

Tax & Legal Weekly Alert

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The new legislative framework on public procurement and concession of works and services was published in the Official Gazette

The new legislation regulating public procurement and the concession of works and services was published in Official Gazette no. 390, 391, 392, 393 on 23rd of May of 2016.

The legal framework implements the EU Directives on public procurement and concession of works and services, respectively Directives 2014/23/EU, 2014/24/EU and 2014/25/EU and shall enter into force on 26th of May of 2016.



The new legislative framework on public procurement and concession of works and services was published in the Official Gazette

The legislative framework, which repeals Government Emergency Ordinance no. 34/2006, is comprised of the following laws:

- Law no. 98/2016 on public procurement;
- Law no. 99/2016 on procurement in the water, energy, transport and postal services sectors (sectorial procurement);
- Law no. 100/2016 on concessions of works and services;
- Law no. 101/2016 on the remedies and appeal procedures of the awarding of public procurement contracts and contracts of services and works concession, and on the establishment and functioning of the Nation Council of Appeals Settlement.

In a term of 30 days for public procurement and in 60 days in case of concession of works and services and sectorial procurement, the Government will have to issue the Methodological Norms for application.

The main new elements brought by the new legislative framework are:

- A new structure of the legislation on public procurement and concessions, by providing special laws which distinctly regulate the concessions of works and services, sectorial procurement and the appeal procedures;
- New awarding procedures of public procurement contracts:
 - *competitive negotiation* – procedure similar to the previous negotiation procedure with the publication of a participation announcement;
 - *innovation partnership* – applicable for the development and subsequent acquisition of products, services or works which are not existing on the market;
 - *special procedure applicable for social services and other specific services*;
 - *simplified procedure* – procedure that replaces the call for offers, applicable in case of contracts that are below a certain threshold.
- The award of concession contracts shall be realized through two procedures: open tender and competitive dialogue;
- The application of negotiated procedures for the award of contracts is encouraged;
- The establishment of clear rules on the possibility to amend the ongoing contracts;
- The provision of the possibility of the authorities to perform market consultations prior to the initiation of the awarding procedures. Consultations may be conducted, provided that specific principles are observed in order not to affect the competition, with the purpose of evaluating the structure, characteristics and capacity of the market, as well as to inform the economic operators with respect to future requests and the authorities' foreseen projects;
- Shorter procedural deadlines for the stages of the awarding procedures;
- The introduction of new evaluation criteria, such as technical advantages, impact on the environment, esthetic, functional and innovative characteristics, or the organization and experience of the personnel designated to execute the contract;
- The national contracting authorities shall have the possibility to conduct public procurement projects together with contracting authorities from other EU state members;

- The increase of the value of the stamp duties for litigation having as object the request of compensation for damages caused during the awarding procedures, as well for the performance, annulment, nullity and termination of contracts.

For further questions regarding the aspects mentioned in this alert, please contact us.

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