracting authority/entity shall determine by

the tender documentation sets out the elements that may be subject to negotiation. (on 13 July 2020, Paragraph (4) of Article 51 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (5) In the tender documentation, the contracting authority/entity shall define the subject-matter of the works concession or services concession by describing the needs of the contracting authority/entity and the characteristics required for the works or services to be concessionned, and shall set out the award criteria and the method of risk allocation. (as at 13 July 2020, Paragraph (5) of Article 51 was amended by Points 3 and 14, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (6) When describing the elements referred to in paragraph (5), the contracting authority/entity shall specify the minimum requirements that tenders must meet. (on 13 July 2020, Paragraph (6) of Article 51 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (7) The information provided in the tender documentation must be sufficiently precise, clear and complete to enable economic operators to determine the nature and subject matter of the works concession or services concession, and, on that basis, to decide whether to submit a tender or not to participate in the award procedure. + Article 52(1) The contracting authority/entity is required to set out the qualification criteria in the concession notice and, where a negotiation stage is used, the applicable rules.(2) Upon completion of the first stage, the contracting authority/entity shall simultaneously send an invitation to participate in the negotiation stage to all tenderers who have submitted admissible tenders. (On 13 July 2020, Article 52 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 53(1) The contracting authority/entity shall negotiate, during the negotiation stage, with each tenderer who has submitted an admissible tender and has been invited in accordance with Article 52(2), with a view to improving the content of their tenders.(2) During the negotiations, the contracting authority/entity and the tenderers may discuss any aspects relating to the concession set out in the tender documentation, with the exception of the subject matter of the concession, the award criteria and the minimum requirements, which may not be amended during the negotiations.(3) During the negotiations, the contracting authority/entity is obliged to ensure compliance with the principle of equal treatment and not to provide information in a discriminatory manner that could give one or more tenderers an advantage over the others.(4) The contracting authority/entity shall not disclose to the other tenderers the proposed solutions or other confidential information provided by a tenderer participating in the negotiations, without that tenderer's written consent regarding each specific intention to disclose particular information. (On 13 July 2020, Article 53 was amended by Point 3, Article III of EMERGENCY ORDINANCE No 114 of 9 July 2020, published in the OFFICIAL GAZETTE No 614 of 13 July 2020) + Article 54(1) The period between the date of transmission of the concession notice for publication in the Official Journal of the European Union and the deadline for the submission of tenders, where the open tender procedure is conducted in a single stage, namely the submission of initial tenders, where the procedure is conducted in two stages, shall be at least 30 days. (2) The period between the date on which the invitation to participate in the negotiation stage is sent and the deadline for the submission of improved tenders, where the procedure is conducted in two stages, shall be at least 22 days.(3) The deadline for receipt of tenders may be reduced by 5 days if the contracting authority/entity accepts that tenders may be submitted by electronic means. (On 13 July 2020, Paragraph (3) of Article 54 was replaced by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 3 Competitive dialogue + Article 55(1) The competitive dialogue procedure is initiated by the submission for publication of a concession notice, in accordance with the provisions of Article 63, through which the contracting authority/entity invites economic operators to submit requests to participate.(2) Under the competitive dialogue procedure, any economic operator is entitled to submit a request to participate; however, only candidates who meet the qualification and selection criteria set by the contracting authority/entity in the concession notice shall be entitled to participate in the subsequent stages. (On 13 July 2020, Article 55 was amended by Point 3, Article III of EMERGENCY ORDINANCE No 114 of 9 July 2020, published in the OFFICIAL GAZETTE No 614 of 13 July 2020) + Article 56(1) The period between the date of transmission of the concession notice for publication in the Official Journal of the European Union and the deadline for the submission of requests to participate shall be at least 30 days.(2) The period between the date of dispatch of the invitation to participate in the third stage of the award procedure and the deadline for the submission of final tenders shall be at least 22 days.(3) The deadline for receipt of requests to participate may be reduced by 5 days if the contracting authority or entity accepts that requests to participate may be submitted by electronic means. (On 13 July 2020, paragraph (3) of Article 56 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 57 The competitive dialogue procedure shall be conducted in three stages: a) the first stage – the submission of requests to participate and the selection of candidates, by applying the qualification and selection criteria set out in the tender documentation; ... b) the second stage – dialogue with the selected candidates, with a view to identifying the solution(s) capable of meeting the needs of the contracting authority/entity, on the basis of which the final tenders will be submitted; (On 13 July 2020, point (b) of Article 57 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020)... (c) the third stage – the submission of final tenders by the candidates remaining after the dialogue stage and their evaluation, by applying the award criteria. ... + Article 58(1) The contracting authority/entity shall

the obligation to specify in the concession notice the qualification and selection criteria and the applicable rules, the minimum number of candidates it intends to invite to the second stage and, where applicable, the maximum number thereof. (on 13 July 2020, Paragraph (1) of Article 58 was replaced by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The minimum number of candidates specified in the concession notice must be sufficient to ensure genuine competition and, in any event, may not be less than 3.(3) When selecting candidates for the subsequent stages, the contracting authority/entity is obliged to apply only the selection and qualification criteria set out in the concession notice, which must be objective and non-discriminatory. (as at 13 July 2020, Paragraph (3) of Article 58 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 59(1) Upon completion of the first stage, the contracting authority/entity shall simultaneously send all selected candidates an invitation to participate in the second stage. (as at 13 July 2020, Paragraph (1) of Article 59 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The contracting authority/entity is required to send the invitation to tender accompanied by a copy of the tender documentation, which shall also include a descriptive document. (on 13 July 2020, Paragraph (2) of Article 59 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The descriptive document referred to in paragraph (2) contains details regarding the needs and requirements of the contracting authority/entity, the award criteria selected, the allocation of risks, the indicative timeframe for the award procedure, and, where applicable, the incentives to be granted to participants in the dialogue. (on 13 July 2020, Paragraph (3) of Article 59 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) The contracting authority/entity is obliged to invite to the second stage a number of candidates at least equal to the minimum number of candidates specified in the concession notice, in accordance with the provisions of Article 58(2). (on 13 July 2020, Paragraph (4) of Article 59 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (5) Where the number of candidates meeting the qualification and selection criteria is lower than the minimum number specified in the concession notice, in accordance with the provisions of Article 58(2), the contracting authority/entity shall be entitled to continue the award procedure only with those candidates who meet the required criteria or to cancel the procedure. (on 13 July 2020, Paragraph (5) of Article 59 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (6) The contracting authority/entity shall not be entitled to invite to the second stage an economic operator who has not submitted a request to participate in the first stage or who has not met the required qualification and selection criteria. (On 13 July 2020, paragraph (6) of Article 59 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 60(1) The contracting authority/entity shall conduct the dialogue stage with each selected candidate individually, with a view to identifying and defining the best means of meeting its needs.(2) During the dialogue, the contracting authority/entity and the selected candidates may discuss all aspects relating to the concession, as set out in the tender documentation, with the exception of the subject matter of the concession, the award criteria and the minimum requirements, which may not be altered during the dialogue.(3) During the dialogue, the contracting authority/entity is obliged to ensure compliance with the principle of equal treatment and not to provide information in a discriminatory manner that could give one or more candidates an advantage over the others.(4) The contracting authority/entity is obliged not to disclose to the other candidates the proposed solutions or other confidential information provided by a candidate participating in the dialogue, without that candidate's written consent regarding each specific instance of disclosure of particular information.(5) The contracting authority/entity shall be entitled to conduct the dialogue in successive rounds, with the aim of reducing the number of solutions to be discussed during the dialogue stage. (6) The application of the option provided for in paragraph (5) must be specified by the contracting authority/entity in the concession notice and in the descriptive document referred to in Article 59(2). (7) The contracting authority/entity shall continue the dialogue until it is able to identify the solution(s) capable of meeting its needs.(8) Upon completion of the dialogue phase, the contracting authority/entity shall simultaneously send to all remaining candidates an invitation to submit final tenders, accompanied by the solution(s) identified in accordance with the provisions of paragraph (7). (On 13 July 2020, Article 60 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 61(1) Final tenders shall include all the elements requested and necessary for the contracting authority/entity to carry out the subject matter of the works concession or the services concession and shall be drawn up on the basis of the solution or solutions presented and negotiated with the relevant candidate during the dialogue phase. (on 13 July 2020, Paragraph (1) of Article 61 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The period allowed for the preparation and submission of the final tender must not be shorter than the period agreed with the shortlisted candidates during the dialogue phase. (3) The contracting authority/entity has the right to request clarifications, further details and improvements to the final tenders. (On 13 July 2020, paragraph (3) of Article 61 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in

OFFICIAL GAZETTE No. 614 of 13 July 2020) (3¹) The time limit granted to tenderers for submitting a response to the request referred to in paragraph (3), including any extension requested and justified by the economic operator, shall be a maximum of 15 working days and shall be determined according to the complexity of the request. (On 10 September 2022, Article 61 of Section 3, Chapter IV was supplemented by Point 2, Article III of Law No. 208 of 11 July 2022, published in the Official Gazette No. 697 of 12 July 2022) (4) The clarifications, specifications and improvements referred to in paragraph (3), as well as any additional information provided by the tenderer, shall not result in any alteration to the essential elements of the award procedure, including the needs and requirements set out in the concession notice and/or the descriptive document referred to in Article 59(2), (2), where any alteration to these elements, needs and requirements is likely to distort competition or have a discriminatory effect. (5) The contracting authority/entity shall evaluate the tenders received on the basis of the award criteria set out in the concession notice and/or in the descriptive document referred to in Article 59(2). (on 13 July 2020, paragraph (5) of Article 61 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 4: Rules on publicity and transparency + Article 62: The contracting authority/entity is obliged to ensure the transparency of the procedure for the award of concession contracts by publishing, in accordance with the provisions of this Law, concession notices, notices of intent and award notices. (On 13 July 2020, Article 62 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 63(1) The contracting authority/entity is required to submit a concession notice for publication when it initiates one of the procedures governed by this Act, namely an open tender or a competitive dialogue. (2) The contracting authority/entity is obliged to submit a notice of intent for publication when it initiates the procedure for the award of a concession contract for social services or other specific services set out in Annex No. 3. (as at 13 July 2020, Article 63 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 64(1) By way of derogation from the provisions of Article 63(1), contracting authorities/entities are not required to publish a concession notice if the works/services in question can be provided only by a specific economic operator, for one of the following reasons: (on 13 July 2020, the introductory part of paragraph (1) of Article 64 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the purpose of the works concession or the services concession is the creation or acquisition of a work of art or a unique artistic performance; ... (b) there is no competition for technical reasons; ... c) the existence of an exclusive right; ... d) the protection of intellectual property rights and other exclusive rights, other than those defined in Article 5(1)(o) (2) The grounds set out in paragraph (1)(b) to (d) shall apply only in where there is no reasonable alternative or substitute solution, and the absence of competition is not the result of an artificial restriction of the parameters of the works concession or the services concession. + Article 65 By way of derogation from the provisions of Article 63(1), contracting authorities/entities are not obliged to publish a new concession notice if, in the course of an initial award procedure provided for in this Act, no tenders or requests to participate were submitted, or only non-compliant tenders or requests to participate were submitted, provided that the initial terms of the works concession or the services concession are not substantially altered and, if requested by the European Commission, a report to that effect has been submitted. (On 13 July 2020, Article 65 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 66(1) The contracting authority/entity is obliged to submit an award notice for publication within a maximum of 48 days from the date of award of a works concession or a services concession. (2) By way of derogation from the provisions of paragraph (1), the contracting authority/entity is entitled to group award notices on a quarterly basis in the case of concession contracts for social services and other specific services set out in Annex 3, and is obliged to submit the award notices grouped in this way for publication within 48 days of the end of each quarter. (On 13 July 2020, Article 66 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 67 Concession notices and notices of the award of works concessions or service concessions, including the corresponding corrigenda, shall be submitted for publication by the contracting authority/entity by electronic means, in accordance with the conditions laid down in the methodological rules for the application of the provisions of this Law, and shall be published in the Official Journal of the European Union, in compliance with the standard formats established by the European Commission pursuant to the provisions of Article 33 of Directive 2014/23/EU of the European Parliament and of the Council. (On 13 July 2020, Article 67 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 68(1) Concession notices and notices of the award of works concessions or service concessions may not be published at national level before the date of their publication in the Official Journal of the European Union. (2) By way of derogation from the provisions of paragraph (1), the publication at national level of concession notices and notices of the award of works concessions or service concessions is permitted where the contracting authority/contracting authority or entity has not been notified by the Publications Office of the European Union of the publication in the Official Journal of the European Union of the notices submitted for publication, within 48 hours of the Publications Office of the European Union confirming receipt of the notice submitted for publication. (on 13 July 2020, paragraph (2) of

Article 68 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 69: Concession notices and notices of the award of works concessions or service concessions published at national level must not contain any information other than that contained in the corresponding notices published in the Official Journal of the European Union and must state the date of transmission to the Publications Office of the European Union. +

Article 70(1) Contracting authorities/entities shall ensure, by electronic means via the SEAP, direct, full, unrestricted and free access for economic operators to the concession documents, from the date of publication of the concession notice. (as at 13 July 2020, para. (1) of Article 70 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The concession notice shall specify the website where the concession documents are available. (3) In objectively justified cases where the contracting authority or entity cannot ensure direct, full, unrestricted and free access to certain concession documents, for technical reasons or due to exceptional security requirements or the particularly sensitive nature of commercial information requiring an extremely high level of protection, the concession notice shall stipulate that the concession documents in question will be transmitted by means other than electronic ones and that the deadline for the receipt of tenders is extended. (on 13 July 2020, Paragraph (3) of Article 70 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) In the context of the two-stage open tender procedure within the meaning of Article 51(3) and the competitive dialogue procedure, the contracting authority/entity is obliged to send the invitation to participate in the second stage of the procedure to all selected tenderers/candidates, simultaneously and in writing. (on 13 July 2020, para. (4) of Article 70 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (5) The invitation to tender referred to in paragraph (4) shall include a reference to the email address at which the concession documents have been made available to economic operators by electronic means. (6) Where, for one of the reasons set out in paragraph (3), the contracting authority/entity has been unable to provide, by electronic means, direct, full, unrestricted and free access to certain concession documents, and these have not been made available by other means, the contracting entity shall attach the concession documents to the invitation to tender referred to in paragraph (4). (on 13 July 2020, paragraph (6) of Article 70 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (7) In the case provided for in paragraph (3), the contracting authority is obliged to extend the deadline for the submission of tenders or requests to participate by 5 days. (8) Any interested economic operator is entitled to request clarifications or additional information regarding the tender documentation, subject to the deadline set by the contracting authority/entity in the concession notice or simplified participation notice, under the following conditions: (as at 13 July 2020, the introductory part of paragraph (8), Article 70 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the contracting authority/entity is entitled to specify in the concession notice/simplified call for competition one or two deadlines by which it will respond clearly and comprehensively to all requests for clarification/additional information, in accordance with the methodological rules under this Act; (on 13 July 2020, Point (a) of Paragraph (8), Article 70 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (b) insofar as requests for clarification or additional information have been made within the time limit laid down by law, the contracting authority's or entity's response to such requests must be provided at least 15 days before the deadline set for the receipt of tenders or requests to participate. (on 13 July 2020, Point (b) of Paragraph (8) of Article 70 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (on 22 December 2017, Paragraph (8) of Article 70, Section 4, Chapter IV was amended by Point 2, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017) + Section 5 Preparation of tender documentation + Paragraph

§1. Procedural safeguards + Article 71(1) The contracting authority/entity is obliged to draw up tender documentation containing all the information necessary to ensure that tenderers/candidates are provided with complete, correct and accurate information regarding the requirements of the works concession or services concession, the subject matter of the contract, the allocation of risks and the conduct of the award procedure. (on 13 July 2020, Paragraph (1) of Article 71 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) For the purposes of paragraph (1), the contracting authority/entity shall provide: (on 13 July 2020, the introductory part of paragraph (2) of Article 71 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) a) a description of the subject-matter of the works concession or the services concession and of the qualification and selection requirements – in the concession notice; ... (b) a description of the award criteria and, where applicable, the minimum requirements to be met, as well as an indicative timeframe for the completion of the award procedure – in the concession notice, in the tender documentation and/or in other concession documents.(3) The contracting authority/entity shall notify all economic operators of any change to the elements set out in the concession notice. Furthermore, the contracting authority/entity shall inform all candidates of the organisation of the award procedure and the indicative deadline for its completion,

as well as any amendment made to any of the concession documents. (on 13 July 2020, Paragraph (3) of Article 71 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) The contracting authority/entity shall ensure that the stages of the procedure are properly recorded, using the means it deems appropriate, in accordance with the provisions of Article 41(1). (on 13 July 2020, Paragraph (4) of Article 71 was amended by Point 15, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (5) The contracting authority/entity is entitled to require tenderers to provide a tender guarantee with a period of validity at least equal to the period of validity of the tender. The value of the tender guarantee may not exceed 1 per cent of the estimated average annual value of the concession contract. (On 10 September 2022, Article 71 of Paragraph §1, Section 5, Chapter IV was supplemented by Point 3, Article III of Law No. 208 of 11 July 2022, published in the Official Gazette No. 697 of 12 July 2022) (6) The tender guarantee must be irrevocable and unconditional and shall be provided by: a) bank transfer; ... b) guarantee instruments issued in accordance with the law, as follows: (i) letters of guarantee issued by banking credit institutions in Romania or in another country; ... (ii) letters of guarantee issued by non-bank financial institutions in Romania or in another country for works concessions whose estimated value is less than or equal to 40,000,000 lei excluding VAT and, respectively, for service concessions with an estimated value of 7,000,000 lei or less excluding VAT; ... (iii) guarantee insurance issued:— either by insurance companies holding operating licences issued in Romania or in another Member State of the European Union and/or which are listed in the registers published on the website of the Financial Supervisory Authority, as applicable; ... – or by insurance companies from third countries through branches authorised in Romania by the Financial Supervisory Authority; ... c) the deposit of cash sums at the cashier's office, provided the amount is less than 5,000 lei; ... d) a combination of two or more of the methods of provision set out in points (a) to (c), in the case of a performance guarantee(on 6 October 2022, Paragraph (6) of Article 71, Section §1, Part 5, Chapter IV was as amended by Article VI of EMERGENCY ORDINANCE No. 136 of 5 October 2022, published in the OFFICIAL GAZETTE No. 975 of 6 October 2022) Note ...

In accordance with Article VII of EMERGENCY ORDINANCE No. 136 of 5 October 2022, published in the OFFICIAL GAZETTE No. 975 of 6 October 2022, Article VI applies to award procedures initiated after the date of entry into force of this emergency ordinance. An 'initiated award procedure' means any procedure for which a call for competition, a concession notice, a simplified call for competition or, where applicable, an invitation to tender has been issued by the date of entry into force of this Emergency Ordinance.

(7) The procedure for retaining the tender guarantee and for refunding the tender guarantee shall be regulated in a separate chapter of the methodological rules for the implementation of this Act. (as at 10 September 2022, Article 71 of Paragraph §1, Section 5, Chapter IV was supplemented by Point 3, Article III of Law No. 208 of 11 July 2022, published in the Official Gazette No. 697 of 12 July 2022) + Article 72(1) Concession contracts shall be awarded on the basis of the award criteria established by the contracting authority/entity in accordance with the provisions of Article 86, provided that all of the following conditions are met: (on 13 July 2020, the introductory part of paragraph (1) of Article 72 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) the tender complies with the minimum requirements set out in the tender documentation by the contracting authority/entity; (on 13 July 2020, subparagraph (a) of paragraph (1), Article 72 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020)(b) the tenderer meets the set out in Article 75;c) the tenderer is not excluded from participating in the award procedure, in accordance with the provisions of Articles 79–81 and subject to the provisions of Article 84. (2) The minimum requirements set out in paragraph

(1)(a) include conditions and characteristics – in particular technical, physical, functional and legal – which any tender must fulfil or which the tenderer must possess. + Paragraph §2. Technical and functional requirements + Article 73(1) The technical and functional requirements are set out in the tender documentation and define the necessary characteristics of the works/services that are the subject of the concession.(2) The requirements referred to in paragraph (1) may also relate to the specific process of producing or supplying the works or services requested, provided that they are linked to the subject-matter of the concession and proportionate to its value and objectives.(3) The procedures for defining technical and functional requirements shall be laid down in the methodological rules for the application of the provisions of this Act. + Article 74(1) The contracting authority/entity may not, through the technical and functional requirements, refer to a specific manufacturer, origin or process characterising the products or services supplied. (on 13 July 2020, Paragraph (1) of Article 74 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) Technical and functional requirements may not refer to a specific trade mark, patent, type or manufacturer, which would have the effect of favouring or excluding certain economic operators or certain products. (3) By way of derogation from the provisions of paragraphs (1) and (2), such a reference is authorised, on an exceptional basis, where it is not possible to provide a sufficiently precise and intelligible description of the subject-matter of the works concession or the services concession, provided that the reference is accompanied by the phrase 'or equivalent'.(4) The contracting authority/entity may not reject a tender on the grounds that the works and services offered do not comply with the technical and functional requirements referred to, if the tenderer demonstrates in its tender, by any appropriate means, that the solutions it has proposed fulfil the technical and functional requirements in an equivalent manner. (On 13 July 2020, paragraph (4) of Article 74 was

as amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Paragraph §3. Qualification and selection criteria + Article 75(1) The contracting authority/entity shall be entitled to apply, within the award procedure, only non-discriminatory qualification and selection criteria that are proportionate to the subject-matter of the works concession or services concession, relating to: (a) the grounds for exclusion of the candidate/tenderer; ... (b) the capacity of the candidate/tenderer. ... (on 13 July 2020, Paragraph (1) of Article 75 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The contracting authority/entity shall verify compliance with the qualification and selection criteria on the basis of sworn statements, as well as on the basis of the documents to be submitted as evidence, in accordance with those specified in the concession notice. (on 13 July 2020, Paragraph (2) of Article 75 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The qualification and selection criteria must be relevant to and proportionate to the need to ensure the concessionaire's ability to perform the concession contract, taking into account the subject-matter of the works concession or services concession and the aim of ensuring effective competition. + Article 76(1) The economic operator has the right, where appropriate and in relation to a specific concession contract, to rely on the support of one or more third parties in meeting the criteria relating to economic and financial standing and/or the criteria relating to technical and professional capacity, regardless of the nature of the legal relationships between the economic operator and the third party or parties concerned.(2) Where the economic operator demonstrates its economic and financial standing and/or technical and professional capacity by relying on the support provided by one or more third parties, in accordance with the provisions of paragraph (1), the economic operator is obliged to prove to the contracting authority/entity that it has taken all necessary measures to have access at any time to the necessary resources, by submitting a commitment to that effect from the supporting third party or parties. (on 13 July 2020, Paragraph (2) of Article 76 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) Where an economic operator demonstrates compliance with the criteria relating to financial standing by relying on the support of a third party, the contracting authority/entity may require the economic operator and the supporting third party to be jointly and severally liable for the performance of the concession contract. (on 13 July 2020, Paragraph (3) of Article 76 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) The methodological rules for the application of the provisions of this Law shall lay down standard provisions or requirements regarding the manner in which the criteria relating to economic and financial standing and technical and professional capacity are to be met through support provided by one or more third parties. + Article 77(1) Where several economic operators participate jointly in the award procedure, compliance with the criteria relating to technical and professional capacity shall be demonstrated by taking into account the resources of all members of the group, and the contracting authority/entity may require them to be jointly and severally liable for the performance of the concession contract. (on 13 July 2020, Paragraph (1) of Article 77 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) Where several economic operators participate jointly in the award procedure, they may rely on the support of a third party in meeting the criteria relating to economic and financial standing and/or technical and professional capacity, in accordance with the provisions of this Act. + Article 78(1) The contracting authority/entity shall verify whether the third party/third party or third parties providing support in meeting the criteria relating to economic and financial standing or those relating to technical and/or professional capacity meet the relevant capacity criteria, and that they do not fall within the grounds for exclusion set out in Articles 79–81.(2) If the third party falls within the grounds for exclusion set out in Articles 79–81, the contracting authority or entity shall request, on a one-off basis, that the economic operator replace the supporting third party. (On 13 July 2020, Article 78 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Paragraph §4. Grounds for exclusion + Article 79(1) The contracting authorities/entities referred to in Article 10((1)(a) shall exclude from participation in a procurement procedure any economic operator in respect of whom they have established, following an analysis of the information and documents submitted by that operator, or of whom they have otherwise become aware, that the operator has been convicted by a final court judgement for committing one of the following offences:(a) the formation of an organised criminal group, as provided for in Article 367 of Law No 286/2009 on the Criminal Code, as subsequently amended and supplemented, or in the corresponding provisions of the criminal law of the state in which the economic operator in question was convicted; ... b) corruption offences, as provided for in Articles 289–294 of Law No 286/2009, as subsequently amended and supplemented, and offences treated as corruption offences as provided for in Articles 10–13 of Law No 78/2000 on the prevention, detection and punishment of acts of corruption, as subsequently amended and supplemented, or by the corresponding provisions of the criminal law of the State in which the economic operator in question was convicted; ... (c) offences against the financial interests of the European Union, as provided for in Articles 181–185 of Law No 78/2000, as subsequently amended and supplemented, or in the corresponding provisions of the criminal law of the State in which the economic operator in question was convicted; ... (d) acts of terrorism as provided for in Articles 32–35, 37 and 38 of Law No 535/2004 on the prevention and combating of terrorism, as subsequently amended and supplemented, or in the corresponding provisions of the criminal law of the State in which the economic operator in question was

convicted; ... e) money laundering, as provided for in Article 29 of Law No. 656/2002 on the prevention and punishment of money laundering, and on the introduction of measures to prevent and combat the financing of terrorism, as republished, with subsequent amendments, or the financing of terrorism, as provided for in Article 36 of Law No. 535/2004, as subsequently amended and supplemented, or by the corresponding provisions of the criminal law of the state in which the economic operator in question was convicted; ... (f) trafficking in and exploitation of vulnerable persons, as provided for in Articles 209–217 of Law No 286/2009, as subsequently amended and supplemented, or by the corresponding provisions of the criminal law of the State in which the economic operator in question was convicted; ... g) fraud, within the meaning of Article 1 of the Convention on the Protection of the European Communities' Financial Interests – Combating Fraud.....(as at 13-07-2020, paragraph (1) of Article 79 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The obligation to exclude an economic operator from the award procedure, in accordance with the provisions of paragraph (1), shall also apply where the person convicted by a final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision-making or control within it. (3) Contracting entities, other than those referred to in Article 10(1)(a), may exclude an economic operator from participating in a procurement procedure if they are aware that the economic operator in question has been convicted by a final judgment on one of the grounds listed in paragraph (1). + Article 80(1) The contracting authorities/entities referred to in Article 10(1)(a) shall exclude from the award procedure any economic operator in respect of whom: (a) they are aware that it has failed to fulfil its obligations regarding the payment of taxes, duties or contributions to the general consolidated budget, and this has been established by a court judgement or an administrative decision which is final and binding in accordance with the law of the State in which that economic operator is established or with that of the Member State of the contracting authority; ..(b) or can demonstrate by any appropriate means that the economic operator in question has breached its obligations regarding the payment of taxes, duties or contributions to the general consolidated budget (2) An economic operator shall not be excluded from the award procedure if, prior to the decision on exclusion, it fulfils its obligations by paying the taxes, duties or contributions due to the general consolidated budget, or by other means of settling them, or if it is granted, in accordance with the law, a payment plan or other facilities for their payment, including, where applicable, any interest or late payment penalties accrued or fines.(3) By way of derogation from the provisions of paragraph (1) and of Article 79, in exceptional cases, the contracting authorities/entities referred to in Article 10(1)(a) shall be entitled not to exclude from the award procedure an economic operator which is in one of the situations referred to in paragraph (1) and Article 79, on imperative grounds of general interest, such as public health or environmental protection.(4) By way of derogation from the provisions of paragraph (1), an economic operator shall not be excluded from the award procedure where the amount of taxes, duties and contributions to the general consolidated budget that are due and outstanding is less than 10,000 lei. (5) To comply with the provisions of paragraph (2), the economic operator shall submit, for its principal place of business, documents demonstrating that it does not fall within the scope of paragraph (1), and for secondary places of business or branches, a sworn statement regarding the fulfilment of its obligations to pay any taxes, duties or contributions to the general consolidated budget that are due. (as at 30 August 2021, Article 80 of Paragraph §4, Section 5, Chapter IV was supplemented by Point 2, Article III of ORDINANCE No. 3 of 25 August 2021, published in the OFFICIAL GAZETTE No. 821 of 27 August 2021) (on 13 July 2020, Article 80 of Paragraph §4. , Section 5, Chapter IV was amended by Point 16, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 81(1) Contracting authorities/entities shall exclude from the concession contract award procedure any economic operator who is in any of the following situations: (as at 13 July 2020, the introductory part of paragraph (1) of Article 81 was amended by Point 1, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) has breached the obligations laid down in Article 38, and the contracting authority/entity can demonstrate this by any appropriate means of evidence, such as decisions by the competent authorities establishing the breach of those obligations; (on 13 July 2020, subparagraph (a) of paragraph (1) of Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (b) insolvency proceedings have been initiated against the economic operator, in accordance with the legal provisions, with except where the economic operator is undergoing judicial reorganisation;(c) has committed a serious professional misconduct that calls into question its integrity, and the contracting authority/entity can demonstrate this by any appropriate means of evidence, such as a decision by a court of law or an administrative authority; (on 13 July 2020, subparagraph (c) of paragraph (1) of Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (d) the contracting authority/entity has sufficient plausible grounds to consider that the economic operator has entered into agreements with other economic operators aimed at distorting competition within the framework of, or in connection with, the procedure in question; (on 13 July 2020, subparagraph (d) of paragraph (1) of Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (e) is in a conflict of interest in or in connection with the proceedings in question, and this situation cannot be effectively remedied by other, less severe measures;f) the economic operator has seriously or repeatedly breached its main obligations under a concession contract or a previous contract concluded with a contracting authority or entity, and these breaches have led to the early termination of

under that contract, the payment of damages or other comparable penalties; (on 13 July 2020, subparagraph (f) of paragraph (1) of Article 81 was amended by Point 5, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (g) the economic operator has made false statements in the information provided at the request of the contracting authority or entity, for the purpose of verifying the absence of grounds for exclusion or the fulfilment of the qualification and selection criteria, has failed to provide such information, or is unable to produce the supporting documents requested; (on 13 July 2020, subparagraph (g) of paragraph (1) of Article 81 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (h) the economic operator has attempted to unlawfully influence the decision-making process of the contracting authority or entity, to obtain confidential information which could confer unjustified advantages in the procedure for awarding a works concession or a services concession, or has negligently provided incorrect information that may have a significant influence on the decisions of the contracting authority/entity regarding the exclusion of that economic operator from the award procedure, its selection or the award of the concession contract to that economic operator; (on 13 July 2020, subparagraph (h) of paragraph (1), Article 81 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (i) have committed serious errors in their professional conduct, as demonstrated by any means which the contracting authority/entity can substantiate, including by courts of law, the European Investment Bank and international organisations. (On 13 July 2020, subparagraph (i) of paragraph (1), Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (2) By way of derogation from the provisions of paragraph (1)(b), the contracting authority/entity shall not exclude from the award procedure an economic operator against whom general insolvency proceedings have been opened where, on the basis of the information and/or documents submitted by the economic operator, it determines that the latter has the capacity to perform the concession contract. This presupposes that the economic operator in question is either in the observation phase and has taken the necessary measures to draw up a feasible reorganisation plan, enabling the sustainable continuation of its current activities, or is undergoing judicial reorganisation and is fully complying with the timetable for implementing the reorganisation plan approved by the court. (on 13 July 2020, Paragraph (2) of Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) For the purposes of the provisions of paragraph (1)(c), 'serious professional misconduct' means any misconduct committed by the economic operator which affects its professional reputation, such as cartel-type breaches of competition rules aimed at rigging tenders or infringements of intellectual property rights, committed intentionally or through gross negligence. (4) ~~Repealed. (on 13 July 2020, Paragraph (4) of Article 81, Section §4. , Section 5, Chapter IV was repealed by Point 17, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020)~~ (5) For the purposes of the provisions of paragraph (1)(d), the contracting authority shall be deemed to have sufficient plausible indications to consider that the economic operator has concluded agreements with other economic operators aimed at distorting competition within or in connection with the procedure in question in the following situations, which are set out by way of example: (a) the tenders or requests to participate submitted by two or more economic operators taking part in the award procedure show significant similarities in terms of the content of non-standardised documents, as set out in the tender documentation; ... (b) the management bodies of two or more economic operators participating in the award procedure include the same persons, or persons who are spouses, relatives or relatives by marriage up to and including the second degree, or who have common interests of a personal, financial, economic or any other nature (6) ~~Before excluding an economic operator in accordance with the provisions of paragraph (1)(d),~~ the contracting authority/entity shall request in writing the Competition Council's opinion on the indications identified regarding the distortion of competition within or in connection with the award procedure in question. (on 13 July 2020, Paragraph (6) of Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (7) The contracting authority/entity is obliged to provide all information requested by the Competition Council for the purpose of formulating its opinion, in accordance with the provisions of paragraph (6). (On 13 July 2020, paragraph (7) of Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (8) For the purposes of paragraph (1)(f), serious breaches of contractual obligations shall include, by way of example, failure to fulfil obligations relating to the supply of goods or services; the supply of goods or services that are significantly non-compliant, rendering them unfit for use, in accordance with the intended purpose of the contracting authority/entity, or inappropriate conduct which raises serious doubts as to the economic operator's credibility. (on 13 July 2020, paragraph (8) of Article 81 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (9) The methodological rules for the implementation of the provisions of this Act shall establish the procedure for setting up a database of economic operators who are, or have been, in any of the situations provided for in paragraph (1)(a), (c), (f) and (i), a list valid for 5 years, unless the entry is annulled by a court decision. The list shall be published on the ANAP website and updated monthly. + Article 82(1) The contracting authority is obliged to accept as sufficient and relevant proof that the tenderer/candidate does not fall within any of the situations set out in Articles 79–81

any document considered relevant in this regard in the country of origin or in the country where the tenderer/candidate is established, such as certificates, criminal records or other equivalent documents issued by the competent authorities of that country. (2) Where there is uncertainty as to the existence or non-existence of a ground for exclusion, the contracting authority/entity shall be entitled to request information directly from the relevant foreign authorities referred to in paragraph (1). (on 13 July 2020, paragraph (2) of Article 82 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) With regard to the situations provided for in Article 81, in accordance with the domestic legislation of the state in which the candidates/tenderers are established, the requests provided for in paragraph (2) refers to natural persons and legal entities, including, where applicable, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer. (4) Where, in the country of origin or in the country in which the tenderer/candidate is established, documents of the kind referred to in paragraph (1) are not issued, or where such documents do not cover all the situations provided for in Articles 79–81, the contracting authority or entity shall be obliged to accept a declaration on one's own responsibility or, if there are no legal provisions in that country relating to declarations on one's own responsibility, an authenticated declaration made before a notary, an administrative or judicial authority, or a professional body competent in this regard. (on 13 July 2020, Paragraph (4) of Article 82 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 83 The contracting authorities/entities referred to in Article 10(1)(a) shall exclude an economic operator at any stage of the award procedure where they become aware that the economic operator in question is, in view of acts committed or omissions, either prior to or during the procedure, in one of the situations set out in Article 79 and Article 80(1). (On 13 July 2020, Article 83 of Paragraph §4. , Section 5, Chapter IV was amended by Point 18, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 84(1) Any economic operator in any of the situations provided for in Articles 79 and 81, which give rise to exclusion from the award procedure, may provide evidence to show that the measures taken by them are sufficient to demonstrate, in concrete terms, their credibility in relation to the grounds for exclusion. (2) Where the contracting authority/entity considers the evidence submitted by the economic operator in accordance with the provisions of paragraph (1) to be sufficient to demonstrate credibility in concrete terms, the contracting authority/entity shall not exclude the economic operator from the award procedure. (as at 13 July 2020, Paragraph (2) of Article 84 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The evidence which an economic operator in any of the situations provided for in Articles 79 and 81 may provide to the contracting authority or entity, for the purposes of paragraph (1), relates to the economic operator making payment or undertaking to pay compensation in respect of any damage caused by a criminal offence or other unlawful act, and the economic operator providing a full account the facts and circumstances in which the offence or unlawful act was committed, through active cooperation with the investigating authorities, as well as the adoption by the economic operator of concrete and appropriate measures at a technical, organisational and personnel level, such as: severing ties with persons and organisations involved in the misconduct, staff reorganisation measures, the implementation of control and reporting systems, the establishment of an internal audit structure to verify compliance with legal provisions and other rules, or the adoption of internal rules on liability and the payment of compensation, in order to prevent the commission of further offences or other unlawful acts. (on 13 July 2020, Paragraph (3) of Article 84 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3^1) Contracting authorities/entities shall assess the measures taken by economic operators and demonstrated in accordance with the provisions of paragraph (3), taking into account the seriousness and specific circumstances of the offence or breach in question. (On 13 July 2020, Article 84 of Paragraph §4. , Section 5, Chapter IV was supplemented by Point 19, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3^2) Where the measures provided for in paragraph (3^1) are deemed insufficient by the contracting authorities/entities, they shall provide the economic operator with a statement of the reasons leading to the decision to exclude it from the award procedure. (on 13 July 2020, Article 84 of Paragraph §4. , Section 5, Chapter IV was supplemented by Point 19, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) Where an economic operator has been subject, by a final court judgement, to a ban on participating in procedures for the award of a public or sectoral procurement contract or a concession contract, which takes effect in Romania, the provisions of paragraphs (1) to (3) shall not apply for the entire period of exclusion established by that judgment. (5) Where the economic operator has not been subject, by a final court judgement, to a ban on participating in procedures for the award of a public or sectoral procurement contract or a concession contract for a specific period, the grounds for exclusion set out in Articles 79 and 81 shall not apply: (a) where, in the case of the offences referred to in Article 79, a period of 5 years has elapsed since the date on which the conviction became final; ... (b) where, in the case of the situations, acts or events referred to in Article 81, a period of 3 years has elapsed since the date on which the relevant situation, act or event occurred. ... + Section a

6. Deadlines for the receipt of requests to participate and tenders for works concessions or

services + Article 85(1) Without prejudice to the provisions of this Act concerning the minimum time periods that must be ensured between, on the one hand, the date of transmission for publication of the notices for works concessions or services concessions and, on the other hand, the deadline for the submission of tenders/requests to participate, the contracting authority/entity is obliged to determine that period in accordance with the complexity of the concession contract and the specific requirements, so that interested economic operators have an adequate and sufficient period of time to draw up tenders/requests to participate and to prepare the qualification and selection documents required by the tender documentation.(2) Where tenders or requests to participate can only be drawn up after a site visit or after on-site consultation of additional documents on which the concession documents are based, the period set by the contracting authority/entity for the submission of tenders/requests to participate shall be longer than the minimum period provided for in this Act for the award procedure used, and shall be set in such a way that interested economic operators have a real and effective opportunity to obtain all the information necessary for the proper preparation of tenders/requests to participate. (On 13 July 2020, Article 85 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 7 Award Criteria + Article 86(1) Concession contracts shall be awarded on the basis of the most economically advantageous tender, determined on the basis of objective criteria which ensure that tenders are evaluated under conditions of genuine competition.(2) For the purposes of paragraph (1), the objective criteria must be directly related to the subject-matter of the works concession or the services concession, must not confer on the contracting authority/entity unlimited freedom of choice, and may relate to any of the following: a) the extent to which the concessionaire assumes certain risks; ... b) the level of discounted payments made by the contracting authority or entity; ... c) the level of user charges; ... d) the method of carrying out the works or providing the services, based on performance indicators of a qualitative, technical, functional, financial or other nature; ... e) the method of ensuring environmental protection; ... f) the manner in which social issues are addressed; ... g) the level of the royalty; ... h) the duration of the concession; ... i) innovation; ... j) whether the concessionaire has a collective labour agreement at unit level concluded with a trade union organisation, or whether a collective labour agreement at sectoral collective bargaining level applies to it. (On 17 November 2024, Paragraph (2) of Article 86, Section 7, Chapter IV was supplemented by Point 1 of Article VII of Law No. 283 of 13 November 2024, published in the Official Gazette No. 1139 of 14 November 2024) ... (on 13 July 2020, Paragraph (2) of Article 86, Section 7, Chapter IV was amended by Point 20, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The contracting authority/entity may use the criteria set out in paragraph (2) in combination, depending on the subject matter of the concession and to the extent that those criteria are compatible. (On 13 July 2020, paragraph (3) of Article 86 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) The award criteria are set out in the documents referred to in Article 71(2)(b), in descending order of importance, and are accompanied by requirements enabling the effective verification of the information provided by tenderers. + Article 87(1) Where the contracting authority/entity receives a tender proposing an innovative solution with an exceptional level of functional performance, which could not have been foreseen by a diligent contracting authority/entity, it may, exceptionally, alter the order of the award criteria to take account of that innovative solution. (on 13 July 2020, Paragraph (1) of Article 87 was amended by Point 5, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) In the case provided for in paragraph (1), the contracting authority/entity shall notify all tenderers of the change in the order of priority and issue a new invitation to tender, in compliance with the minimum time limits laid down in this Act.(3) In the situation referred to in paragraph (1), if the award criteria were published at the time of publication of the concession notice, the contracting authority/entity shall publish a new concession notice, in compliance with the minimum time limits referred to in Article 54(1).

(1). (On 13 July 2020, Article 87 of Section 7, Chapter IV was supplemented by Point 21, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) The alteration of the order of the award criteria in the situation provided for in paragraph (1) shall not result in discrimination. (On 13 July 2020, Article 87 of Section 7, Chapter IV was supplemented by Point 21, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (on 13 July 2020, Article 87 was amended by Points 3 and 5, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 8: Completion of the award procedure + Article 88: The award procedure shall be completed by: (a) the signing of the concession contract; or ... (b) the cancellation of the award procedure. ... + Article 89(1) The contracting authority/entity is obliged to cancel the concession contract award procedure in the following cases: (on 13 July 2020, the introductory part of paragraph (1) of Article 89 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (a) no tender or request to participate has been submitted, or no admissible tender or request to participate has been submitted; ... (b) admissible tenders have been submitted which cannot be compared due to the inconsistent approach to technical and/or financial solutions; ... c) breaches of legal provisions affect the award procedure or if it is impossible to conclude the contract; ... d) the National Council for the Settlement of Appeals or the court orders the amendment or removal of any technical specifications from the tender documents or from

other documents issued in connection with the award procedure, and the contracting authority/entity is unable to take remedial measures without affecting the principles set out in Article 2(2); (on 13 July 2020, Point (d) of paragraph (1) of Article 89 was amended by Point 15, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) ... (e) the contract may not be concluded with the tenderer whose tender has been declared the successful one on the grounds that the tenderer in question is in a situation of force majeure or is fortuitously unable to perform the contract and there is no compliant tender ranked second; ... f) circumstances arise which necessitate the award of a different type of contract to which a different legal regime applies than that applicable under the provisions of this Act; ... g) the value of the works concession or services concession at the time of the contract's award exceeds by more than 20 per cent the estimated value at the time the concession was initiated, which would necessitate the organisation of an award procedure in accordance with the provisions of this Act. (2)

For the purposes of paragraph (1)(c), 'breaches' means

'breach of legal provisions' means a situation where, during the award procedure, errors or omissions are identified and the contracting authority/entity is unable to take corrective measures without breaching the principles set out in Article 2(2). (On 13 July 2020, paragraph (2) of Article 89 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 90 The contracting authority/entity shall have the right to cancel the concession contract award procedure in the situations provided for in Article 59(5). (On 13 July 2020, Article 90 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 91 The contracting authority/entity is obliged to publish the decision to cancel the concession contract award procedure, together with the grounds for cancelling the award procedure, via the SEAP, within one working day of the adoption of the cancellation decision. (On 30 August 2021, Article 91 of Section 8, Chapter IV was amended by Point 3, Article III of ORDINANCE No. 3 of 25 August 2021, published in the OFFICIAL GAZETTE No. 821 of 27 August 2021) + Section 9: Notification of candidates/tenderers + Article 92(1) The contracting authority/entity is obliged to send the successful tenderer a notice of acceptance of their tender, thereby expressing its agreement to conclude the concession contract. (2) The contracting authority/entity shall, as soon as possible, each candidate/tenderer of the decisions taken regarding the award of the concession contract, including the name of the successful tenderer, the reasons for rejecting their request to participate or their tender, and the reasons underlying any decision not to award a contract or to restart the award procedure.(3) At the request of the interested party, the contracting authority/entity shall, as soon as possible but no later than 15 days after receiving a written request, inform each tenderer who has submitted an admissible tender but whose tender has not been declared the winner of the characteristics and relative merits of the tender declared the winner.(4) The contracting authority/entity shall be entitled to withhold certain information referred to in paragraphs (2) and (3) concerning the award of the concession contract, where disclosure of such information: (a) would impede the application of legal provisions or would be contrary to the public interest;.....b) would prejudice the legitimate commercial interests of an economic operator, whether public or private, or could prejudice fair competition between economic operators. ... (On 13 July 2020, Article 92 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 93(1) For the purposes of this Act, an admissible tender is one that is neither unacceptable nor non-compliant.(2) A tender shall be deemed unacceptable if it does not meet the formal requirements relating to its preparation and submission, nor the qualification and selection criteria set out in the concession documents.(3) A tender is considered non-compliant if it is irrelevant to the subject matter of the concession contract and clearly cannot, without substantial amendments, meet the needs and requirements of the contracting authority/entity as set out in the concession documents, including where the tender does not comply with the technical specifications and/or financial conditions. (as at 13 July 2020, Paragraph (3) of Article 93 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (4) An application to participate shall be deemed non-compliant where the candidate falls within one of the grounds for exclusion set out in Articles 79–81 or fails to meet the qualification criteria established by the contracting authority/entity. (On 13 July 2020, paragraph (4) of Article 83 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Chapter V Rules on the performance of concession contracts + Section 1 Subcontracting + Article 94(1) The contracting authority/entity is obliged to request the tenderer to specify in the tender: a) the categories of services/works under the contract which are to be subcontracted, as well as the percentage or value relating to the activities indicated in the tender as being carried out by subcontractors; ... b) the identification details of the proposed subcontractors. ... (as at 30 August 2021, Paragraph (1) of Article 94, Section 1, Chapter V was amended by Point 4, Article III of ORDINANCE No. 3 of 25 August 2021, published in the OFFICIAL GAZETTE No. 821 of 27 August 2021) (2) Subcontractors proposed in the tender or involved/declared after the contract has been signed are required to comply with the same environmental, social and labour obligations as set out in Article 38, in exactly the same way as tenderers. (as at 30 August 2021, Paragraph (2) of Article 94, Section 1, Chapter V was amended by Point 5, Article III of ORDINANCE No. 3 of 25 August 2021, published in the OFFICIAL GAZETTE No. 821 of 27 August 2021) (3) The application of the provisions of paragraph (1) does not diminish the concessionaire's liability in respect of the manner in which the future contract is performed

concession. + Article 95(1) The obligation set out in Article 94(1) shall not apply to subcontractors carrying out activities under the concession contract whose value is less than 5 per cent of the value of the works concession or the services concession, provided that this possibility is explicitly mentioned in the tender documentation.(2) By way of derogation from the provisions of paragraph (1), where the activities carried out by subcontractors are essential in relation to the subject-matter of the contract, as set out in the tender documentation, the provisions of Article 94(1) shall apply to them. + Article 96(1) The contracting authority/entity is obliged to verify whether any of the grounds for exclusion set out in Articles 79–81 apply to the proposed subcontractors. (as at 13 July 2020, Paragraph (1) of Article 96 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) Where a ground for exclusion is identified, the contracting authority/entity shall request the tenderer/candidate to replace the subcontractor in respect of whom the verification has revealed that they are in such a situation. (on 13 July 2020, Paragraph (2) of Article 96 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) For the purposes of the verification provided for in paragraph (1), the subcontractor shall complete a declaration on their own responsibility, stating that they are not in any of the situations giving rise to exclusion from the award procedure. + Article 97(1) The contracting authority/entity is obliged to make payments corresponding to the part or parts of the contract performed by the subcontractors proposed in the tender, if they so request, where the nature of the contract so permits, and if the proposed subcontractors have expressed their preference in this regard. (as at 13 July 2020, Paragraph (1) of Article 97 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The contracting authority/entity shall establish the mechanisms governing the manner in which the payments referred to in paragraph (1) are to be made through the concession documents and in the concession contract. (on 13 July 2020, Paragraph (2) of Article 97 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (3) The conditions and procedures for making the payments referred to in paragraph (1) shall be laid down in the methodological rules for the implementation of the provisions of this Act.(4) The provisions set out in paragraphs (1) to (3) shall not diminish the contractor's liability regarding the performance of the future concession contract. + Article 98(1) The contracting authority/entity shall request the concessionaire, following the award of the contract but no later than the commencement of the contract's performance, to provide the names, contact details and legal representatives of its subcontractors involved in the performance of the concession contract, to the extent that such information is known at that time. (on 13 July 2020, Paragraph (1) of Article 98 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) (2) The concessionaire is obliged to notify the contracting authority/entity of any changes to the information referred to in paragraph (1) during the term of the concession contract. (On 13 July 2020, paragraph (2) of Article 98 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020.) (3) The concessionaire shall be entitled to engage new subcontractors during the term of the concession contract, provided that the concessionaire in question submits to the contracting authority/entity the information specified in paragraph (1) and obtains its consent regarding any new subcontractors subsequently engaged in the performance of the contract. (On 13 July 2020, paragraph (3) of Article 98 was replaced by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Article 99 The contracting authority/entity shall have the right to extend the application of the obligations set out in Article 98: (a) in respect of suppliers involved in works concession contracts or services concession contracts; ... (b) in respect of subcontractors of the concessionaire's subcontractors or subcontractors at lower levels of the subcontracting chain. ... (On 13 July 2020, Article 99 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020) + Section 2 Amendment of the concession contract + Article 100 Concession contracts may be amended, without organising a new award procedure, only in the situations provided for in this section. + Article 101(1) Concession contracts may be amended, without organising a new award procedure, where the amendments, whether or not they are quantifiable in monetary terms and regardless of their value, were provided for in the original documents of the works concession or services concession in the form of clear, precise and unambiguous revision clauses, which may include value adjustment clauses or any other options.(2) In the situation referred to in paragraph (1), the revision clauses shall specify the subject matter, limits and nature of any amendments or options, as well as the conditions under which they may be invoked, and shall not provide for amendments or options that would affect the general nature of the concession contract. + Article 102(1) Concession contracts may be amended, without organising a new award procedure, where the following conditions are cumulatively met: (a) it becomes necessary to procure from the original concessionaire additional services or works which were not included in the original concession contract but which have become strictly necessary for the performance of the contract; ... b) it is impossible to change the concessionaire....(2) For the purposes of paragraph (1)(b), a change of the concessionaire is impossible where all of the following conditions are met: a) the replacement of the concessionaire cannot be carried out for economic or technical reasons, such as requirements regarding interchangeability or interoperability with existing equipment, services or installations procured under the original concession contract;.....b) a change of concessionaire would cause the contracting authority/entity

significant difficulties or a significant increase in costs. (on 13 July 2020, Point (b) of Paragraph (2) of Article 102 was amended by [Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) ... (3) In the case of concession contracts awarded by the contracting authority for the purpose of carrying out an activity other than those set out in Annex No. 2, no increase in value may exceed 10 per cent of the value of the initial works concession or services concession.

(4) Where the contracting authority makes several successive amendments, these may not, taken together, result in an increase of more than 10 per cent of the value of the original works concession or services concession. + Article 103 Concession contracts may be amended without organising a new award procedure where all of the following conditions are met: (a) [the amendment has become necessary as a result of circumstances which a contracting authority or entity acting with due diligence could not have foreseen; \(On 13 July 2020, point \(a\) of Article 103 was amended by Point 5, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) ... b) the amendment does not affect the general nature of the works concession or the services concession; ... c) in the case of concession contracts awarded by contracting authorities for the purpose of carrying out an activity other than those set out in Annex No. 2, the amendment shall not entail an increase in value of more than 10 per cent of the value of the initial concession, with the provisions of Article 102(4) applying accordingly. ... + Article 104 Contracting authorities/entities which amend a concession contract, in the cases provided for in Articles 102 and 103, shall be required to publish a notice to that effect in the Official Journal of the European Union and at national level, in accordance with the standard form established by the European Commission pursuant to the provisions of Article 33 of Directive 2014/23/EU of the European Parliament and of the Council. (On 13 July 2020, Article 104 was amended by [Point 1, Article III of EMERGENCY ORDINANCE No 114 of 9 July 2020, published in the OFFICIAL GAZETTE No 614 of 13 July 2020](#)) + Article 105(1) Concession contracts may be amended, without the need to organise a new award procedure, where a new concessionaire replaces the one to whom the contracting authority or entity initially awarded the works concession or services concession, in one of the following situations: (on 13 July 2020, the introductory part of paragraph (1) of Article 105 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (a) as a result of a review clause or an option established by the contracting authority/entity in accordance with Article 101; (on 13 July 2020, Subparagraph (a) of Paragraph (1) of Article 105 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) ... (b) the rights and obligations of the original concessionaire arising from the concession contract are assumed as a result of universal succession or by universal title as part of a reorganisation process, including through a merger or division, by another economic operator that meets the qualification and selection criteria originally established, provided that this change does not entail any other substantial amendments to the concession contract and is not carried out with the aim of circumventing the application of the award procedures provided for in this Act; ... (c) [the early termination of the concession contract and the assignment of contracts concluded with subcontractors by the main concessionaire of the contracting authority/entity, as a result of a review clause or an option established by the contracting authority/entity in accordance with Article 101. \(on 13 July 2020, subparagraph \(c\) of paragraph \(1\), Article 105 was amended by Points 3 and 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) ... (2) Where the review clause or option established by the contracting authority/entity in accordance with paragraph (1)(a) stipulates, in favour of the financing financial institutions, the right to assign the concession contract to another economic operator, that operator must meet the qualification and selection criteria set out in the concession notice and the tender documentation. (On 13 July 2020, paragraph (2) of Article 105 was amended by [Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) + Article 106 Concession contracts may be amended, without organising a new award procedure, where the amendments, regardless of their value, are not substantial, i.e. the amended contracts do not have characteristics that differ substantially from those of the originally signed document. Without prejudice to the provisions of Articles 101–105 and 107, an amendment to a concession contract during its term is considered substantial where at least one of the following conditions is met: (a) the amendment introduces conditions which, had they been included in the initial award procedure, would have allowed for the selection of candidates other than those initially selected, or the acceptance of a tender other than the one initially accepted, or would have attracted other participants to the award procedure; ... (b) the amendment alters the economic balance of the concession contract in favour of the concessionaire and/or the allocation of risks between the parties in a manner not provided for in the original works concession or services concession; ... c) the amendment considerably extends the scope of the works concession or the services concession; ... d) a new concessionaire replaces the original concessionaire, in cases other than those provided for in Article 105. ... (on 13 July 2020, Article 106 of Section 2, Chapter V was amended by [Point 22, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) Note ... [Articles 1–8 of EMERGENCY ORDINANCE No. 47 of 14 April 2022, published in the OFFICIAL GAZETTE No. 377 of 15 April 2022, provide as follows:](#)

Article 1(1) The price of public procurement contracts/sectoral contracts/concession contracts/framework agreements relating to investment objectives/projects/ongoing maintenance and repair works

or major repairs financed, in whole or in part, from public funds as defined in Article 2(27) of Law No. 500/2002 on public finances, as subsequently amended and supplemented, and, respectively, in Article 2(32) of Law No. 273/2006 on local public finances, as subsequently amended and supplemented, or from the contracting authorities' or entities' own funds as provided for in Article 4(1) of Law No 98/2016 on public procurement, as subsequently amended and supplemented, in Article 4(1) of Law No. 99/2016 on sectoral procurement, as subsequently amended and supplemented, and in Article 9(b) and (c) and Article 10(1)(b) and (c) of Law No. 100/2016 on works concessions and service concessions, as subsequently amended and supplemented, which are ongoing at the date of entry into force of this Emergency Ordinance, shall be adjusted, in accordance with the terms of this Emergency Ordinance, to take account of any increase or decrease in the costs on which the contract price was based.(2) The provisions of paragraph (1) shall apply to public procurement contracts/sectoral contracts/concession contracts/framework agreements for works as defined in Article 3(1)(a)

(c) and (m) of Law No. 98/2016, as subsequently amended and supplemented, Article 3(1)(b) and (l) of Law No. 99/2016, as subsequently amended and supplemented, and Article 5(1)(g) of Law No. 100/2016, as subsequently amended and supplemented, including framework contracts/agreements covering facilities and/or technological and functional machinery and equipment necessary for the execution of the works and, respectively, for commissioning and/or intended for the specific fitting out and equipping of the sites/investment projects/routine maintenance and repair works/major repairs, as set out in Annex No. 6, Section 4, points 4.3–4.5 of Government Decision No. 907/2016 on the stages of preparation and the framework content of the technical-economic documentation relating to investment objectives/projects financed from public funds, as subsequently amended and supplemented, as well as public procurement contracts, sectoral contracts and framework agreements for the preparation of feasibility studies and/or technical designs relating to transport infrastructure of national interest and which include geotechnical studies.(3) The adjustment provided for in paragraph (1) shall also apply to public works contracts concluded by legal entities not acting as contracting authorities, in accordance with the provisions of Article 6(1) of Law No 98/2016, as subsequently amended and supplemented.(4) The provisions of paragraph (1) shall apply to public works contracts, sectoral contracts, concession contracts and framework agreements for works referred to in paragraphs (2) and (3), which are in force on the date of entry into force of this Emergency Ordinance: (a) concluded prior to the date of entry into force of Law No. 98/2016, as subsequently amended and supplemented, Law No. 99/2016, as subsequently amended and supplemented, and Law No. 100/2016, as subsequently amended and supplemented, as defined in accordance with the public procurement legislation in force at the time of conclusion; b) concluded after the date of entry into force of Law No. 98/2016, as subsequently amended and supplemented, Law No. 99/2016, as subsequently amended and supplemented, and Law No. 100/2016, as subsequently amended and supplemented, respectively, regardless of their duration of performance, and in which no price revision clauses were provided for, in accordance with the provisions of Article 221(1)(a) of Law No. 98/2016, as subsequently amended and supplemented, Article 236 of Law No. 99/2016, as subsequently amended and supplemented, and Article 101 of Law No. 100/2016, as subsequently amended and supplemented.(5) The provisions of paragraph (1) shall apply to public procurement contracts, sectoral contracts and framework agreements for products, financed from the funds referred to in paragraph (1), as defined in Article 3(1)(1)(c) and (n) of Law No. 98/2016, as subsequently amended and supplemented, and in Article 3(1)(b) and (m) of Law No. 99/2016, as subsequently amended and supplemented, respectively, provided that all of the following conditions are met:(a) the contracts/framework agreements are in force on the date of entry into force of this Emergency Ordinance and do not contain any price revision clauses in accordance with the provisions of Article 221(1)(a) of Law No 98/2016, as subsequently amended and supplemented, or in accordance with the provisions of Article 236 of Law No 99/2016, as subsequently amended and supplemented;b) relate to technological and functional equipment/machinery, as provided for in paragraph (2), and these are necessary for the commissioning and/or specific fitting out and equipping of the investment projects/maintenance and routine repair works/major repairs, as provided for in paragraph (1), in accordance with their intended function, or strictly necessary for the execution of works relating to one of the activities set out in Annex 1 to Law No. 98/2016, as subsequently amended and supplemented, in Annex 1 to Law No 99/2016, as subsequently amended and supplemented, and in Annex 1 to Law No 100/2016, as subsequently amended and supplemented, respectively.(6) The provisions of paragraph (1) shall also apply to public procurement contracts, sectoral contracts and framework agreements for products, as referred to in paragraph (5)(a), which have as their subject matter the procurement of facilities and/or technological and functional machinery and equipment, as referred to in paragraph (2), as well as those relating to the procurement of products intended for the maintenance, repair, administration or operation of roads of national, county or local importance, classified in accordance with the provisions of Government Ordinance No. 43/1997 on the road regime, as republished, with subsequent amendments and additions, where the procurement is carried out through the award of a separate contract.(7) The provisions of paragraph (1) apply to public procurement contracts, sectoral contracts and framework service agreements, financed from the funds referred to in paragraph (1), as defined in Article 3(1)(1)(c) and (o) of Law No. 98/2016, as subsequently amended and supplemented, and in Article 3(1)(b) and (n) of Law No. 99/2016, as subsequently amended and supplemented, respectively, the subject matter of which is the carrying out of feasibility studies and/or technical designs, which include the geotechnical investigation of the foundation ground through drilling/boring for national transport infrastructure, which were in progress on the date of entry into force of this Emergency Ordinance and which do not contain the review clauses provided for in paragraph (4)(b).(8) The adjustment provided for in paragraph (1) shall also apply to public procurement contracts, sectoral contracts, concession contracts and framework agreements for works, which are in progress on the date of entry into force of this Emergency Ordinance, and into which is introduced

the price adjustment clause in accordance with the provisions of Article 2(6) of Government Ordinance No. 15/2021 on the regulation of certain fiscal and budgetary measures for the adjustment of prices in public procurement contracts, approved with amendments and additions by Law No. 281/2021, and in accordance with the provisions of Article III(1) and (2) of Law No. 281/2021 approving Government Ordinance No. 15/2021 on the regulation of certain fiscal and budgetary measures, as well as public procurement contracts/sectoral contracts/concession contracts/framework agreements for works/products/design services for transport infrastructure of national interest referred to in paragraph (7), the terms of which provide for a fixed price.

Article 2 The provisions of this Emergency Ordinance shall not apply to: a) public procurement contracts, sectoral contracts, concession contracts or framework agreements relating to projects financed from non-repayable external funds; b) award procedures relating to projects financed from non-repayable external funds that are ongoing on the date of entry into force of this Emergency Ordinance; c) projects funded through the NATO Security Investment Programme, for which price adjustments are made following approval by the relevant NATO bodies, in accordance with the provisions of Article 3(2) (2) of Law No. 294/2007 on the implementation in Romania of projects funded through the NATO Security Investment Programme, as subsequently amended and supplemented.

Article 3(1) The adjustment determined in accordance with the provisions of this Emergency Ordinance shall apply exclusively to the remaining part to be executed/supplied/provided as at the date of entry into force of this Emergency Ordinance, until the completion of the objectives/investment projects/works provided for in the framework agreements/routine maintenance and repair works/major repairs and the acceptance of the works upon completion, in accordance with the legal provisions in force on the date of acceptance, until the full supply and acceptance of the procured products, in accordance with the contractual provisions, and, respectively, until the acceptance of the technical and economic documentation relating to the design services, feasibility studies and/or technical designs—which also include the geotechnical study—for transport infrastructure of national interest, in accordance with the contractual provisions, following a justified request from the contractor. (2) The adjustment provided for in paragraph (1) shall apply to each payment request throughout the entire duration of the contract. (3) Contractors shall justify the adjustment to the amount of the payment request by applying the total construction cost index, hereinafter referred to as the ICC, published by the National Institute of Statistics in official publications. (4) In order to adjust the value of the payment request in accordance with paragraph (1), the

the following formula shall be used: where:— V_a represents the adjusted value of the payment claim, V_o represents the value of the payment claim in accordance with the prices set out in the tender on which the contract/framework agreement was based, a represents the percentage value of the advance payment, determined as the ratio between the value of the advance received and not repaid/unjustified and the contract price; p represents the percentage value of the profit, determined as the ratio between the value of the profit expressed in monetary terms and the contract price; ICC_n represents the total construction cost index for the month of the payment claim, and $ICC_{reference_date}$ represents the total construction cost index for the month preceding the deadline for submission of the tender, in accordance with the tender documentation or the documents relating to the direct procurement. In the case of subsequent contracts concluded under a framework agreement, $ICC_{reference_date}$ represents the total construction cost index for the month preceding the deadline for submitting the tender relating to the framework agreement. Where the month corresponding to the deadline for submitting the tender is prior to January 2019, $ICC_{reference_date}$ shall be taken as the total construction cost index for January 2019.

The advance payment and profit, expressed in monetary terms, shall be those set out in the tender on which the contract or framework agreement was based. (5) In the case of supplementary order forms, the reference date for adjusting the value of the payment request

is the month preceding the deadline for the submission of tenders for public procurement contracts/sectoral contracts/concession contracts/framework agreements, in accordance with the tender documentation or the documents relating to direct procurement, or the equivalent reference date in accordance with paragraph (4), where applicable, for quantities of additional works and/or products that have an equivalent in the initial tender, or the month in which the tender was submitted for quantities of additional works and/or products that do not have an equivalent in the initial tender. (6) Where, for the ICC_n index referred to in paragraph (4), no officially published values exist or these are not final at the date of submission of payment claims to the contracting authorities/entities, the latest available indices shall be used, and the adjustment shall be recalculated by the contractor once the indices become final, determining the final value of the payment claim on the basis of which the parties shall proceed to settle the amounts paid and due. (7) The value of the payment claim in accordance with the prices set out in the tender on which the contract V_o was based, as provided for in paragraph (4), shall include, where applicable: a) direct and indirect costs relating to the works and/or costs relating to the procurement of facilities and/or machinery and technological and functional equipment as provided for in Article 1(2), and shall not include the costs relating to design and technical assistance set out in Annex 6, Section 3, to Government Decision No. 907/2016, as subsequently amended and supplemented, where this also forms part of the works contract; or (b) the cost, excluding profit, relating to the procurement of products intended for the performance of maintenance, repair, administration or operation works on roads of national, county or local importance, classified in accordance with the provisions of Government Ordinance No. 43/1997, as republished, as subsequently amended and supplemented, where the procurement is carried out through the award of a separate contract. (8) In the case of the design work referred to in Article 1(2) and the framework service contracts/agreements referred to in Article 1(7), the adjustment shall apply to each payment request, throughout the duration of the contract, by applying the total consumer price index, hereinafter referred to as

hereinafter referred to as the CPI, as published by the National Institute of Statistics in official publications, using the following

formula: where – V_a represents the adjusted value of the payment request, V_o represents the value of the payment request based on the prices set out in the tender on which the contract/framework agreement was based, CPI_n represents the total consumer price index for the month of the payment request, and $IPC_reference_date$ represents the total consumer price index for the month preceding the deadline for submitting the tender, in accordance with the tender documentation or the documents relating to the direct procurement. In the case of subsequent contracts concluded under a framework agreement, the reference CPI represents the consumer price index for the month preceding the deadline for submitting the tender relating to the framework agreement. Where the month corresponding to the deadline for the submission of tenders is prior to January 2019, the reference CPI is taken to be the consumer price index for January 2019. ...

Article 4(1) Within 45 days of the date on which this Emergency Ordinance comes into force, contractors may submit a written request to the contracting authorities/entities asking for an adjustment to the value relating to the remaining work to be carried out or supplies to be provided, existing on the date of entry into force of this Emergency Ordinance, for all public procurement contracts, sectoral contracts, concession contracts and framework agreements to which they are party, as provided for in Article 1(2), (3) and (5) to (8), using the formula and the other provisions of this Emergency Ordinance, and the conclusion of addenda to the contracts within the time limit and with the content provided for in paragraph (3). (2) Contracting authorities/entities which have registered the requests referred to in paragraph (1) within the time limit specified therein shall be obliged to take the necessary legal steps to adjust the price of public procurement contracts/sectoral contracts/concession contracts/framework agreements by concluding addenda thereto. (3) The addenda referred to in paragraph (2) shall be concluded within 45 days of the expiry of the deadline set out in paragraph (1) and shall mandatorily specify the remaining work to be performed or supplies to be provided as at the date of entry into force of this Emergency Ordinance, determined in terms of quantity and value, the documents on the basis of which the remaining work to be performed is determined, which shall form annexes to the supplementary agreement; the formula set out in Article 3(4) or (8), as applicable; the value of the advance payment expressed as a percentage and in monetary terms; the profit expressed as a percentage and in monetary terms, broken down by contract category according to the subject matter — works, supply, the method of applying the provisions of Article 3(6), as well as the reference date provided for in Article 3(4) or (8), as applicable. (4) In the case of public procurement contracts/sectoral contracts/concession contracts/framework agreements for works which include a price adjustment clause in accordance with the provisions of Government Ordinance No. 15/2021, approved with amendments and additions by Law No. 281/2021, with the exception of the contracts referred to in Article 2(8) of the same Ordinance and in Article III(3) of Law No. 281/2021, by means of the addendum provided for in paragraph (3), in addition to specifying the mandatory elements mentioned in that paragraph, the parties agree that the wording introduced into the contract in accordance with Government Ordinance No. 15/2021, approved with amendments and additions by Law No. 281/2021, shall be replaced by the wording provided for in Article 3(4). (5) Failure by the contracting parties to submit the letter requesting an adjustment to the value for the remaining work to be performed or supplies to be provided as at the date of entry into force of this Emergency Ordinance, within the time limit set out in paragraph (1), shall result in their forfeiture of the right to benefit from the application of the provisions of this Emergency Ordinance. (6) The final contract price shall be determined following the submission of the final payment claim, on the basis of the summary statement which shall include all expenditure incurred under the contract, including under any addenda thereto, endorsed by the contractor, site manager and/or engineer/supervisor/consultant, as applicable, and approved by the contracting authority/entity, by the conclusion of an addendum to the contract. In the case of public procurement contracts, sectoral contracts, concession contracts or framework agreements relating to routine maintenance and repair works, for which there is no legal obligation for the works to be supervised by authorised site managers, engineers, supervisors or consultants, as appropriate, the summary statement shall be endorsed by the contractor and approved by the contracting authority or entity. The final price of the public procurement contract, sectoral contract, concession contract or framework agreement for works must fall within the range of the technical and economic indicators relating to the investment objective or project covered by the contract, except where the final price exceeds the value of the technical and economic indicators as a result of the application of the provisions of this Emergency Ordinance. In such a case, the technical and economic indicators shall be updated under the sole responsibility of the chief authorising officer, in accordance with the law.

Article 5(1) Approval is hereby granted for the additional sums required to adjust the price of public procurement contracts, sectoral procurement contracts, concession contracts and framework agreements to be met from the State budget, via the budgets of the chief authorising officers/authorising officers responsible for implementing national investment programmes, following the conclusion of the addenda referred to in Article 4(3), or as a result of the conclusion of contracts after the entry into force of this Emergency Ordinance containing the adjustment clause established in accordance with the provisions of this Emergency Ordinance, exclusively for those relating to eligible expenditure corresponding to the contribution from the State budget through programmes established by the funding contracts, in accordance with the specific legal regulations applicable to each individual national programme, for investment objectives/projects funded through national programmes on the basis of funding contracts, concluded in accordance with the provisions of Article 34(2) of Law No 273/2006, as subsequently amended and supplemented. (2) The commitment appropriations and budgetary appropriations required to amend the funding agreements referred to in paragraph (1) shall be allocated in the budgets of the chief authorising officers when the draft annual budget laws and budgets are drawn up, in accordance with the provisions of Law No. 500/2002, as

subsequent amendments and additions, and Article 30(2) of the Fiscal and Budgetary Responsibility Act No. 69/2010, as republished.(3) For the purposes of implementing the provisions of this Emergency Ordinance, beneficiaries of national programmes shall, during the term of the funding contracts referred to in paragraph (1), submit requests setting out the amounts required to adjust the price of public procurement/sectoral procurement/concession contracts or in accordance with the provisions of this Emergency Ordinance, until the completion of the investment objectives/projects or until the supply of the products, drawn up in accordance with the specific legal regulations for each national programme, accompanied by the following documents:(a) the addenda referred to in Article 4(3) or the contracts containing the adjustment clause established in accordance with the provisions of this Emergency Ordinance, as applicable, in a copy certified as a true copy of the original; (b) a supporting note setting out the method used to determine the additional sums requested and the calculation elements used; (c) the documents specified in accordance with the regulations set out in the legislative acts on which the conclusion of the funding contracts was based. (4) The requests referred to in paragraph

(3) may be submitted by beneficiaries of national programmes only after at least 85 per cent of the amount allocated under the funding agreements has been utilised.(5) During the term of the funding agreements referred to in paragraph (1), provided that commitment appropriations and budgetary appropriations have been allocated in the budgets of the chief authorising officers, in accordance with the provisions of paragraph (2), addenda to the funding agreements shall be concluded between the chief authorising officers/authorising officers managing the national programmes and the beneficiaries who have submitted applications in accordance with paragraph (3). (6) Where beneficiaries do not submit applications, accompanied by the documents referred to in paragraph (3), during the period of validity of the funding contracts referred to in paragraph (1), the amounts required to adjust the price of public procurement contracts/sectoral contracts/concession contracts/framework agreements for works/products shall be borne by the beneficiaries.(7) The requests referred to in paragraph (3) may be drawn up and submitted in electronic form, in accordance with the provisions of Government Emergency Ordinance No. 38/2020 on the use of electronic documents by public authorities and institutions.

Article 6(1) Notwithstanding the provisions of Article 47(9) and (10) of Law No 500/2002, as subsequently amended and supplemented, for the duration of the national programmes they manage, as determined in accordance with the legal regulations establishing them, and/or during the term of public procurement contracts/sectoral contracts/concession contracts/framework agreements falling within the scope of this Emergency Ordinance, chief authorising officers are authorised to transfer budgetary appropriations between budget chapters and between programmes, beyond the prescribed limits, throughout each year, until the completion and acceptance of the works, or until the supply and acceptance of the products, in accordance with the approved budgetary provisions, with a view to financing the expenditure arising from the adjustment of prices under public procurement contracts/sectoral contracts/concession contracts/framework agreements in accordance with Article 5.(2) Notwithstanding the provisions of Article 49(7) of Law No. 273/2006, as subsequently amended and supplemented, during the term of public procurement contracts/sectoral contracts/concession contracts/framework falling within the scope of this Emergency Ordinance, the decision-making bodies of local public administration shall be entitled to transfer budgetary appropriations between budget chapters and between programmes, beyond the prescribed limits, throughout each year, until the completion and acceptance of the works, or until the supply and acceptance of the products, in accordance with the approved budgetary provisions, with a view to financing the expenditure arising from the adjustment of prices in public procurement contracts/sectoral contracts/concession contracts/framework agreements in accordance with Article 5.

Article 7(1) The provisions of this Emergency Ordinance shall also apply to public procurement contracts/sectoral contracts/concession contracts/framework agreements for works/products/services relating to the design of transport infrastructure of national interest for which award procedures or direct awards are ongoing on the date of entry into force of this Emergency Ordinance, where the tender documentation or the documents relating to the direct award do not include price revision clauses.(2) The provisions of this Emergency Ordinance shall also apply to procedures already in progress on the date of entry into force of this Emergency Ordinance, where the tender documentation or the documents relating to direct procurement price revision or indexation clauses have been provided for, based on the inflation rate or other indices, including the adjustment clause provided for in Government Ordinance No. 15/2021, approved with amendments and additions by Law No. 281/2021.(3) In applying the provisions of paragraph (1), where the award procedures are at a stage prior to the deadline for the submission of tenders, the contracting authorities/entities are obliged to take the necessary steps to amend the tender documentation to include the adjustment clause established in accordance with this Emergency Ordinance, and where the award procedures are at a stage subsequent to the submission of tenders, following the completion of the procedures or direct awards, contracts shall be concluded in accordance with the tender documentation or the documents relating to the direct awards, and subsequently the provisions of Article 4 shall apply, with the exception of the time limits set out in Article 4(1) and (3). The request for the application of the provisions of this Emergency Ordinance shall be submitted by the contractor within 15 days of the conclusion of the contract, but no later than the date of issue of the order to commence performance of the contract, on pain of forfeiture as provided for in Article 4(5), and the addendum shall be concluded within 10 days of the submission of the request. (4) In applying the provisions of paragraph (2), following the completion of the procedures, public procurement contracts, sectoral procurement contracts, concession contracts and framework agreements shall be concluded in accordance with the tender documentation or the documents relating to direct procurement, and, during the term of the contracts/framework agreements, should the application of the review clauses in the contracts result in a price adjustment lower than that resulting from

For the purposes of applying the provisions of this Emergency Ordinance, the parties shall apply the provisions of paragraphs (8)–(10). (5) The provisions of this Emergency Ordinance shall also apply to procedures already in progress on the date this Emergency Ordinance comes into force, where the tender documentation or the documents relating to direct procurement contain price revision clauses, but where such clauses are to be applied only after a certain period has elapsed from the date of conclusion of the contracts or framework agreements and/or upon fulfilment of certain conditions for their application, where applicable, for the period between the date of conclusion of the contracts or framework agreements and the date on which the period commences from which the price revision clause applies and/or the conditions are met, as the case may be. (6) Notwithstanding the provisions of Article 1(4)(b), (5)(a), (6) and (7), the provisions of this Emergency Ordinance shall also apply to ongoing public procurement contracts, sectoral contracts, concession contracts and framework agreements for works, products or design services relating to transport infrastructure of national interest, regardless of the duration of their execution, supply or provision, in which, and in the initial tender documentation or the documents relating to direct awards, price revision clauses have been provided for, but for which the contracts stipulate that such clauses shall apply only after a certain period has elapsed from the date of their conclusion and/or upon the fulfilment of certain conditions for their application, where applicable, for the period between the date of entry into force of this Emergency Ordinance and the date on which the period commencing from which the price revision clause applies and/or the conditions are met expires, as the case may be, exclusively for the remaining part to be performed/supplied/provided as at the date of entry into force of this Emergency Ordinance. (7) In order to eliminate double adjustments to amounts, as a result of the application of the provisions of paragraph (6), where the revision clauses in contracts also relate to amounts paid prior to their application, the adjustment of the price of the public procurement contract, sectoral contract, concession contract or framework agreement for works/products/services relating to the design of transport infrastructure of national interest, by applying the review clause in the contract, shall be made taking into account the additional amounts paid as a result of the application of paragraph (6); the contracting parties shall reconcile the additional amounts determined as a result of the application of the provisions of this Emergency Ordinance with the additional amounts resulting from the application of the contract's revision clause. (8) From the date of entry into force of this Emergency Ordinance, by way of derogation from the provisions of Article 1(4)(b), (5)(a), (6) and (7), the adjustment determined in accordance with this Emergency Ordinance shall also apply to public procurement contracts, sectoral contracts, concession contracts and agreements. (6) and (7), the adjustment established in accordance with this Emergency Ordinance shall also apply to ongoing public procurement contracts/sectoral contracts/concession contracts/framework agreements for works/products/services relating to the design of transport infrastructure of national interest, regardless of the duration of their execution/supply/provision, which contain price revision or adjustment clauses, other than those provided for in Article 1(8), based on the inflation rate or other indices, the application of which results, on the date of entry into force of this Emergency Ordinance, exclusively for the remaining part of the contract to be performed, to a price adjustment value lower than that resulting from the application of the provisions of this Emergency Ordinance, for the price difference up to the value of the adjustment established as a result of the application of this Emergency Ordinance. (9) In order to eliminate double surcharges resulting from the application of the provisions of paragraph (8), the price adjustment of the public procurement contract, sectoral contract, concession contract or framework agreement for works, products or services relating to the design of transport infrastructure of national interest, in accordance with the provisions of this Emergency Ordinance, shall be made taking into account the additional amounts resulting from the application of the clause in the contract; the contracting parties shall reconcile the additional amounts determined as a result of the application of the provisions of this Emergency Ordinance with the additional amounts resulting from the application of the review clause in the contract. (10) Where, during the performance of public procurement contracts/sectoral contracts/concession contracts/framework agreements for works/products/transport infrastructure design services of national interest referred to in paragraph (8), the price increase resulting from the adjustment determined in accordance with the provisions of this Emergency Ordinance is less than the price increase resulting from the application of the contract's revision clause, the contract's revision clause shall apply exclusively for that period. (11) The provisions of paragraphs (6) and (8) shall be applied in accordance with the provisions of Article 4.

Article 8 Amendments to public procurement contracts/sectoral contracts/concession contracts/framework agreements resulting from the application of this Emergency Ordinance shall be treated in the same way as the situations provided for in Article 221(1)(e) in conjunction with Article 221(7) of Law No. 98/2016, as subsequently amended and supplemented, in Article 240(2) in conjunction with paragraph (3) of Law No. 99/2016, as subsequently amended and supplemented, and to Article 106 of Law No. 100/2016, as subsequently amended and supplemented, as applicable. + Article 107(1) Concession contracts may be amended, without organising a new award procedure, where the following conditions are cumulatively met: (a) the value of the amendment is less than the threshold value provided for in Article 11(1); (on 4 June 2018, point (a) of paragraph (1), Article 107, Section 2, Chapter V was amended by Point 5, Article III of EMERGENCY ORDINANCE No. 45 of 24 May 2018, published in the OFFICIAL GAZETTE No. 459 of 4 June 2018) ... (b) the value of the amendment is less than 10 per cent of the value of the initial works concession or the initial services concession. (2) The amendment to the concession contract in accordance with the provisions of paragraph (1) shall not affect the general nature of the works concession or the services concession. (3) In the situation provided for in paragraph (1), where several successive amendments are made, the value of the amendments shall be determined on the basis of the total net value of those successive amendments. (4) For the purposes of calculating the value referred to in paragraph (1), Article 102(3) and Article 103(c), the discounted value shall be used, which represents: a) the reference value, where the concession contract includes a clause

indexation; ... b) the amount calculated on the basis of the average inflation rate published by the National Institute of Statistics, where the concession contract does not include an indexation clause. ... + [Article 108 The methodological rules for the application of the provisions of this Act shall lay down obligations on the contracting authority/entity to notify the institution responsible for ex-ante control of its intention to make amendments to concession contracts in accordance with the provisions of this section. \(On 13 July 2020, Article 108 was amended by Point 4, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) + Article 109(1) Any amendment to a concession contract during its term, other than in the cases and under the conditions provided for in this section, shall be made by organising a new award procedure, in accordance with the provisions of this Act.(2) [In the event of non-compliance with the provisions of paragraph \(1\), the contracting authority/entity shall be entitled to unilaterally terminate the original concession contract. \(on 13 July 2020, paragraph \(2\) of Article 109 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) (3) [The contracting authority/entity shall include the right of unilateral termination provided for in paragraph \(2\) in the contractual terms and conditions set out in the tender documentation. \(as at 13 July 2020, paragraph \(3\) of Article 109 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) + Section 3 Termination of the concession contract + Article 110(1) Without prejudice to the provisions of ordinary law concerning the termination of contracts or the right of the contracting authority/entity to seek a declaration of the absolute nullity of the concession contract, in accordance with the provisions of general law, the contracting authority/entity is entitled to unilaterally terminate a concession contract, during its term, in any of the following situations: (as at 13 July 2020, the introductory part of paragraph

(1) of Article 110 was amended by [Points 3 and 4 of Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020](#)) (a) at the time of the award of the contract, the concessionaire was in one of the situations provided for in Articles 79–81, which would have led to its exclusion from the award procedure; ... (b) the contract should not have been awarded to that concessionaire, given a serious breach of obligations arising from the relevant European legislation, which has been established by a decision of the Court of Justice of the European Union(2) [The contracting authority/entity shall include the right to unilateral termination provided for in paragraph \(1\) into the contractual terms contained in the tender documentation. \(on 13 July 2020, paragraph \(2\) of Article 110 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) + Chapter VI Administrative Offences and Penalties + Article 111(1) [The contracting authority/entity shall be liable for administrative offences in the cases and under the conditions provided for by this Act. \(as at 13 July 2020, Paragraph \(1\) of Article 111 was amended by Point 3, Article III of EMERGENCY ORDINANCE No. 114 of 9 July 2020, published in the OFFICIAL GAZETTE No. 614 of 13 July 2020\)](#) (2) The following constitute administrative offences and are punishable by a fine of between 5,000 lei and 30,000 lei: a) the award of a concession contract without the prior publication of a concession notice, in cases where such publication is mandatory under the provisions of Article 63(1), or of a notice of intent, in accordance with the provisions of Article 63(2); ... b) breaching the provisions of Article 13(3); ... c) breaching the provisions of Article 72.d) [failure to implement the decision of the National Council for the Settlement of Appeals after the date on which it becomes final; \(on 4 June 2018, Subparagraph \(d\) of Paragraph \(2\), Article 111, Chapter VI was amended by Point 6, Article III of EMERGENCY ORDINANCE No. 45 of 24 May 2018, published in the OFFICIAL GAZETTE No. 459 of 4 June 2018\)](#)(e) [failure to provide ANAP with information relating to the award or amendment of concession contracts, for the purpose of ANAP carrying out its functions; \(on 22 December 2017, Paragraph](#)

(2) of Article 111, Chapter VI was supplemented by [Point 3, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017\)](#).....f) [any breach of the provisions of this Act or of the regulatory acts issued in implementation thereof, resulting in a breach of the provisions of Article 2; \(on 22 December 2017, Paragraph \(2\) of Article 111, Chapter VI was supplemented by Point 3, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017\)](#)(g) [breach of the rules governing the drafting of technical specifications as provided for in Article 74; \(on 22 December 2017, Paragraph \(2\) of Article 111, Chapter VI was supplemented by Point 3, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017\)](#)(h) [breach of the rules on disclosure and transparency laid down in Article](#)

62–70; (on 22 December 2017, Paragraph (2) of Article 111, Chapter VI was supplemented by [Point 3, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017](#)) i) [the use of qualification and selection criteria other than those set out in Article 75 or of award criteria other than those provided for in Article 86; \(on 22 December 2017, Paragraph \(2\) of Article 111, Chapter VI was supplemented by Point 3, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017\)](#)(j) [the incorrect application, within the](#)

the qualification/selection and/or evaluation process, of the qualification and selection criteria, the award criterion or the evaluation factors; (as at 22 December 2017, Paragraph (2) of Article 111, Chapter VI was supplemented by [Point 3, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017](#))k) [the cancellation of a procurement procedure in cases other than those](#)

provided for in Articles 89–90, or the creation of artificial circumstances for the cancellation of the award procedure; (on 22 December 2017, Paragraph (2) of Article 111, Chapter VI was supplemented by Point 3, Article III of the ORDINANCE OF

EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017) ... l) breach of the provisions of Article 92. (on 22 December 2017, Paragraph (2) of Article 111, Chapter VI, was supplemented by Point 3, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017) ... (3) The administrative penalty shall be imposed on the contracting authority or entity, which may order measures to be taken against the person or persons involved

in the concession process that formed the subject of the administrative offence, only if the courts find that they have, through wilful misconduct amounting to gross negligence, either performed or failed to perform any act or deed in connection with the exercise, in accordance with the law, of their respective duties. (On 30 August 2021, Paragraph (3) of Article 111, Chapter VI, was amended by Point 6, Article III of ORDINANCE No. 3 of 25 August 2021, published in the OFFICIAL GAZETTE No. 821 of 27 August 2021) (4) The commission of an administrative offence does not necessarily entail the causing of damage.(5) The determination of the damage must take into account the circumstances of the administrative offence and be substantiated. + Article 112 The establishment of administrative offences and the imposition of penalties shall be carried out ex post by persons authorised for this purpose by the Romanian Court of Auditors. (On 4 June 2018, Article 112 of Chapter VI was amended by Point 7, Article III of EMERGENCY ORDINANCE No. 45 of 24 May 2018, published in the OFFICIAL GAZETTE No. 459 of 4 June 2018) + Article 112¹ Notwithstanding the provisions of Article 13(1) of Government Ordinance No. 2/2001 on the legal regime governing administrative offences, approved with amendments and additions by Law No. 180/2002, as subsequently amended and supplemented, the right to impose an administrative fine shall lapse 36 months after the date on which the offence was committed. (On 22 December 2017, Chapter VI was supplemented by Point 4, Article III of EMERGENCY ORDINANCE No. 107 of 20 December 2017, published in the OFFICIAL GAZETTE No. 1022 of 22 December 2017) + Article 113 In the case of the administrative offences provided for in Article 111, the provisions of Government Ordinance No.

2/2001, approved with amendments and additions by Law No. 180/2002, as subsequently amended and supplemented. (On 10 September 2022, Article 113 of Chapter VI was amended by Point 4, Article III of Law No. 208 of 11 July 2022, published in the Official Gazette No. 697 of 12 July 2022) + Chapter VII Transitional and Final Provisions + Article 114(1) The competent national authorities shall have powers within the scope of this Law, such as regulatory, advisory and operational support functions, ex-ante control, ex-post control, monitoring, supervision, the detection of conflicts of interest, the prevention of bid-rigging and other functions aimed at ensuring compliance with the principles set out in Article 2(2).(2) The methodological rules for the implementation of the provisions of this Act shall set out in detail the specific obligations and responsibilities of the competent national authorities in relation to the performance of these functions. + Article 115 Within 60 days of the date of publication of this Act in the Official Gazette of Romania, Part I, ANAP shall draw up methodological rules for the implementation of its provisions, which shall be approved by a Government decision. + Article 116(1) This Act shall apply to procedures for the award of works concessions or service concessions initiated after the date of its entry into force.(2) Procedures for the award of works concessions or service concessions that are ongoing on the date this Act comes into force shall be governed by the law in force on the date the award procedure was initiated. (3) This Act applies to concession contracts concluded after the date on which it comes into force.(4) Concession contracts concluded before the date of entry into force of this Act shall be subject to the provisions of the law in force on the date on which they were concluded, in all matters relating to their conclusion, amendment, interpretation, effects, performance and termination. + Article 117 On the date of entry into force of this Act, the following shall be repealed: a) the Public-Private Partnership Act No. 178/2010, published in the Official Gazette of Romania, Part I, No. 676 of 5 October 2010, as subsequently amended and supplemented; ... b) Government Decision No. 71/2007 approving the implementing rules for the provisions relating to the award of public works concession contracts and service concession contracts provided for in Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, public works concession contracts and service concession contracts, published in the Official Gazette of Romania, Part I, No. 98 of 8 February 2007; ... c) any other conflicting provisions contained in any other legislative acts. ... + Article 11 Annexes Nos. 1–3 form an integral part of this Act.*This Act transposes the provisions of Articles 3, 8, 11, 13–19, 22–26, 28, 31, 34–36, Articles 38–40, Article 43, Article 44 and Article 54 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, published in the Official Journal of the European Union, Series L, No 94 of 28 March 2014, and, in part, the provisions of Articles 1, 2, 4–7, 9, 10 and 20, Articles 21, 29, 30, 32, 33, 37, 41, 42 and 45 of Directive 2014/23/EU of the European Parliament and of the Council, as well as Article 9 of Directive (EU) 2022/2.041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, published in the Official Journal of the European Union (OJEU), Series L, No 275 of 25 October 2022. (On 17 November 2024, the reference to the transposition of certain directives was amended by Point 2, Article VII of Law No. 283 of 13 November 2024, published in the Official Gazette No. 1139 of 14 November 2024) This Act was adopted by the Romanian Parliament in accordance with the provisions of Article 75 and Article 76(2) of the Constitution of Romania, as republished.

p. THE PRESIDENT OF THE CHAMBER OF DEPUTIES,
FLORIN IORDACHE

THE PRESIDENT OF THE SENATE

CĂLIN-CONSTANTIN-ANTON POPESCU-TĂRICEANU Bucharest, 19 May 2016. No. 100. + Annex No. 1 List

of activities referred to in Article 5(1)(q)

NACE Rev. 1*1)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Description	Notes	
45			Construction	This division includes: the construction of new buildings and works, restoration and routine repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition of buildings; earthworks	This class includes: - the demolition of buildings and other structures; - site clearance; - earthworks: excavation, backfilling, levelling of construction sites, trench digging, rock removal, demolition by blasting, etc.; - preparation of sites for mining operations; - soil removal and other works relating to the development and preparation of land and mining sites. This class also includes: - drainage of construction sites; - drainage of agricultural and forestry land.	45110000
		45.12	Drilling and boring works	This class includes: - exploratory drilling, reconnaissance drilling and core sampling for construction, as well as for geophysical, geological or other similar surveys. This class excludes: - drilling of wells for the extraction of crude oil or natural gas (see class 11.20); - drilling of water wells (see class 45.25); - digging of wells (see class 45.25); - exploration for crude oil and natural gas deposits, as well as geophysical, geological and seismic surveys (see class 74.20).	45120000
	45.2		Complete or partial construction works; civil engineering works		45200000
		45.21	General construction of buildings and civil engineering works	This class includes: - the construction of all types of buildings and civil engineering works; - bridges, including those supporting elevated roads, viaducts, tunnels and underpasses; - pipelines, communication lines and power lines for long-distance transmission; - pipelines, communication lines and power lines for urban networks; - related urban development works; - the assembly and installation of prefabricated structures on construction sites. This class excludes: - services relating to the extraction of crude oil and natural gas (see class 11.20); - the construction of fully prefabricated structures made of materials other than concrete, manufactured by the unit carrying out the works (see divisions 20, 26 and 28); - construction works, other than those for buildings, for stadiums, swimming pools, sports halls, tennis courts, golf courses and other sports facilities (see class 45.23); - building installation works (see class	45210000 with the exception of: 45213316 45220000 45231000 45232000

				45.3); - finishing works (see class 45.4); - architectural and engineering activities (see class 74.20); - construction project management (see class 74.20).	
		45.22	Erection of roof structures and roofing	This class includes: - erection of roof structures; - installation of roofing; - waterproofing works.	45261000
		45.23	Construction of motorways, roads, aerodromes and sports complexes	This class includes: - the construction of motorways, roads, other vehicular and pedestrian routes; - the construction of railways; - the construction of runways; - construction works, other than those relating to buildings, for stadiums, swimming pools, sports halls, tennis courts, golf courses and other sports facilities; - the painting of road surfaces and car parks. This class does not include: - preliminary earthworks (see class 45.11).	45212212 and DA03 45230000 with the exception of: 45231000 45232000 45234115
		45.24	Hydraulic engineering works	This class includes the construction of: - waterways, ports, river works, marinas, locks, etc.; - dams and dykes; - dredging; - underwater works.	45240000
		45.25	Other construction works involving specialised works	This class includes: - specialised construction activities which are common to several types of works and which require specialised skills or equipment; - the construction of foundations, including the installation of piles; - drilling and construction of water wells, and the excavation of wells; - the erection of metal structural elements not manufactured by the unit carrying out the works; - the bending of metal structures; - bricklaying or stonework; - the erection and dismantling of own or hired scaffolding and work platforms; - the construction of chimneys and industrial furnaces. This class does not include: - the hire of scaffolding without erection and dismantling (see class 71.32).	45250000 45262000
	45.3		Installation works		45300000
		45.31	Electrical installation works	This class includes: - the installation, in buildings or other construction projects, of the following: - electrical cables and connections; - telecommunications systems; - electrical heating installations; - antennas for residential buildings; - fire alarm systems; - burglar alarm systems; - lifts and escalators; - lightning conductors, etc.	45213316 45310000 with except: 45316000
		45.32	Insulation works	This class includes: - the installation, in buildings or other construction projects, of thermal, acoustic or vibration insulation. This class excludes: - waterproofing works (see class 45.22).	45320000
		45.33	Plumbing	This class includes: - the installation, in buildings or other construction projects, of the following items: - sanitary fittings and equipment; - gas distribution equipment; - heating, ventilation, refrigeration or air-conditioning equipment and ductwork; - sprinkler fire-extinguishing systems. This class does not	45330000

				include: - the installation of electric heating systems (see class 45.31).	
		45.34	Other installation works	This class includes: - the installation of lighting and signalling systems for roads, railways, airports and ports; - the installation, in buildings or other construction projects, of installations and equipment not classified elsewhere.	45234115 45316000 45340000
	45.4		Finishing works		45400000
		45.41	Plastering	This class includes: - the application, in buildings or other construction projects, of plaster and stucco for interior and exterior structural or decorative purposes, including associated cladding materials.	45410000
		45.42	Joinery and carpentry	This class includes: - the installation of doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and similar items, made of wood or other materials, which are not manufactured by the unit carrying out the work; - interior fittings, such as ceilings, wooden panelling, movable partitions, etc. This class excludes: - the laying of parquet or other wooden flooring (see class 45.43).	45420000
		45.43	Flooring and wall covering	This class includes: - the installation, in buildings or other construction projects, of the following items: - ceramic, concrete or stone tiles for walls or floors; - parquet and other wooden flooring, carpets and linoleum; - including those made of rubber or plastic; - floor or wall coverings made of terrazzo, marble, granite or slate; - wallpaper.	45430000
		45.44	Painting and glazing	This class includes: - interior and exterior painting of buildings; - painting of civil engineering structures; - fitting of glass, mirrors, etc. This class excludes: - installation of windows (see class 45.42).	45440000
		45.45	Other finishing works	This class includes: - the installation of private swimming pools; - the cleaning of the external walls of buildings using steam, sandblasting or other similar methods; - other building completion and finishing works not classified elsewhere. This class excludes: - cleaning the interior walls of buildings and other structures (see class 74.70).	45212212 and DA04 45450000
	45.5		Rental of construction or demolition equipment with operator		45,500,000
		45.50	Rental of or	This class does not include: - the hire of construction or demolition machinery and equipment without an operator (see class 71.32).	45500000

		demolition machinery and equipment with an operator	
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Note ...

*1) Council [Regulation \(EEC\) No 3037/90](#) of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). + Annex 2: List of activities referred to in Article 10(1)

1. Gas and heat	(1) The following are considered relevant activities in the field of gas and heat: a) the provision or operation of fixed networks intended for the provision of public services in the field of the production, transmission or distribution of gas or heat; b) the supply of gas or heat through networks of the kind referred to in point a). (2) The supply of gas or heat to fixed networks by a contracting entity referred to in Article 10(1)(b) and (c) of the Act, which provides a service to the public, shall not be considered a relevant activity within the meaning of paragraph (1) if all of the following conditions are met: (a) the production of gas or heat by that contracting entity is the inevitable consequence of carrying out an activity other than those considered relevant under this Act; b) the supply of gas and heat via public networks is intended solely for the commercial exploitation of such production and accounts for no more than 20 per cent of the contracting entity's turnover, taking into account the average over the last three years, including the current year.
2. Electricity	(1) The following are considered relevant activities in the field of electricity: a) the provision or operation of fixed networks intended for the provision of public services in the field of the generation, transmission or distribution of electricity; b) the supply of electricity via networks of the kind referred to in point (a). (2) The supply of electricity to fixed networks by a contracting entity referred to in Article 10(1)(b) and (c) of the Act, which provides a service to the public, shall not be considered a relevant activity within the meaning of paragraph (1) if all of the following conditions are met: (a) the generation of electricity by the contracting entity in question is intended for the purpose of carrying out an activity other than those considered relevant under this Act; b) the supply of electricity via public networks depends solely on the contracting entity's own consumption and has not exceeded 30 per cent of that contracting entity's total energy production, taking into account the average over the last three years, including the current year.
3. Water	(1) The following are considered relevant activities in the water sector: a) the provision or operation of fixed networks intended for the provision of public services relating to the production, transport or distribution of drinking water; b) the supply of drinking water to networks of the kind referred to in point (a). (2) This Act also applies to concession contracts awarded by contracting entities carrying out an activity referred to in paragraph (1) and which relate to the following: a) hydraulic engineering, irrigation or drainage projects, provided that the volume of water intended for the supply of drinking water represents more than 20 per cent of the total volume of water made available through such projects or irrigation or drainage installations; b) the discharge or treatment of waste water. (3) The supply of electricity to fixed networks by a contracting entity referred to in Article 10(1)(b) and (c) of the Act, which provides a service to the public, shall not be considered a relevant activity within the meaning of paragraph (1), provided that all of the following conditions are met: (a) the production of drinking water by that contracting entity is intended for the purpose of carrying out an activity other than those considered relevant under this Act; b) the supply of drinking water to public networks depends solely on the contracting entity's own consumption and has not exceeded 30 per cent of the contracting entity's total drinking water production, taking into account the average over the last three years, including the current year.
4. Transport	(1) The provision or operation of networks intended to provide a public service in the field of transport by rail, using automated systems, by underground, tram, trolleybus, bus or cable is considered a relevant activity in the transport sector. (2) For the purposes of paragraph (1), a network for the provision of transport services is deemed to exist where the operating conditions – which may relate to the routes to be served, the transport capacity to be provided or the frequency of the service – are predetermined by a competent authority.

5. Ports and airports	Relevant activities are those involving the operation of a geographical area for the purpose of making airports, seaports or inland waterway ports, or other transport terminals, available to air, sea or inland waterway carriers.
6. Postal services	(1) The provision of the following services is considered a relevant activity in the postal sector: a) postal services, namely services consisting of the collection, sorting, transport and delivery to recipients of postal items - letters, books, catalogues, newspapers, periodicals, and postal parcels containing goods with or without commercial value – regardless of weight; b) courier service management services, namely services preceding and following dispatch, including mail handling services; (c) services relating to postal items not covered by point (a), such as direct mail advertising that is unaddressed; (2) The provision of the services referred to in paragraph (1)(b) and (c) shall fall within the category of relevant activities only if the person concerned also provides postal services within the meaning of paragraph (1)(a) and only if the postal service activity is not directly exposed to competition in accordance with the provisions of Article 35 of the Act.
7. Oil and gas. Coal and other solid fuels	For the purposes of this Act, relevant activities are deemed to be those activities relating to the exploitation of a geographical area for the purpose of: a) the extraction*2) of oil and natural gas; b) the exploration for and extraction of coal or other solid fuels.

Note ...

*2) For the purposes of this Act, activities relating to the exploitation of a geographical area for the purpose of extracting oil and natural gas include the production of crude oil or natural gas, as well as the development of the necessary infrastructure for the future production of crude oil or natural gas.

Activities carried out for the purpose of exploring for oil and natural gas are excluded from the scope of this Act; these include all activities undertaken to ascertain whether oil and/or natural gas deposits are present in a given area, to assess their quantity and quality, and to determine the technical and economic conditions for their exploitation. + Annex 3: Services referred to in Article 24

Description	CPV code
Health, social and related services	75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Domestic domestic staff]; 79624000-4 [Provision of nursing staff] and 79625000-1 [Provision of medical staff] from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5 and 98500000-8 [Private households with employed staff] and 98513000-2 to 98514000-9 [Labour services for private households, Agency staff services for private households, Office staff services for private households, Temporary staff services for private households, Home help services and Domestic services]
Administrative, educational, health and cultural services	5321000-5 and 85322000-2, 75000000-6 [Public administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and vocational training services to 80660000-8; from 92000000-1 to 92700000-8, 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion show organisation services], 79956000-0 [Organisation of fairs and exhibitions]

Compulsory social security services*3)	75300000-9
Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1
Other community, social and personal services, including services provided by trade unions, political organisations, youth organisations and miscellaneous services provided by associations	98000000-3, 98120000-0; 98132000-7; 98133110-8 and 98130000-3
Religious services	98131000-0
Hotel and restaurant services	from 55100000-1 to 55410000-7; from 55521000-8 to 55521200-0 [55521000-8 home catering services, 55521100-9 home food delivery services, 55521200-0 food delivery services], 55510000-8 [canteen services], 55511000-5 [Canteen and other café services for a restricted clientele], 55512000-2 [Canteen management services], 55523100-3 [School restaurant services], 55520000-1 [Catering services], 55522000-5 [Catering services for transport companies], 55523000-2 [Catering services for other companies or institutions], 55524000-9 [Catering services for schools]
Legal services, in so far as they are not excluded under Article 30(3) of the Act	from 79100000-5 to 79140000-7; 75231100-5
Other administrative and government services	from 75100000-7 to 75120000-3; 75123000-4; from 75125000-8 to 75131000-3
Community services	from 75200000-8 to 75231000-4
Services relating to prisons, public security and rescue, in so far as they are not excluded under Article 30(1)(g) of the Act	from 75231210-9 to 75231230-5; from 75240000-0 to 75252000-7; 79430000-7; 98113100-9
Investigation and security services	from 79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm system monitoring services, Security guard services, Surveillance services, Tracing services, Fugitive tracing services, Patrol services, Issuing of identification badges, Investigation services and Detective agency services], 79722000-1 [Handwriting analysis services], 79723000-8 [Waste analysis services]
International services	98900000-2 [Services provided by extraterritorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]
Postal services	64000000-6 [Postal and telecommunications services], 64100000-7 [Postal and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services for the distribution of newspapers and periodicals], 64112000-4 [Postal services for the distribution of correspondence], 64113000-1 [Postal parcel delivery services], 64114000-8 [Post office counter services]

	post office counters], 64115000-5 [Postbox hire], 64116000-2 [Unclaimed mail services], 64122000-7 [Courier and internal office messenger services]
Miscellaneous services	50116510-9 [Tyre-retreading services], 71550000-8 [Metalwork services]

Note ...

*3) These services are not covered by this Act where they are organised as non-economic services of general interest.-----