

PUBLIC ENTERPRISES ACT

Prom. SG. 79/8 Oct 2019, amend. SG. 100/20 Dec 2019, amend. and suppl. SG. 85/2 Oct 2020, amend. SG. 96/10 Nov 2020, amend. and suppl. SG. 11/9 Feb 2021

Chapter one.

GENERAL PROVISIONS

Art. 1. (1) This Act shall provide for the manner of defining and publicly announcing the state policy in the field of public enterprises, introducing standards for good corporate governance of public enterprises, as well as the obligations for publicity and transparency of the activities of public enterprises and their governing bodies.

(2) The state policy, regarding public enterprises shall be determined and implemented by the Council of Ministers.

(3) Municipal policies for public enterprises shall be determined and implemented by the Municipal councils.

Art. 2. (1) Public enterprises shall be:

1. commercial companies with more than 50 percent state / municipal participation in the capital, or in which the State / Municipality otherwise exercises a dominant influence;

2. the subsidiaries of the commercial companies under item 1 and the enterprises under item 3, if through them, the State / Municipality controls more than 50 percent of the voting assets / shares or otherwise exercises a dominant influence;

3. the state-owned enterprises, established by special Acts, pursuant to [Art. 62, Para. 3](#) of the Commercial Act.

(2) The requirements of this Act shall not apply to the Bulgarian Development Bank.

Art. 3. The local self-government bodies and municipal public enterprises shall apply the provisions of Chapters Two, Five, Six and Seven, respectively.

Art. 4. Public enterprises shall be divided into "micro", "small", "medium" and "large" categories, on the basis of the criteria, described in [Chapter Two, Section I](#) and [Section II of the Accounting Act](#).

Chapter two.

PRINCIPLES OF EXERCISING THE STATE OWNERSHIP OVER PUBLIC ENTERPRISES

Art. 5. Public enterprises shall be legal persons, established and managed for the benefit of the citizens and society, in order to achieve maximum value for society, through efficient allocation of resources, where necessary:

1. to eliminate existing market defects;

2. to provide goods or services of strategic importance or those, related to national security or development;

3. to manage strategic property for the State.

Art. 6 (1) The business activity of public enterprises shall be carried out on an equal footing with other economic operators and no abuse of monopoly or dominant position or unfair competition shall be permitted.

(2) The members of the governance and control bodies shall act in an informed, conscientious manner, with due care and attention and in the best interests of the enterprise and the owners of the capital.

(3) All partners / shareholders in public enterprises shall be treated equally.

Art. 7. (1) Public enterprises may be entrusted with the obligation to perform a public service or to fulfill public objectives of the public policy by the authorities, exercising the rights of the State / Municipality, within the limits of their competence or in the procedure, provided by an Act.

(2) The obligations under Para. 1 shall be specified by specifying the obliged public enterprise, the content of the obligation, the terms and conditions, under which it is to be fulfilled, and other conditions, if any. The information shall be published on the website of the Public Enterprises and Control Agency.

(3) The expenses of the public enterprises in fulfillment of obligations under Para. 1 shall be financed by the state / municipal budget or in accordance with the procedure, provided by an Act and shall be announced in the annual financial statement.

Art. 8. Public enterprises, entrusted with public service obligations and / or public policy objectives shall apply the same rules for public announcement under **Chapter Seven** as enterprises, categorized as "large".

Art. 9. (1) (Suppl. - SG 11/21) The main legal form of commercial companies with state participation in the capital shall be a "joint stock company". The legal form "limited liability company" shall be eligible for "micro", "small" and "medium" enterprises as well as for the public enterprises under Art. 2, para. 1, item 2.

(2) Changes in the legal form shall be made if, for a period of three consecutive financial years, a commercial company with state participation in the capital meets the criteria for a "large" enterprise within one year.

Art. 10. (1) The Council of Ministers shall approve a policy for state participation in public enterprises. The policy shall provide a justification for the reasons why the State participates in public enterprises and the objectives it sets itself, the role of the State in the management of the public enterprises, the implementation of the policy, as well as the role and responsibilities of the Ministers, exercising the rights of the State and other state organizations, involved in implementation.

(2) The state participation policy in public enterprises shall be developed by the Public Enterprises and Control Agency in cooperation with the bodies, exercising the rights of the State in the enterprises and other state organizations, involved in its implementation.

(3) The state participation policy in public enterprises shall be updated as necessary, but at least every 4 years, on the basis of proposals, submitted by the Public Enterprises and Control Agency.

(4) The state participation policy in public enterprises shall be published on the websites of the [Council of Ministers](#) and the Public Enterprises and Control Agency.

Chapter three.

COORDINATION OF THE STATE PARTICIPATION IN PUBLIC ENTERPRISES

Art. 11. (1) The Agency for Public Enterprises and Control shall perform the functions of a unit, that carries out the coordination of the State policy, regarding public enterprises, monitor and report to the Council of Ministers on its implementation.

(2) The Executive Director of the Public Enterprises and Control Agency shall report to the Council of Ministers and work under the supervision of the Prime Minister or a Deputy Prime Minister, designated by him.

(3) Members of the Executive Board of the Public Enterprises and Control Agency shall be persons with a university degree - Master with at least 10 years professional experience in the field of finance, government and / or the real economy, of which at least three years in managerial position.

Art. 12. The Public Enterprises and Control Agency shall perform the functions of **Art. 11, Para. 1**, where it shall:

1. develop a policy for State participation in public enterprises;
2. monitor the implementation of the State participation policy in public enterprises and prepare a policy update;

3. assist the state law enforcement authorities in defining the overall strategic goals of enterprises and the key indicators for meeting financial and non-financial objectives in business programs of enterprises;
4. monitor the activities of public enterprises and prepare a summary report for the previous year in the format and scope, specified in the Act;
5. cooperate with other State administrations, non-governmental and international institutions on issues, related to the management of public enterprises;
6. publish up-to-date information and reports on the activities of public enterprises, including financial and non-financial information about enterprises;
7. carry out monitoring of competitive procedures for the selection and appointment of members of management and control bodies;
8. carry out an assessment of the implementation of the approved business programs of the public enterprises and make proposals for improving their management;
9. when delegated by the Council of Ministers, exercise the rights of the State in public enterprises;
10. on request, assist Municipalities in the management of Municipal public enterprises;
11. prepare assessment and analysis of approved business programs of public enterprises and their implementation, as well as recommendations regarding risks and effects on public finances, including potential effects and risks on the indicators of consolidated debt and deficit / surplus of State Govern sector;
12. give instruction on the implementation of the Act.

Chapter four.

POWERS OF THE STATE IN PUBLIC ENTERPRISES

Art. 13. The Council of Ministers shall exercise the rights of the State in public enterprises. The Council of Ministers may delegate these rights to Ministers, according to their sectoral competence and / or to the Public Enterprises and Control Agency.

Art. 14. The Council of Ministers shall:

1. approve the policy for State participation in public enterprises, as well as its update on the basis of the proposals of the Public Enterprises and Control Agency;
2. establish new trading companies with state participation;
3. approve the common dividend policy.

Art. 15. (1) The authority, exercising the rights of the State shall make decisions within the competence of the general meeting of the partners / shareholders in the sole public enterprises and exercise the rights of a partner / shareholder in the public enterprises, in which the State is not sole owner of the capital.

(2) When a public company participates in another company, its rights as a partner / shareholder or sole proprietor shall be exercised by the person, entitled to represent it, or by a person, expressly authorized by it.

(3) The decisions under Para. 1 and 2 shall be formulated in a protocol in the form, appropriate for the decisions of the general assembly.

Art. 16. The authority, exercising the rights of the State as a partner / shareholder in a public enterprise shall participate in person or through an authorized representative in the meetings of the partners / shareholders, represent in them the state shares/assets and vote on the basis of the number of state-owned shares/assets. When authorized, the power of attorney shall indicate the manner of voting on each item on the agenda.

Art. 17. (1) The authority, exercising the rights of the State as a sole owner of the capital or a partner / shareholder, with the assistance of the Public Enterprises and Control Agency, shall determine the overall strategic objectives and evaluate the results of the activity of the enterprise and its governing bodies.

(2) The authority, exercising the rights of the State as sole owner of the capital, respectively the general meeting, shall approve the business programs and the key indicators, included in them for the

fulfillment of financial and non-financial objectives, adopted by the Supervisory Board or the Board of Directors, with the assistance of the Public Enterprises and Control Agency.

(3) The Public Enterprises and Control Agency shall assess the implementation of the approved business programs of the public enterprises. The result of the assessment shall be provided to the authority, exercising the State's rights, along with proposals to improve the management of the public enterprise.

(4) The procedure for concluding contracts for the assignment of control with the members of the Supervisory board, where applicable, and contracts for the assignment of management with the members of the Board of Directors, shall be provided by the Rules on the implementation of the Act.

Art. 18. The authority, exercising the rights of the State shall not interfere with the management or the current operation of the public enterprise and observe its rights with respect to the exercise of all property rights in the subsidiaries concerned.

Art. 19. The procedure of exercising the rights of the State in the commercial companies with State participation in the capital shall be determined by the Council of Ministers in the Rules on the implementation of the Act.

Chapter five.

REQUIREMENTS TO THE MANAGEMENT AND CONTROL AUTHORITIES

Art. 20. (1) The manager or member of a collective authority for the management and control of a public company may be a Bulgarian citizen or a citizen of the European Union, of a country - party to the European Economic Area Agreement, or the Swiss Confederation, who:

1. has graduated university education;
2. has at least 5 years professional experience;
3. is not interdicted;
4. has not been convicted of a premeditated crime of general nature;
5. has not been deprived of the right to occupy the relevant position;
6. has not been declared bankrupt as a sole proprietor or an unlimited liability partner in a trading company, declared insolvency, if the creditors remain unsatisfied;
7. has not been a member of the management or supervisory body of a company or cooperative, respectively, terminated due to bankruptcy during the last two years prior to the appointment, if the creditors remained unsatisfied;
8. is not a spouse, or a person in factual cohabitation, direct relative, or indirect relative – up to fourth level including, and by marriage - up to the second degree inclusive, of a manager or member of the collective management and control body of the same public enterprise;
9. does not hold a senior public position under **Art. 6, Para. 1, items 1 - 38 and 41 - 45** of the Act on Anti-Corruption and Forfeiture of Illegally Acquired Property, is not a member of a political cabinet and secretary of a Municipality;
10. does not carry out commercial transactions on its own or in someone else's name;
11. is not a partner in joint-stock companies, limited partnerships and limited liability companies;
12. is not a manager or member of the executive or controlling body of another public enterprise;
13. meets other requirements, stipulated in the Statute of the company.

(2) The prohibitions under Para. 1, items 10 and 11 shall be applied, when an activity, similar to the activity of the company is performed.

(3) (Amend. - SG 85/20, in force from 02.10.2020, suppl. - SG 11/21, in force from 09.02.2021) Managers and executive members of the Boards of Directors and of the Management boards may not be persons, working under an official or labor employment contract except as teachers in higher education and / or as doctors or dentists in a medical establishment within the meaning of the **Medical Establishments Act**.

Art. 21. (1) All members of the management and control bodies shall be selected and appointed after a competition. The terms and procedure for conducting the competition shall be laid down in the implementing Rules of the Act.

(2) The members of the management and control bodies shall be persons with diverse qualifications and professional experience, corresponding to the specifics of the activities, carried out by the respective public company, meet certain criteria in respect of reputation and integrity and can take sufficient time to fulfill their assigned duties.

(3) All representatives of the State in the bodies for management and control of public enterprises shall be required to meet the requirements of para. 2. The State representative shall have the same rights, obligations and responsibilities as other members of the management and control bodies, including the right to receive remuneration and the obligation not to disclose trade secrets of the public enterprise.

(4) Boards of Directors, Managing and Supervisory Boards may set up special committees from among their members, such as remuneration committees or risk management committees. The committees shall prepare decisions to be taken by the relevant boards. The committees shall be chaired by an independent board member.

(5) All boards shall prepare annual self-assessments of their activities and effectiveness, which are submitted to the authority, exercising the right of the State and to the Public Enterprises and Control Agency.

Art. 22. (1) In the Boards of Directors and Supervisory Boards of public enterprises, the independent members must be at least one-third, but not more than one-second of the members.

(2) (Suppl. - SG 85/20, in force from 02.10.2020) The Boards of Directors and Supervisory Boards of the public enterprises, categorized as "large", shall consist of at least five members. The chairman of the board must be an independent member with the exception of the councils of the directors of the state and municipal medical establishments for hospital care, to which the provision of Art. 63, para. 2, sentence two of the Medical Establishments Act shall apply.

Art. 23. (1) Independent members must meet the requirements of **Art. 20**.

(2) An independent member may not be:

1. employee in a public enterprise;
2. a shareholder / partner in the same public company;
3. a person who, personally or through related parties, has a commercial relationship with a public enterprise;
4. a sole proprietor, shareholder or partner in a company, having the same or a similar subject of activity as a public company;
5. a related party with another member of a management or controlling body of the public enterprise.

(3) The representatives of the State in the management and control bodies shall not be independent members.

(4) The members of the managing boards in the shareholding companies with two-tier joint-stock structure shall be independent from the State and the Municipality respectively.

Art. 24. (1) The contract for the management and control of a manager or a member of a collective body for the management and control of a public enterprise shall be terminated early in case of:

1. death;
2. submission of an application for release;
3. objective inability to fulfill his obligations for more than 6 months;
4. conviction of a premeditated crime of general nature;
5. incompatibility with the requirements of **Art. 20** and **Art. 23, Para. 2**;
6. serious violation or systematic failure to perform duties;
7. enactment of an act, establishing conflict of interest under the **Act on Counteracting**

Corruption and on Seizure of Illegally Acquired Property.

(2) Except in the cases under Para. 1, the contract may be terminated preliminary and upon dismissal, due to non-fulfillment of the laid down indicators in the approved business program.

Chapter six.

ACCOUNTANCY AND AUDIT

Art. 25. The accounting of public enterprises shall be carried out in accordance with the **Accountancy Act**. Public enterprises shall prepare their financial statements on the basis of National Accounting Standards or International Accounting Standards in accordance with the requirements of the Accountancy Act.

Art. 26. The annual and consolidated accounts of public enterprises shall be subject to statutory independent financial audit by registered auditors in accordance with the **Accountancy Act** and the **Independent Financial Audit Act**. The audits shall be carried out strictly in accordance with international auditing standards.

Art. 27. The internal audit of public enterprises shall be organized in accordance with the **Act on the Internal Audit in the Public Sector**.

Chapter seven.

PUBLIC ANNOUNCEMENT

Art. 28. Public enterprises shall publish financial and non-financial information about the enterprise in accordance with the provisions of this Act, its implementing Rules and applicable law.

Art. 29. (1) Public enterprises shall prepare quarterly and annual financial statements, analyzes and reports, and shall submit them to the authority, exercising the rights of the State and to the Public Enterprises and Control Agency, in accordance with a procedure, format, content and time limits, specified in the Rules on the implementation of the Act. Public enterprises, categorized as "large" shall be subject to increased requirements for disclosure of information.

(2) The Public Enterprises and Control Agency shall publish the information, received under Para. 1 on its website.

(3) The financial statements shall contain at least the accountancy balance sheet, income and costs statement, statement on own capital, cash flow statement and annexes thereto, prepared in accordance with the **Accountancy Act** and the applicable accounting standards, together with an analysis of the activity.

(4) Non-financial information shall include at least the elements of the non-financial declaration under **Art. 48 of the Accountancy Act**, as well as reports on risk assessment, human resources and employment relations reports, sustainability, environmental impact, related party transactions and a report on members of management and control bodies, including their remuneration report, performance report on public service obligations and public policy objectives.

Art. 30. The Public Enterprises and Control Agency shall be responsible for the preparation of an annual summary report on state-owned public enterprises. The summary report shall provide an overview of the results of the activity of the enterprises, as well as an analysis of the activities of the enterprises by sectors and by all public enterprises, categorized as "large". The summary report shall also assess the compliance by public enterprises with applicable corporate governance and announcement standards. The summary report shall also contain information on the implementation of the state policy in relation to public enterprises.

Art. 31. (1) The Public Enterprises and Control Agency shall annually submit a summary report for the year in question for approval by the Council of Ministers by 31 October of the following year. The Council of Ministers shall submit the summary report to the National Assembly within one month of its approval.

(2) The Public Enterprises and Control Agency shall publish the summary report on its website and shall publish it in hard copy.

Additional provisions

§ 1. In the meaning of this Act:

1. "Business program" is a document for planning the activity of a public enterprise for a period of at least three years, containing key indicators for the fulfillment of the financial and non-financial objectives.

2. "Dominant influence" is assumed in cases, where the State directly or indirectly owns more than 50 percent of the subscribed capital of the enterprise, controls the majority of the votes, related to the assets/shares, issued by the enterprise, or may appoint more than half of the members of the management or supervisory body of the enterprise.

3. "Maximum value for society" means the achievement of added value for citizens by ensuring the long-term value of investments and revenues for the state budget from the business activities of public companies or by the most efficient allocation of resources in the performance of public services or the pursuit of public politics objectives.

4. "Non-financial objectives" are the objectives of the public enterprise, which derive from the general strategic objective, set for the public enterprise and from the normative acts, and policy planning documents and relate to the performance of the functions, assigned to the public enterprise.

5. "Public services" means educational, health, water supply, sewer, heat, electricity, gas, telecommunications, postal or similar services, provided to meet public needs.

6. "Common strategic objectives" are objectives, that the State / Municipality wishes to achieve through participation in a public enterprise and which result from normative acts and policy planning documents.

7. " Authority, exercising the rights of the State" is:

a) an administrative body, which, by an Act or under an order of the Council of Ministers, exercises the rights of the State in the capital of a public enterprise under Art. 2, Para. 1, items 1 and 3;

b) a public enterprise under Art. 2, Para. 1, item 2, when exercising property rights in another public enterprise.

8. "Market defects" are cases, where the distribution of goods and services on the free market is ineffective and inefficient.

9. (revoked - SG 100/19, in force from 01.01.2020)

10. "Standards for good corporate governance" are the standards, included in the OECD Guidelines for corporate governance of public enterprises.

11. "Financial objectives" means the objectives of a publicly enterprise, related to its financial activities (including profitability, capital structure, turnover, profit and dividends).

12. "Public policy objectives" are those, that benefit the general public within the specific competence of public enterprises, other than maximizing shareholder returns and value, such as the provision of public services - postal, transport and other special commitments, undertaken in the public interest.

13. "Members of management and control bodies" are the members of the supervisory boards and management boards of joint-stock companies with two-tier structure, the members of the boards of directors of joint-stock companies with one-tier structure, the managers and controllers of the limited liability companies and the members of the management boards and executive directors in state-owned enterprises, established by an Act.

Transitional and concluding provisions

§ 2. (1) No state-owned enterprises may be established under [Art. 62, Para. 3](#) of the Commercial Act, if they are intended to carry out predominantly economic activities, that may be carried out by a private operator with profit purpose.

(2) The Council of Ministers shall assign to the Public Enterprises and Control Agency the

preparation of an analysis of the established by special Acts, by virtue of **Art. 62, Para. 3** of the Commercial Act state enterprises to clarifying the nature of their activities - mainly commercial or mainly public functions and policies. The analysis shall be submitted to the Council of Ministers within 12 months of the entry into force of the Act. Based on the analysis, the Council of Ministers shall adopt a transformation program, within three years.

(3) State-owned enterprises, established by special Acts, pursuant to **Art. 62, Para. 3** of the Commercial Act, which are mainly engaged in commercial activity, shall be transformed into sole commercial companies under of **Part Two, Title Three, Chapter Sixteen, Section III of the Commercial Act**.

(4) (Revoked - SG 11/21)

§ 3. (1) Within three months from the entry into force of the Act, the Council of Ministers shall adopt Rules of Procedure of the Public Enterprises and Control Agency.

(2) Within 6 months of the entry into force of the Act, the Council of Ministers shall adopt Rules on its implementation.

(3) Within six months of the entry into force of the Act, the Council of Ministers shall bring in compliance with it the legislative normative acts.

(4) (Suppl. - SG 85/20, in force from 02.10.2020, amend. - SG 96/20, in force from 10.11.2020) Within 16 months of the entry into force of the Act, the composition of the Management and Control bodies of public enterprises shall be brought into compliance with its requirements.

§ 4. The Public Enterprises and Control Agency shall provide guidance on the implementation of the Act.

§ 5. (1) The Privatization and Post-Privatization Control Agency shall be renamed the Public Enterprises and Control Agency.

(2) The activity, budget, assets, liabilities, archive and other rights and obligations of the Privatization and Post-Privatization Control Agency shall be transferred to the Public Enterprises and Control Agency. Cases, pending on the date of entry into force of the Act shall be continued by the Public Enterprises and Control Agency until their completion in all instances.

(3) The employment and civil relations of the heads and employees of the Privatization and Post-privatization Control Agency shall be settled under the terms of **Art. 123** of the Labor Code and **Art. 87a** of the Civil Servant Act.

(4) Except for the cases under Para. 3 the civil and employment relations of the administration staff under Para. 1, whose functions do not pass to the Public Enterprises and Control Agency, shall be settled by the Executive Director of the Public Enterprises and Control Agency under the conditions and in accordance with **Art. 328, Para. 1, item 2** of the Labor Code, respectively under **Art. 106, Para. 1, item 2** or Art. 106, Para. 1, items 5 and 6 of the Civil Servant Act.

(5) The Public Enterprises and Control Agency shall enter into the rights and obligations of the Privatization and Post-Privatization Control Agency under the contracts, it has concluded, including under Operational programs, financed by European Union funds.

(6) The Supervisory Board of the Privatization and Post-Privatization Control Agency shall continue to exercise its powers as the Supervisory Board of the Public Enterprises and Control Agency from the date of entry into force of the Act.

(7) The Executive Board of the Privatization and Post-Privatization Control Agency shall continue to exercise its powers as the Executive Board of the Public Enterprises and Control Agency from the date of entry into force of the Act.

(8) If a member of the Executive Board of the Privatization and Post-privatization Control Agency does not meet the requirements of Art. 11, Para. 3, his powers shall be terminated from the date of entry into force of the Act. The members of the Executive Board of the Privatization and Post-privatization Control Agency, who meet the requirements of **Art. 11, Para. 3**, shall continue to exercise their powers as members of the Executive Board of the Public Enterprises and Control Agency.

The Act was adopted by the 44th National Assembly on September 26, 2019 and was affixed with the official seal of the National Assembly.

Concluding provisions
TO THE ACT ON THE STATE BUDGET OF THE REPUBLIC OF BULGARIA FOR 2020

(PROM. - SG 100/19, IN FORCE FROM 01.01.2020)

§ 23. The Act shall enter into force on January 1, 2020, with the exception of § 14, 15 and 20, which shall enter into force on the day of its promulgation in the State Gazette.

Concluding provisions
TO THE ACT AMENDING THE MEDICAL ESTABLISHMENTS ACT

(PROM. - SG 85/20, IN FORCE FROM 02.10.2020)

§ 5. The Act shall enter into force on the day of its promulgation in the State Gazette.

Concluding provisions
TO THE ACT AMENDING THE PUBLIC ENTERPRISES ACT

(PROM. - SG 96/20, IN FORCE FROM 10.11.2020)

§ 2. The Act shall enter into force on the day of its promulgation in the State Gazette.

Concluding provisions
TO THE ACT AMENDING THE MEDICAL ESTABLISHMENTS ACT

(PROM. - SG 11/21, IN FORCE FROM 09.02.2021)

§ 3. The Act shall enter into force on the day of its promulgation in the State Gazette.