

RULES ON IMPLEMENTATION OF THE PUBLIC ENTERPRISES ACT

In force from 05.05.2020 Adopted by CMD No 85 of 30.04.2020

Prom. SG. 40/5 May 2020, Amend. SG. 89/26 Oct 2021

Chapter one. GENERAL PROVISIONS

Art. 1. (1) The Rules shall provide for:

1. the content of the policy on state participation in public enterprises and the procedure for its development, adoption and updating;
 2. the activities of the Agency for Public Enterprises and Control as coordinating body for public enterprises and its relations with the bodies, exercising the rights of the State and with public enterprises;
 3. the procedure for the exercise of the State's rights in public enterprises;
 4. special rules for conclusion of certain types of contracts by public enterprises;
 5. the main selection criteria, conditions and procedure for the competitive procedure for nomination of the members of the management and control bodies;
 6. the assignment of management and control in public enterprises and the procedure for determining the remuneration of the members of the management and control bodies;
 7. public enterprise planning and performance reporting;
 8. public disclosure of financial and non-financial information about the enterprises;
 9. the principles of exercising the rights of municipalities in municipal public enterprises.
- (2) Local government bodies and municipal public enterprises shall apply the provisions of

Chapter Eight.

Chapter two. STATE POLICY

Section I.

Development of a Policy on State Participation in Public Enterprises

Art. 2. The policy on state participation in public enterprises shall be developed by the Agency for Public Enterprises and Control, in cooperation with the bodies, exercising the rights of the state in public enterprises and other state organisations, involved in its implementation and shall be approved by the Council of Ministers.

Art. 3. The Agency for Public Enterprises and Control shall propose to the Council of Ministers an update of the Policy on state participation in public enterprises periodically, at least once every four years, as well as when it finds, that there are changes in the economic environment or other circumstances, requiring a change in the approach of the state as an owner in public enterprises. The update shall be prepared on the basis of the annual reviews of the existing policy or on the proposal of the relevant sectoral Minister.

Art. 4. In developing and updating the Policy on state participation in public enterprises, the Agency for Public Enterprises and Control shall conduct public consultations.

Section II.

Content of the Policy of State Participation in Public Enterprises

Art. 5. (1) The Policy of State Participation in Public Enterprises is a short framework document, that aims to set out the overall objectives and priorities, that the state sets for itself as an owner in public enterprises.

(2) The Policy of State Participation in Public Enterprises shall determine:

1. the justification for state ownership in public enterprises;
2. the objectives, that the state sets for itself as an owner in public enterprises;
3. the role of the state in the governance of public enterprises;
4. policy performance indicators;
5. the role and responsibilities of Ministers, exercising the rights of the state in enterprises and other state organisations, involved in policy implementation.

Art. 6. (1) The justification for the reasons of the state ownership in public enterprises shall include:

1. the information on public enterprises, in which the state participates, presented analytically, such as data on their number, total value of their equity, distribution by economic activity, share in gross domestic product
2. the reasons why the state is involved in public enterprises;
3. information on the expected development of public enterprises, including with regard to their privatisation, restructuring or dissolution, and the creation of new public enterprises.

(2) Depending on the specific criteria selected, public enterprises may be classified/grouped into separate categories.

Art. 7. The objectives, that the state sets with its participation in public enterprises may be long-term - general for the whole public sector or for a certain part of it, and medium-term (for a business cycle in the period from 3 to 5 years) - for each specific enterprise.

Art. 8. (1) The Policy of State Participation in Public Enterprises shall set out the overall long-term objectives in line with the justification for state ownership, as well as the expected outcomes.

(2) Long-term objectives may be either financial or non-financial, and apply to the whole public sector, or to a specific part of it, depending on the grouping of public enterprises into a category or sector.

(3) The expected results shall represent pre-established indicators in the policy to measure the degree of achievement of each objective.

Art. 9. For each of the objectives (long-term and medium-term), key performance indicators shall be set, which should be:

1. relevant to the objectives set;
2. clear, specific and measurable - have a baseline, a target and a clearly defined data source, informing performance on an annual basis and as an end result;
3. credible and comparable.

Art. 10. The Policy of State Participation in Public Enterprises shall include information on the manner, in which the State's rights in public enterprises are exercised - model (centralised, decentralised, mixed or other ownership model), main functions, role and responsibilities of all state institutions, involved in its implementation.

Art. 11. The State's rights in public enterprises shall be exercised in a professional and predictable manner in accordance with generally accepted principles of corporate governance and with a strict separation of the functions of the owner from the other functions, performed by the State in the formation of policies and establishing regulations.

Art. 12. The manner, in which the state exercises ownership rights in public enterprises shall be based on the following principles:

1. all partners and shareholders are treated equally;
2. the exercise of the State's rights in public enterprises is carried out in a transparent and accountable manner;
3. the State acts as an informed and active owner;
4. the State allows public enterprises to have operational autonomy to achieve their objectives and

refrains from interfering in the operational management of the enterprises;

5. where public enterprises combine economic activities and activities in pursuit of public policy objectives, high standards of transparency and disclosure of revenue and expenditure, relevant to the area of activity concerned shall be maintained;

6. public enterprises have access to debt and equity financing for their economic activities under market conditions;

7. the members of the management and control bodies of public enterprises shall be selected and appointed through a competitive procedure, aimed at formation of professional and independent management and control bodies.

Chapter three.

COORDINATION OF STATE PARTICIPATION IN PUBLIC ENTERPRISES

Art. 13. The Agency for Public Enterprises and Control shall perform the functions, set out in the **Public Enterprises Act** of a coordinating body in relation to public enterprises.

Art. 14. (1) Within 30 days after the end of each quarter and by 25 April of the following year, public enterprises shall submit to the authority, exercising the rights of the State and to the Agency for Public Enterprises and Control through the electronic information system, referred to in **Art. 21** quarterly and annual financial statements, analyses and reports on their activities, prepared in accordance with **Chapter Seven**.

(2) By 30 June of the year, following the accounting period, public enterprises shall submit to the authority, exercising the rights of the State and to the Agency for Public Enterprises and Control, through the electronic information system, referred to in **Art. 21**, the audited and approved annual financial statements, individual and consolidated respectively, where applicable, together with the approved business programmes, as well as reports on the extent, to which the indicators, set out in the business programmes have been met.

(3) The Agency for Public Enterprises and Control may request additional information from public enterprises in the format it requires.

(4) The Agency for Public Enterprises and Control may provide methodological guidance on the content of business programmes, including the choice of indicators, reporting on performance and setting deadlines for their submission.

Art. 15. For the purposes of the budget procedure for the relevant year, the development of the general dividend policy and cash management, public enterprises shall provide the Ministry of Finance with forecast and reporting information in the format and in the manner, specified by the Minister of Finance.

Art. 16. (1) Before approving the business programmes of public enterprises, categorised as "large", the authority exercising the rights of the State shall request an opinion from the Public Enterprises and Control Agency on the compliance of the set medium-term financial and non-financial objectives and planned results with the provisions of **Art. 9**.

(2) Annually, the Public Enterprises and Control Agency shall assess the performance of the approved business programmes of public enterprises, categorised as 'large' against the achievement of financial and non-financial targets.

(3) The evaluation of the implementation of the approved business programmes of a number of public enterprises, categorised as "micro", "small" and "medium" shall be carried out annually in accordance with the Plan for the evaluation of the implementation of the approved business programmes, approved by a decision of the Council of Ministers.

Art. 17. The achievement of the financial and non-financial objectives of the State-owned public enterprise shall be assessed on the basis of the indicators, set out in the business programmes, the performance of which is reported on a four-level scale, that includes the following levels: unsatisfactory performance, satisfactory performance, good performance and very good performance. The order, manner and specific criteria for the assessment shall be laid down in a methodology, adopted by the Agency for

Public Enterprises and Control.

Art. 18. The Agency for Public Enterprises and Control shall submit its assessment of the performance of the enterprises to the general meeting of shareholders within four months of receipt of the information, referred to in **Art. 14, Para. 2**.

Art. 19. If the performance of the public enterprise during the year under review is assessed as unsatisfactory, the Agency for Public Enterprises and Control shall include in its assessment a proposal to the authority, exercising the rights of the State, that measures be taken to improve performance.

Art. 20. The competent authority shall consider the assessments provided, decide on further action and forward to the Agency for Public Enterprises and Control the information on the decision taken.

Art. 21. (1) The Agency for Public Enterprises and Control shall maintain an electronic information system for public enterprises with the following data:

1. UIC;
2. name, legal form of the enterprise, registered office and registered address;
3. the subject of activity of the enterprise and the four-digit code of the main economic activity according to CEA 2008;
4. capital, distribution of capital, amount of participation in capital;
5. the names of the members of the management and control bodies and of the persons, representing the enterprise;
6. whether the enterprise is large within the meaning of the **Accountancy Act**;
7. the accounting standards, applied by the enterprise;
8. the body, exercising the rights of the State in the enterprise;
9. the quarterly and annual financial statements, analyses and reports on the activities of public enterprises and other information, pursuant to **Art. 61**;
10. summary information on enterprises about the application of the rules and the existence of a concentration, referred to in **Art. 28, Para. 5**;
11. the approved business programmes of the public enterprise, as well as reports on the extent, to which the indicators, set out in the business programmes, have been met.

(2) Public enterprises shall be obliged to provide information to update the data, referred to in Para. 1 within 5 working days after a change occurs.

(3) The Agency for Public Enterprises and Control shall make the data, referred to in Para. 1, items 1 to 10 publicly accessible on its **website**.

Art. 22. (1) The Agency for Public Enterprises and Control shall prepare an annual summary analytical report on public enterprises, which shall include information at least about:

1. the state portfolio in public enterprises (total value and structure);
2. the implementation of the policy on the State's participation in public enterprises during the reporting period;
3. the financial and operating position of the enterprises at the end of the reporting period;
4. the performance of the public enterprises and the achievement of the strategic objectives and planned results;
5. an assessment of the extent, to which the activities of public enterprises comply with applicable corporate governance and disclosure standards;
6. the composition of the management and control bodies, their remuneration and the changes made thereto.

(2) The information on the achievement of financial and non-financial targets shall include data, separately for each of the public enterprises categorised as 'large', such as revenues, returns, payments from/to the budget, public targets, employees, market share, members of the management and control bodies and their remuneration, satisfaction with the service, environmental protection, etc. Comparisons with private sector enterprises may be made for the purpose of analysis.

(3) The report should summarise and complement information on the size, development,

performance and value of public enterprises and the public sector, as a whole.

(4) The annual analytical summary report shall be prepared with the assistance of the public enterprises and bodies, exercising the rights of the State, which shall provide the Agency with the necessary information.

(5) The annual analytical summary report shall be submitted to the Council of Ministers for approval by 31 October of the following year and shall be submitted to the National Assembly within one month from its approval. The approved annual summary report shall be published in the Bulgarian and in the English languages on the Agency's [website](#) within three days and shall also be issued in hard copy.

Chapter four.

POWERS OF THE STATE IN PUBLIC ENTERPRISES - COMMERCIAL COMPANIES

Section I.

Formation, transformation and termination

Art. 23. (1) The Council of Ministers may establish single-member limited liability companies with state participation in the capital and single-member joint-stock companies with state participation in the capital, in accordance with the [Commerce Act](#) and take decisions on the establishment of joint-stock companies and limited liability companies jointly with other co-founders and on state participation in the capital of joint-stock companies and limited liability companies by acquiring shares or stakes in their capital.

(2) The valuation of a non-monetary contribution of the State in the capital of commercial companies shall be carried out in accordance with [Chapter VII](#) of the Rules on the Implementation of the State Property Act, and for non-monetary contributions of property, other than property and assets - in accordance with the [Commerce Act](#).

Art. 24. (1) The transformation or termination of sole trading companies with state participation in the capital shall be carried out by the Council of Ministers, or by the Ministers in accordance with their sectoral competence.

(2) The authority, exercising the rights of the State in a public enterprise - a limited liability company shall undertake actions for transformation of the public enterprise into a joint stock company in the cases, referred to in [Art. 9, Para. 2](#) of the Public Enterprises Act.

Section II.

Competence of bodies of public enterprises - commercial companies

Art. 25. In addition to the matters, conferred by the [Commerce Act](#) to its competence, the general meeting of shareholders in public limited liability companies shall decide on:

1. approval of the business programme;
2. selection and dismissal of the independent registered auditor;
3. acquiring or disposing of shares, owned by the company in other companies;
4. obtaining loans or credits, granting loans, granting guarantees (with the exception of guarantees, granted under the [Public Procurement Act](#)), assuming suretyship obligations and providing earmarked financing, granting guarantees in favour of third parties, where the value of each of the above exceeds the lower of BGN 500 thousand or 5 per cent of the total book value of fixed assets as at 31 December of the preceding year;
5. entering into a judicial or out-of-court settlement, that acknowledges an obligation or forgives a debt;
6. disposals of fixed assets and lease transactions of immovable property with a book value, exceeding 5 per cent of the total book value of fixed assets as at 31 December of the preceding year; entering into agreements to obtain loans or credits;

7. mortgage and pledge of fixed assets of the company;
8. any other matters, conferred on it by the legislation and the memorandum or Articles of

Association.

Art. 26. (1) In addition to the matters, conferred by the **Commerce Act** on its competence, the general meeting in public companies - joint stock companies, shall take the following decisions:

1. approval of the business programme;
2. acquisition or disposal of shares or stocks, owned by the company in other companies;
3. any other matters, conferred on it by the legislation and by the statutes or the Art.s of

incorporation.

(2) The Board of Directors of public joint stock companies shall make the following resolutions, which shall become effective upon approval by the General Meeting of Shareholders, for:

1. disposal transactions with fixed assets and establishment of property rights over immovable property, the value of which exceeds the lower of BGN 500 thousand or 5 per cent of the book value of fixed assets as at 31 December of the previous year;
2. rental of real estate with a carrying value that exceeds 5 percent of the carrying value of fixed assets at December 31 of the previous year;
3. obtaining loans or credits, granting loans, granting guarantees (with the exception of guarantees, granted under the **Public Procurement Act**), assuming suretyship obligations and providing earmarked financing, granting collateral to third parties, in cases where the value of each of the above exceeds the lower of BGN 500 thousand or 5 per cent of the total book value of fixed assets as at 31 December of the previous year;
4. entering into a judicial or out-of-court settlement, that acknowledges an obligation or forgives a debt;
5. mortgage and pledge of fixed assets of the company.

(3) The division of competence for the approval of the decisions, referred to in Para. 2 between the supervisory board and the general meeting of shareholders in public enterprises - joint stock companies with a two-tier management system shall be regulated in the Articles of Association of the public enterprise.

Art. 27. The board of directors (in a one-tier system) or the supervisory and management board (in a two-tier system) and the manager(s) shall decide on all matters, relating to the management of the public enterprise, which are not within the competence of the general meeting, pursuant to their powers as laid down in the Articles of incorporation, the Articles of Association or the statutes of the public enterprise.

Section III.

Special rules for certain types of contracts

Art. 28. (1) Public enterprises with a balance sheet value of cash in excess of BGN 3 000 000 shall comply with the following concentration rules:

1. the net exposure of the public enterprise to any one credit institution may not exceed 25 per cent of the total cash of the public enterprise; the net exposure shall be calculated at the end of each month on the basis of the balances at the last date of that month;
2. in the event of a breach of the restriction under item 1 as a result of ongoing operational processes (disbursement of funds from accounts, receipt of payments, exchange rate changes, etc.), the public enterprise shall, within one month, take the necessary action to comply with the condition under item 1;
3. net exposure to a credit institution is the difference between the BGN equivalent of the public enterprise's cash in accounts with a credit institution and the BGN equivalent of the amount of the outstanding part of its loans and bank guarantees, opened with the same institution;
4. the amount of the public enterprise's cash shall not include cash in accounts, which are subject to a lien.

(2) The rules, referred to in Para. 1 shall not apply to public enterprises, which are credit or

financial institutions within the meaning of the [Credit Institutions Act](#), or whose main activity is the management of financial instruments under programmes, co-financed by the European Structural and Investment Funds and other initiatives of the European Union.

(3) Public enterprises shall contract for financial services on the basis of the publicly advertised terms and conditions of the relevant service providers and subject to the requirements of risk management, accessibility and value for money.

(4) Public enterprises shall submit electronically to the body, exercising the rights of the State in the enterprise concerned information on the application of the rules, referred to in Para. 1 on a quarterly basis (including data for each month) by the 25th day of the month, following the relevant quarterly reporting period.

(5) The authorities, referred to in Para. 4 shall publish in the electronic information system, referred to in [Art. 21](#) summary information on an enterprise about the application of the concentration rules, referred to in Para. 1 on a quarterly basis by the 30th day of the month following the relevant quarterly reporting period. The information shall be submitted electronically in a form and on a template, maintained on the [website](#) of the Agency for Public Enterprises and Control.

(6) Public enterprises, whose cash at book value does not exceed BGN 3 million shall apply the reporting requirement in Para. 4 and 5.

Art. 29. (1) The sale of immovable property, as well as movable items and assets, functionally related thereto, owned by public enterprises, shall be carried out through an electronic auction on the electronic platform for the sale of immovable property in accordance with the Ordinance on the electronic platform for the sale of immovable property - private state property, and property - owned by commercial companies with more than 50 per cent state participation in the capital or commercial companies, whose shares or stocks are owned by a commercial company with more than 50 per cent state participation in the capital (SG, 77/19), with the exception of properties, owned by enterprises in liquidation procedure.

(2) The sale of tangible fixed assets - movable property, and intangible fixed assets shall be carried out by means of an auction in accordance with the Rules for Tendering and Competitive Bidding and for the Conclusion of Sale and Lease Agreements with Employees, as set out in [Annex No 1](#).

(3) The conclusion of contracts for the lease of fixed tangible assets, as well as for the insurance of the property of public enterprises, with the exception of those, referred to in [Art. 5, Para. 4, item 1 and 2](#) of the Public Procurement Act, which carry out one or more sectoral activities within the meaning of [Art. 123](#) of the same Act, shall be carried out following an auction or a competition in accordance with the Rules for the Conduct of an Auction and a Competition and for the Conclusion of Contracts for Sale and Lease with Employees as set out in [Annex No 1](#).

(4) The starting price for the auction and competition shall be determined by an independent valuer, appointed by the enterprise.

(5) The auction or competition shall be opened after the specific requirements of the Rules, the Articles of association, the memorandum of association or the Articles of incorporation have been fulfilled.

Art. 30. (1) With the permission of the body, exercising the rights of the state in public enterprises, respectively of the general assembly of partners/shareholders, the conclusion of contracts for the sale, exchange and lease of fixed assets, as well as the establishment of property rights may be carried out by direct negotiation, with the initial price, determined by an independent appraiser, in the following cases:

1. under co-ownership;
2. with subsidiaries within the meaning of [Art. 2, Para. 1, item 2](#) of the Public Enterprises Act;
3. with a concessionaire, where the asset is necessary for the object of the concession;
4. with the State, with municipalities and with budget enterprises, within the meaning of the

[Accountancy Act](#);

5. for the needs of diplomatic and consular representations of foreign countries and representations of intergovernmental organizations in the Republic of Bulgaria;

6. when the transaction is with a commercial company with more than 50 per cent state

participation, providing public services to consumers, subject to regulation by a state authority;

7. when the conclusion of lease contracts is carried out by the "Diplomatic Property Agency in the country" - EOOD, and the "National Palace of Culture - Congress Centre Sofia" - EAD;

8. where the lease is a short-term (up to one year) use of commercial premises, parts of premises or infrastructure, where these are not separate premises or separate parts, and the conclusion of transactions is based on publicly disclosed terms;

9. after authorisation by the Council of Ministers.

(2) With the permission of the body, exercising the rights of the state in public enterprises, respectively of the general assembly of the partners/shareholders, the conclusion of lease contracts for fixed assets - sports facilities and equipment, irrespective of their balance sheet value, may be carried out through direct negotiation with non-profit legal entities for the implementation of public benefit activities, whose main activity corresponds to the purpose of the asset, with the initial price, determined by an independent appraiser.

(3) The contracts, referred to in Para. 2 shall be for a period of up to one year.

Chapter five.

REQUIREMENTS FOR THE MANAGEMENT AND CONTROL BODIES OF PUBLIC ENTERPRISES AND NOMINATION OF APPLICANTS

Section I.

Main selection criteria for members of the management and control bodies

Art. 31. The determination of the selection criteria shall be carried out by the authority, exercising the rights of the State in accordance with **Art. 21, Para. 2 and 3** of the Public Enterprises Act and taking into account the requirements of special Acts. The selection criteria shall be made available to the nomination commission before the start of the competition procedure.

Art. 32. The determination of the criteria for evaluation of applicants and their weighting shall be carried out by the authority, exercising the rights of the State. The evaluation criteria shall be communicated to the nomination commission before the start of the selection procedure.

Art. 33. Selection criteria for the nomination of applicants as members of the management and control bodies of public enterprises shall be:

1. an appropriate educational qualification in a specific field of study, that provides the knowledge and competences, necessary for the professional performance of the duties of the post (law, finance, accounting and control, marketing, business administration, medicine, technical studies, etc.);

2. professional experience providing the necessary skills to perform professionally the duties of a member of a management and supervisory body;

3. good reputation;

4. other relevant professional skills and competences, according to the specific company, e.g. strategic planning, financial, commercial or production management, risk management, foreign language skills, etc.

Art. 34. (1) Depending on the selection criteria set, the body, exercising the rights of the State shall also determine the appropriate performance indicators.

(2) For a educational-qualification degree in a specific specialisation, in view of the specific nature of the enterprise and its needs, only compliance or non-compliance with the requirements is established.

(3) Indicators for assessing professional experience may include a minimum number of years of experience in a particular profession, in a management position, internationally recognised research or consultancy experience, etc.

(4) Indicators for assessing other skills and competences may be used:

1. in the field of strategic planning - ability to set clear short-term and long-term goals of the enterprise, to know the trends in the industry and to use different sources of information, ability to analyze the activities of the enterprise in the context of the industry, in which it operates and at the national/international level (long-term vision), ability to plan and manage change, etc.;

2. in the field of operational management - the ability to lead, to organise teamwork, to motivate team members, to form a wide network of professional contacts, that can be used for professional purposes, to achieve results through different approaches, to make compromises while maintaining continuity, to make decisions within tight deadlines and in situations, where limited information is available, to propose several solutions to a problem, making an informed decision and anticipating possible consequences, etc.

(5) An applicant for membership of a management and supervisory body shall be considered to be of good repute, unless there is evidence to the contrary and there is reasonable doubt as to the person's good repute. In assessing the good repute of an applicant for membership of a management or control body, account shall be taken of the information, available to the public authority and the nominating commission for making the assessment.

Art. 35. The assessment procedure shall comprise two parts - a written part and an oral part (interview), both of which are subject to minimum marks, failure to achieve which will be grounds for exclusion from further participation in the competition. The written part shall include a presentation of a concept for the development of the enterprise and the contribution of the applicant to its management, and may include a test. The oral part will consist of questions to be answered by each applicant.

Art. 36. For the purpose of carrying out the evaluation of applicants, the authority, exercising the rights of the State shall develop an evaluation methodology, which shall be made available to the Nominating commission before the start of the competition procedure.

Art. 37. (1) A competitive procedure for the election of members of the management and control bodies of public enterprises, which are not categorised as "large" may be conducted in accordance with the procedure, laid down in **Section III of Chapter Five**, or by the relevant authority, exercising the rights of the State in accordance with the procedure, laid down by it.

(2) A competition procedure for the election of representatives of the State in the management and control bodies of public enterprises shall be conducted by the relevant body exercising the rights of the State in accordance with a procedure, determined by it.

(3) A competition procedure for the election of members of management boards in joint stock companies with a two-tier structure shall be carried out by the supervisory board of the relevant public enterprise in accordance with the procedure, laid down by it.

(4) In carrying out the competitive procedures, referred to in Para. 1, 2 and 3, the principles of publicity, transparency, free and fair competition, equality and proportionality shall be respected, as well as non-discrimination, and applicants should meet the selection criteria, set out in **Art. 33**.

(5) Information on the competitive procedures, carried out under Para. 1-4 shall be submitted to the Agency for Public Enterprises and Control within 5 working days of the conclusion of the management and control contracts

Section II.

Nomination commission

Art. 38. (1) The Public Enterprises and Control Agency shall appoint a nominating commission, consisting of nine members, including a chairman, and not less than three alternate members. Three of the members shall be appointed by the authority, exercising the rights of the State, three shall be employees of the Public Enterprises and Control Agency and three shall be independent experts.

(2) The Nominating commission shall be composed of permanent and rotating members. The rotating members shall be determined according to the sectoral competence of the body, exercising the rights of the State in each individual selection.

Art. 39. An independent expert may be a person, who is not bound by any material or immaterial interest or relationship with the public enterprise, for which members of the management and control bodies are nominated, with members of its active management, or with a partner/shareholder, or with the body, exercising the rights of the State in the enterprise.

Art. 40. (1) The Nominating commission shall be composed of persons in good standing, who hold higher education, have not been convicted of a felony, have not been placed on probation, and have at least 5 years of experience in at least one of the following areas:

1. staff management, recruitment and competency assessment;
2. management of commercial companies;
3. the area, in which the enterprise, for which the members of the management or control bodies are elected operates;
4. law.

(2) The Nominating commission shall be established for a term of three years. At the expiry of the term of office, the Commission shall continue its work until a new composition is appointed for the following term.

(3) Members of the Commission may be reappointed without limitation.

(4) The term of office of a member of the Commission shall be terminated early in the following cases:

1. in the event of death;
2. on termination of the service/employment relationship with the Agency for Public Enterprises and Control or with the body, exercising the rights of the State, by which he is designated;
3. when objectively unable to perform his/her duties for more than 3 months;
4. in the event of a final conviction for a deliberate offence of a general nature;
5. at his request or by decision of the authority, exercising the rights of the State, by which he is designated;
6. in the event of serious misconduct or systematic failure to perform their duties as members of the Commission.

Art. 41. (1) The Agency for Public Enterprises and Control shall develop internal rules for the operation of the Nomination commission and for the conduct of competitive procedures, which shall be published on the Agency's [website](#).

(2) The Commission shall meet in the premises of the Agency for Public Enterprises and Control and the administrative services of the Commission shall be provided by the Agency.

Section III. Nomination procedure

Art. 42. The authority, exercising the rights of the State shall ensure timely initiation of the process of selection and evaluation of applicants for membership of the management and control bodies by:

1. preparing a description of the competencies and experience requirements, required for the position, as well as information on the current state of the enterprise, its strategy, goals and challenges;
2. making available for publication on the [website](#) of the Agency for Public Enterprises and Control a public call for applicants, together with all relevant documents.

Art. 43. The Agency for Public Enterprises and Control shall publish on its website a public call for applications, which shall contain information on the position and the enterprise, the requirements for applicants, the selection criteria, the criteria and methodology for assessing applicants, the documents required, the method of communication with the commission and the deadline for submitting the documents.

Art. 44. The Nominating commission shall conduct the competition in the following stages:

1. admission of the applicants on the basis of the documents, submitted and the selection criteria;
2. sending invitations to successful applicants to take part in the written part of the competition;
3. conducting the written part of the competition, marking the applicants' work and admitting to the next part those applicants, who have obtained a mark above the minimum mark;
4. inviting and interviewing shortlisted applicants;
5. drawing up a final ranking of the applicants on the basis of the written and oral tests;
6. preparing and sending a proposal with the shortlisted applicants to the competent appointing authority.

Art. 45. Before the assessment of the eligibility of the applicants begins, the members of the Nomination commission shall sign a declaration of prevention of conflict of interest and protection of data of natural persons - applicants. If a member of the commission finds, that the requirements of the declaration cannot be met in respect of any of the applicants, he shall indicate this in his declaration, shall be excluded from the procedure and shall be replaced by a reserve member.

Art. 46. Within seven days after the expiry of the deadline for the submission of documents by the applicants, the Nomination commission shall carry out a documentary check and draw up a list of admitted applicants for members of the management and control bodies.

Art. 47. (1) Verification of compliance with the requirements of **Art. 20, Para. 1, items 1 - 8 and 13** of the Public Enterprises Act shall be carried out by the Nomination commission, when verifying the eligibility of the applicant.

(2) Verification of compliance with the requirements of Art. 20, Para. 1, items 9 - 12 and **Art. 20, Para. 3** of the Public Enterprises Act shall be carried out before the appointment of the selected applicant by the competent appointing authority.

Art. 48. (1) The Nomination commission shall send invitations to the shortlisted applicants to take part in the written part on a specified date and time.

(2) The written tests shall be evaluated within ten days by the Nominating commission, and applicants, who have obtained a score in the written part higher than that, specified in the methodology shall be invited for an interview on a specified date and time.

(3) Within ten days after the interviews with each applicants, the Nomination commission shall make a final ranking of the applicants and, according to the ranking, shall nominate up to five applicants for each position of member of the management and control body, applied for.

(4) The results of the competition and the nominated applicants shall be submitted to the competent body of the public enterprise for a decision. The decision for not selecting the first-ranked applicants shall be reasoned.

Art. 49. (1) If, on the basis of the selection made or the final ranking of the applicants, the Nomination commission shall consider, that no applicant fulfils the requirements, laid down for the post, it shall decide on the termination of the procedure for the assessment of applicants and inform the competent authority.

(2) In the cases, referred to in Para. 1, the authority, exercising the rights of the State shall initiate a new nomination procedure.

Art. 50. The competent authority shall have the right to reject all the applicants, ranked by the Nominating commission, giving appropriate reasons, and to initiate a new nomination procedure.

Art. 51. If the selected applicants fails to remedy the non-compliance with the requirements of **Art. 20, Para. 1, items 9 to 12** and Art. 20, Para. 3 of the Public Enterprises Act before appointment, another of the shortlisted applicants shall be elected in his place. A new nomination procedure shall be initiated in the event, that there is no other qualified applicant, meeting the requirements of Art. 20, Para. 1, items 9 -12 and of **Art. 20, Para. 3** of the Public Procurement Act.

Section IV.

Entrusting the management and control of public enterprises

Art. 52. (1) The management and control of public enterprises shall be entrusted by management and control contracts, concluded in accordance with the provisions of the **Commerce Act**, or the special Act, establishing the enterprise.

(2) The consent of the employer under the main employment contract or of the appointing authority under the civil service relationship shall be required prior to the conclusion of management and control contracts with persons, who work in the public administration outside the administration of the body, exercising the rights of the State in the public enterprise concerned.

Art. 53. Management and control contracts in public enterprises shall be concluded for a period of 3 to 5 years.

Art. 54. (1) The management or control contract shall specify:

1. the rights and obligations of the parties;
2. the amount of the remuneration and the method of its payment;
3. the liability of the parties in the event of non-performance of the contract;
4. the grounds for termination of the contract;
5. the amount of the cash guarantee, but not less than 3 months' gross remuneration, which they give for their management;
6. the relationship between the parties during the period between the termination of the contract and the deletion of the name of the exempted member of the management or control body in the Commercial Register.

(2) The members of the board of directors, of the supervisory board, the management board and the managers of public enterprises shall give a cash guarantee for their management only in that capacity.

(3) The guarantee given shall be returned after the termination of the management or control contract and after the decision of the general meeting of the shareholders to discharge liability. Interest, accrued on the amount deposited shall also be subject to repayment.

Art. 55. (1) Where a public enterprise is wound up by liquidation, the body, which decided on the winding up shall appoint liquidators and conclude a contract with them.

(2) No person may be appointed liquidator who:

1. on their own behalf or on behalf of others, carry out commercial transactions;
2. are partners in general partnerships, limited partnerships and limited liability companies;
3. have been deprived of the right to hold a substantive post by a criminal conviction or administrative penalty;
4. hold a senior public office, referred to in **Art. 6, Par.a 1, items 1 - 38 and 41 - 45** of the Act on Counteracting Corruption and on Seizure of Illegally Acquired Property;
5. are civil servants or work under contract in the civil service.

(3) The prohibitions under Para. 2, items 1 and 2 shall apply when an activity, similar to the activity of the company is carried out.

(4) The contract with the liquidators shall specify:

1. the rights and obligations of the parties;
2. the amount of the remuneration and the manner of its payment;
3. the liability of the parties in the event of non-performance of the contract;
4. the time limit for completion of the work.

Section V.

Determination of remuneration of members of executive and supervisory bodies in public enterprises

Art. 56. (1) The remuneration of the members of the executive and supervisory bodies of public enterprises shall be determined according to the value of the assets, the number of staff, the profitability, the financial result, the variation in value added per employee, the servicing of debts, and the specific obligations and responsibilities, assumed in the contracts concluded.

(2) The monthly remuneration of the members of the management and control bodies of public

enterprises shall be determined by means of a score, formed on the basis of the results for the quarter under review, according to the indicators and criteria, set out in the table in **Annex No 2** and the value of one score unit.

(3) The members of the Boards of Directors, Supervisory Boards and Management Boards of public enterprises - joint stock companies shall receive remuneration, determined at the value of one point unit in the amount of 50 per cent of the minimum monthly salary, established for the country for the respective month.

(4) The executive members and members of the boards of directors, empowered to represent the enterprise, in addition to the remuneration, referred to in Para. 3 shall receive remuneration, set at the value of one point unit equal to the minimum monthly salary, established for the country for the respective month.

(5) Managers of public enterprises - limited liability companies shall receive remuneration, set at a value per unit equal to the minimum monthly salary, established for the country for the relevant month, and controllers of these enterprises - at a value per unit, equal to 40 per cent of the minimum monthly salary, established for the country for the relevant month.

(6) At the end of each quarter, depending on the performance of the indicators and criteria in the Annex, referred to in Para. 2, the score shall be calculated and the monthly remuneration for the quarter under review shall be recalculated. The recalculated remuneration shall be calculated and paid with the remuneration for the last month of the quarter under review. During the first two months of the quarter, members of the executive and supervisory bodies shall receive a monthly remuneration in advance, based on the score for the previous quarter.

(7) The calculation of the score and the amount of remuneration of the members of the executive and supervisory bodies shall be carried out in the enterprise on the basis of the statutory reporting. The funds for the payment of remuneration shall be charged to the expenditure of the enterprise. Information on the remuneration, determined shall be submitted quarterly to the authority, exercising the rights of the State.

(8) The members of the executive and supervisory bodies of the enterprises shall receive remuneration in excess of the remuneration, determined in accordance with Para. 7, provided that the accounting profit of the company in the year under review has increased compared to the previous year and provided, that the company has no outstanding losses from previous years and no arrears. Talties shall be on account of the profit after tax and the allocation of the statutory portions thereof to the company's reserve, profit deductions or dividend in favour of the owner of the capital in an amount, determined by the general meeting of shareholders, from one to three average monthly remunerations, received during the current year by the members of the executive and supervisory bodies.

(9) The amount of the remuneration of the members of the Boards of Directors, Supervisory Boards and Management Boards of joint stock companies, determined in accordance with Para. 3, after the recalculation referred to in Para. 6, may not exceed six times the minimum monthly salary, established for the country for the month concerned.

(10) The amount of the remuneration of the executive members and the members of the management boards, authorized to represent the company, determined in accordance with Para. 3 and 4, after the recalculation, referred to in Para. 6, may not exceed eighteen times the amount of the minimum monthly salary, established for the country for the respective month.

(11) The amount of the remuneration of the managers of the limited liability companies, referred to in Para. 5 after the recalculation, referred to in Para. 6 may not exceed sixteen times the minimum salary, established for the country for the respective month, and that of the controllers of the limited liability companies, referred to in Para. 5 after the recalculation, referred to in Para. 6 may not exceed five times the minimum salary, established for the country for the respective month.

(12) In the state enterprises, established by special Acts on the basis of **Art. 62, Para. 3** of the Commerce Act, the body, exercising the rights of the State shall adopt a policy on the remuneration of the members of the boards of directors and the executive/managing directors, which ensures the effective management of the enterprise and takes into account its specificities. The remuneration, determined under

this procedure shall comply with the requirements of Para. 9 и 10.

(13) By decision of the body, exercising the rights of the State, respectively of the General Assembly, lower remuneration may be set in the management and control contracts by reducing the remuneration, set out in Para. 3 to 5 of the values of a point unit, including in the cases, referred to in Para. 6.

(14) Where the enterprise has achieved or exceeded all planned financial and non-financial targets and there are no arrears, but the other conditions under Para. 8 for receiving a bonus have not been met, the general meeting of shareholders may decide to pay once a year additional remuneration to the members of the management and control bodies for the results achieved. The amount of the additional remuneration may not exceed three average monthly remunerations, received during the current year by the members of the executive and supervisory bodies, and the funds for its payment shall be charged to the costs of the company.

Chapter six.

MEDIUM-TERM OBJECTIVES AND PLANNED RESULTS OF PUBLIC ENTERPRISES

Art. 57. (1) In accordance with the Policy on State Participation in Public Enterprises, approved by the Council of Ministers, the bodies, exercising the rights of the State, respectively the General Assembly, shall approve the medium-term objectives and planned results for each individual enterprise as part of its business programme.

(2) The planned results are pre-set annual values, that allow the measurement of the results achieved. They may have a numerical value or be formulated as tasks, the achievement of which is determined by a yes/no answer.

(3) The definition of the planned results and corresponding key performance indicators for each individual public enterprise is part of the process of preparing the medium-term strategy/business programme of the enterprise and is carried out in dialogue between the State authority and the management and control bodies of the enterprise.

(4) Medium-term financial targets and planned results shall be related to the financial performance of the entity and include profitability, capital structure, turnover, earnings and dividends, etc., taking into account the specific business of the particular public enterprise, or the industry/category, in which it falls.

(5) Medium-term non-financial objectives and planned results are those, related to the public service obligations, assigned to the enterprise or the fulfilment of public policy objectives, as well as those, related to the specific business model of the enterprise, such as number of users, customer satisfaction, number of accidents, technological development, human rights, environment, etc.

(6) The business programme shall be developed by the public enterprise, and adopted by its governing body. The approval of the adopted business programmes shall be carried out by the body, exercising the rights of the State in the enterprise, respectively by the general assembly, and in compliance with the specific requirements of the special legislation. The approved business programme shall be submitted to the Agency for Public Enterprises and Control in electronic format in accordance with **Art. 21**.

(7) The body, exercising the rights of the State, respectively the General Assembly, shall adopt internal rules or policies for the approval, updating and reporting, which shall also specify the deadlines for the adoption of the business programmes of public enterprises by their management and control bodies, and shall notify the Agency for Public Enterprises and Control of these deadlines.

Art. 58. (1) The business programme shall be designed to ensure the flexibility of the enterprise's strategy by updating it each year to allow the planned results to be adapted to changes in the market. The business programme shall be developed over a period of 3 or 5 years at the discretion of the State authority.

(2)) The business program shall contain at least:

1. a descriptive part:

a) general information about the enterprise, including areas of activity, mission, vision, overall

strategic objectives, etc.;

b) state of the enterprise, including financial and economic situation, organizational structure, etc.;

2. analytical part:

a) analysis of the market, market positions, competitive environment;

b) assumptions on the development of the economic environment and the prospects of the enterprise;

c) analysis of the main risks;

3. forecast part:

a) forecast financial statements for the three- or five-year period, developed in variants according to the assumptions made;

b) specific values of key performance indicators for financial and non-financial targets for the forecast period by year;

c) an investment plan or programme, if investments are foreseen, the main investment objects, affecting the forecast financial and economic indicators;

d) a repair programme for public enterprises, whose tangible fixed assets require repairs, that have a material impact on the financial position of the enterprise.

Art. 59. (1) The planning horizon of the business programme shall be three or five years, with the base year, being the year, preceding the first year of the forecast period. The business programme shall be updated annually.

(2) In the event of objective difficulties or significant changes in the activities of public enterprises in the objectives of public policy or the economic environment, an update of the approved business program for the current year shall be allowed after the end of the six-month reporting period of the current year.

(3) The procedure for updating the business programme, referred to in Para. 2 may be initiated by a decision of the management and control bodies of the public enterprise or may be mandated by the authority, exercising the rights of the State.

Art. 60. (1) The body, exercising the rights of the State in the enterprise, respectively the general assembly, shall approve the forecast indicators and the values, to be achieved for each year of the period.

(2) The implementation of the business programme shall be reported annually at the end of the financial year to the authority, exercising the rights of the State and the Agency for Public Enterprises and Control.

(3) The report on the implementation of the business programme must contain a comparative analysis of the indicators, achieved against those, set out in the business programme for the relevant period.

(4) At the same time as the report on the implementation of the business programme, the management and control bodies of public enterprises shall prepare annual self-assessments of their activities and performance under [Art. 21, Para. 5](#) of the Public Enterprises Act in a format, specified by the Public Enterprises and Control Agency. The self-assessments shall be submitted to the authority, exercising the rights of the State and to the Agency for Public Enterprises and Control.

(5) The business programme for the following period may be submitted to the authority, exercising the rights of the State and to the Agency for Public Enterprises and Control together with the annual accounts and the business programme report or separately.

(6) The management and control bodies of public enterprises shall, within 30 days after the end of each quarter and by 25 April of the following year, submit to the body, exercising the rights of the State, a written report on their work - on the financial and economic situation of the company, on the existing problems and measures to solve them.

Chapter seven.

PUBLIC ANNOUNCEMENT

Art. 61. (1) The management and control bodies of public enterprises shall disclose quarterly and annual financial statements, analyses and reports under [Art. 29](#) of the Public Enterprises Act on the

activities of the enterprises, in accordance with the **Accountancy Act** and applicable accounting standards.

(2) Quarterly reporting shall include disclosure of:

1. interim financial statements, prepared in accordance with applicable accounting standards;
2. interim performance analysis, including an analysis of the achievement of financial and non-

financial targets.

(3) Annual reporting shall include disclosure of:

1. annual financial statements, prepared in accordance with applicable accounting standards;
2. an annual activity report, prepared in accordance with the **Accountancy Act** and the **Commerce Act**, including an analysis of the achievement of financial and non-financial objectives;

3. the registered auditor's report;

4. a non-financial declaration under **Art. 48** of the Accountancy Act, as well as reports on risk assessment, human resources and labour relations, sustainability, environmental impact, related party transactions and a report on the members of the management and supervisory bodies, including a report on their remuneration, a report on the fulfilment of the public service obligations, entrusted to them and of the public policy objectives;

5. corporate governance statement, pursuant to **Art. 100m, Para. 7, item 1** of the Public Offering of Securities Act - for enterprises, categorised as "large" and enterprises, entrusted with public service obligations and/or public policy objectives;

6. an analytical account of the enterprise's receipts and expenditure for the performance of its assigned public service obligations or public policy objectives;

7. a report and a self-assessment questionnaire on the state of financial management and control systems, prepared in accordance with the **Act on the Financial Management and Control in the Public Sector**;

8. other required information.

(4) Public enterprises, preparing consolidated financial statements, pursuant to **Art. 31** of the Accountancy Act shall also submit the relevant consolidated financial statements and reports.

(5) The disclosure of the information shall be made on the website of the Agency for Public Enterprises and Control.

Art. 62. (1) The body, exercising the rights of the State, respectively the general meeting of the shareholders, shall adopt rules for the selection of the registered auditor for certification of the annual financial statements of the public enterprise.

(2) (Repealed – SG, 89/21, in force from 26.10.2021)

Art. 63. (1) Public enterprises should develop their own disclosure policy, which shall include:

1. a list of information to be publicly announced;
2. a list of non-disclosable information, such as information, containing business secrets, sensitive personal data (under the **Protection of Personal Data Act**), etc.;

3. deadlines for publication of the information;

4. procedures for quality assurance of the information;

5. procedures for assessing the conformity of the information to be disclosed with the requirements of the normative acts;

6. the procedure and frequency of checking and updating the information disclosed;

7. persons, responsible for publishing information in the capital company.

(2) A single disclosure policy may be developed for companies, that are part of a group (holding).

(3) The management and control body shall be responsible for fulfilling the disclosure obligation for the enterprise, but specific disclosure obligations may be delegated to structural units and officers of the company.

Art. 64. (1) Public enterprises, categorised as 'large' shall maintain a website, on which they shall publish at least the following information:

1. statute/ memorandum of association/ articles of incorporation;

2. information on the boards of the enterprise, if any;
3. the financial and operational performance of the entity, including, where relevant, the costs and funding arrangements, related to public policy objectives;
4. any financial assistance, including guarantees, received from the State;
5. all transactions with the State and other related parties;
6. the qualifications of the members of the management and control bodies, the manner in which they are appointed and their remuneration.

(2) Depending on the chosen disclosure policy, public enterprises may publish on their website:

1. information on environmental issues, such as the use of natural resources by the enterprise, energy consumption, the amount of emissions generated, the risk of accidents;
2. information on social issues, such as the enterprise's involvement in solving social problems, corporate social responsibility;
3. issues, raised by the enterprise for public consultation, such as construction projects, etc.;
4. information on consumers and consumer rights;
5. information, related to employees, such as number, rights, working environment, motivation system;
6. information on respect for human rights, such as measures, taken by the enterprise in the area of equality and non-discrimination;
7. information on anti-corruption issues, such as the enterprise's whistleblowing regime and the ability of its employees to approach audit or control bodies directly;
8. information on non-profit legal entities and international organisations, of which the enterprise is a founder or member;
9. contact information for the official of the enterprise, responsible for publishing the information on its official website;
10. other relevant information.

Chapter eight.

MUNICIPAL PUBLIC ENTERPRISES

Art. 65. (1) The ownership rights of municipalities in municipal public enterprises shall be exercised by the respective municipal council in compliance with the principles of local self-government.

(2) The municipality shall exercise its ownership rights in municipal public enterprises in accordance with the principles of **Art. 12**.

Art. 66. (1) The policy on the participation of the municipality in the municipal public enterprises shall be developed and adopted by the respective municipal council and shall be published on the municipality's website. The municipal council shall define the content of the municipal policy in accordance with **Art. 5, Para. 2** in such a way, as to inform the public about the objectives, set for municipal public enterprises and their implementation.

(2) Each municipality shall independently prepare an annual summary report on the results of the activities of the municipal public enterprises, containing the information, referred to in **Art. 22**, and publish it on its website by 31 October of the following year.

Art. 67. Local authorities shall ensure the establishment of professional and independent management bodies of municipal public enterprises with clear powers, based on a transparent and fair nomination procedure, based on merit.

Art. 68. The bodies of local self-government shall determine the conditions and procedure for nomination of applicants as members of the management and control bodies of municipal public enterprises.

Art. 69. (1) Local self-government bodies shall determine the size and composition of the boards of directors and supervisory boards of municipal public enterprises, as well as the number of independent members thereof, subject to the requirements of the **Public Enterprises Act**.

(2) Competitions shall be conducted according to publicly announced rules, determined by the

municipal council in compliance with [Art. 21, Para. 2](#) of the Public Enterprises Act.

Art. 70. (1) The management and control of municipal public enterprises shall be entrusted by contracts, concluded between each member of the management and control body of the enterprise and the body, exercising the rights of the municipality, in accordance with the provisions of the [Commerce Act](#).

(2) In the event of early termination of a contract for entrusting the management and control of a municipal public enterprise to a member of its sole or collective management and control body, the municipal council may temporarily, pending a competition, but for a period not exceeding 6 months, elect a new member of that body without a prior competitive procedure.

(3) Contracts for the assignment of the management and control of municipal public enterprises shall be terminated early on the ground, specified in the [Public Enterprises Act](#), as well as in the presence of such grounds as determined by the Municipal Council on the basis of [Art. 51a, Para. 4](#) of the Municipal Property Act.

Art. 71. The municipal public enterprises shall disclose the information, referred to in Chapter Seven on the website of the respective municipality in the format, content and within the time limits specified. The provisions of [Art. 64](#) shall apply accordingly.

Additional provisions

§ 1. For the purposes of these Rules, a "royalty" is a portion of the profits of the enterprise, which a member of a management and control body is entitled to receive once a year by a resolution of the general meeting of shareholders.

Transitional and concluding provisions

§ 2. The authority, exercising the rights of the State in public enterprises shall determine the amount of compensation to be paid to the owners of state-owned properties in the cases under [Art. 18](#) of the repealed Act on Transformation and Privatisation of State and Municipal Enterprises and under the Act on Compensation of Owners of State-Owned Properties.

§ 3. (1) Within two months from the entry into force of the Rules, the Ministers, exercising the rights of the State in the capital of commercial companies shall send to the Agency for Public Enterprises and Control the information, referred to in [Art. 21](#) for all public enterprises under their portfolio, including the State enterprises, established by special Acts on the basis of [Art. 62, Para. 3](#) of the Commerce Act.

(2) For the purpose of preparing and submitting to the Council of Ministers the analysis, referred to in [§ 2, Para. 2](#) of the Transitional and Final Provisions of the Public Enterprises Act, within two months from the entry into force of the Rules, the Ministers, exercising the rights of the State in the State-owned enterprises, established by special Acts on the basis of [Art. 62, Para. 3](#) of the Commerce Act, shall send to the Agency for Public Enterprises and Control an analysis of the nature of the activities, carried out by the enterprises, whether primarily commercial or primarily public functions and policies, and a proposal for their restructuring, accompanied by a justification.

§ 4. The first Policy on State Participation in Public Enterprises shall be adopted by 31 December 2020.

§ 5. The Ministry of Finance shall collect and publish the quarterly and annual financial statements of public enterprises by 30 August 2020 and transfer the financial statement datasets to the Public Enterprises and Control Agency no later, than 31 December 2020.

§ 6. The first annual summary report on public enterprises shall be produced by 31 October 2020.

§ 7. Pending the introduction of an electronic information system, the reporting information, referred to in [Art. 61](#) shall be made available by e-mail to the Agency for Public Enterprises and Control for publication on its website.

§ 8. Until 31 December 2020, the Public Enterprises and Control Agency shall prepare a plan for enterprises performance assessments in 2021. The plan for the enterprise performance assessments for each

subsequent year shall be approved by the Council of Ministers by the end of the preceding year.

§ 9. Within 9 months of the entry into force of the Rules, the Agency for Public Enterprises and Control shall adopt the methodology, referred to in **Art. 17**.

§ 10. Management and control contracts, concluded prior to the entry into force of the Rules, as well as approved business programmes/plans of public enterprises, shall remain valid until the procedures, provided for in the Act and the Rules have been carried out. The tendering and competition procedures, announced before the entry into force of the Rules, as well as the procedures for the hiring and sale of property to the employees of the enterprise, shall be completed in accordance with the existing procedure.

§ 11. The first business programmes under the Rules shall be prepared and adopted by the end of 2021, with three-year programmes, covering the period 2021-2023 and five-year programmes covering the period 2021-2025.

§ 12. In the Rules on the Implementation of the State Property Act, adopted by the Council of Ministers' Decree No. 254 of 2006 (SG, 78/06; amend. and suppl., N 26 and 51/07, N 64, 80 and 91/08, N 7, 25, 62 and 93/09, N31, 52, 58 and 69/10, N 61, 80 and 105/11, N24 and 47/12, N62, 80 and 87/13, N13, 15 and 102/14, N58 and 96/16, N 70/18 and N 77 and 102/19), in Art. 4, Para. 1, the words "the Rules on the Procedure for the Exercise of the State's Rights in Commercial Companies with State Participation in the Capital, adopted by the Council of Ministers' Decree No 112 of 2003 (prom., SG, N 51/03; amend. and suppl., N 59/03; Decision No 8260 of the Supreme Administrative Court of 2005, N 79/05)' shall be replaced by 'the Rules on Implementation of the Public Enterprises Act'.

§ 13. The Rules are adopted on the basis of **§ 3, Para. 2** of the Transitional and Final Provisions of the Public Enterprises Act.

Concluding provisions

TO DECREE NO 347 OF 20 OCTOBER, 021, AMENDING THE RULES ON IMPLEMENTATION OF THE PUBLIC ENTERPRISES ACT, ADOPTED BY DECREE NO 85 OF THE COUNCIL OF MINISTERS, 2020

(PUBL. – SG, 89/21, IN FORCE FROM 26.10.2021)

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

Annex No 1 to Art. 29, Para. 2

Rules

for conducting auctions and competitions and for concluding contracts of sale and lease with employees

1. The auction is opened by a decision of the auctioneer, which contains:

1.1. a description of the object;

1.2. the starting price and the bidding step, which may not be less than 1 per cent and not more than 10 per cent of the starting price;

1.3. the type of auction - secret or open, and in the case of a secret auction - the type of meeting - open or closed;

1.4. method of payment;

1.5. the date, place and time of the auction;

1.6. the procedure for receipt or purchase of the auction documentation, the amount and method of payment of its price and the place for its receipt, as well as the amount of the deposit, if any, which may not exceed 50 per cent of the starting price;

1.7. conditions for viewing the site;

1.8. deadline for receipt of applications;

1.9. special requirements for tenderers, where the type of site so requires and other auction conditions;

1.10. day, place and time of the re-tendering;

1.11. a decision, approving the auction documentation.

2. The terms and conditions of the auction, referred to in points 1.1 to 1.10 shall be published by means of a notice on the websites of the enterprise and of the Agency for Public Enterprises and Control at least 14 days before the date of the auction.

3. The auction commission shall be appointed by the enterprise and shall consist of 3 to 7 members and must include a lawyer. The order, appointing the commission shall also specify the two alternate members and the remuneration of the commission members, if any.

4. The work of the auction commission and all the circumstances of the auction shall be recorded in a report, signed by all its members.

5. The registration of the participants in the auction shall be carried out by the auction commission on the announced day and time for the opening of the auction. In the event of withdrawal from the auction after registration, the deposit paid shall not be returned to the bidder.

6. After registration, the commission shall examine the applications in the order, in which they are received and shall take note of the regularity of the documents submitted. If it finds, that the documents submitted are incomplete or do not comply with the requirements, set out in the auction documentation, the commission shall exclude the irregular applicant from participation.

7. An auction may also be held, where only one application is submitted, if this is provided for in the auction documentation. In the event, that only one tenderer from among those, who have submitted applications appears at the auction, the auction shall be postponed for two hours and, if no other tenderer appears after that period, the tenderer shall be declared the successful tenderer at the price he has offered, which may not be less than the starting bid price. If no applicant appears at the auction, it shall be declared not held and shall be held again within one month in accordance with item 1.10. Where only one tenderer reappears at the auction, he shall be declared the successful tenderer at the price offered by him, which may not be lower than the starting bid price.

8. If circumstances arise, which make it impossible to open or close the auction, the Commission shall draw up a report, on the basis of which the enterprise shall determine, that a new auction shall be held.

9. An open auction shall be held by the prior submission of a written application by the participant or by a person, authorised by him within the time limit, referred to in point 1.8, which shall be entered in a special register with an entry number, date and time of receipt:

9.1. in the case of an open auction, the chairman shall announce the subject of the auction, the starting price, from which the bidding shall begin and the bidding increment;

9.2. the bidding shall be carried out by the participants, announcing aloud successive amounts above the starting price, distinguished by the chairman of the commission by an audible signal; each increase shall be equal to the bidding step;

9.3. bidders shall state loudly and clearly the amounts they propose; the amount stated by the bidder shall bind the bidder to the commission and the other bidders, without any right to claim error;

9.4. before the third announcement of the last bid, a warning shall be given, that it is the last bid, and if there are no other bids, the bidding shall end with an audible signal by the chairman, who shall announce the successful bidder and the final price offered and close the auction;

9.5. in the event, that the participants in the auction confirm the starting bid price, but none of them announces the next higher price, than the starting bid price by one step, the auction shall be closed and their deposits for participation in the auction shall not be refunded; neither shall the deposit of any participant, who has been declared the successful bidder but refuses to pay the price, offered by him;

9.6. the highest bidder is the successful bidder; he is obliged to pay the bid price within the terms and according to the conditions of the auction; in case of default, the next highest bidder is the successful bidder, provided that he has not withdrawn his deposit.

10. A secret bidding procedure shall be conducted by means of a written application, submitted in advance by each bidder in a sealed opaque envelope within the time limit, referred to in point 1.8. The envelope shall bear the name of the tenderer or the name of the authorised person and the full name of the tender object. In addition to the auction documents, the envelope must also contain the price offer, which must be placed in a small sealed opaque envelope:

10.1. on the day of the auction, the commission prints the envelopes submitted, checks, that the conditions for participation in the auction have been met and announces the regularity of the documents submitted;

10.2. the price proposals shall be signed by each member of the auction commission; the applications regularly submitted shall be ranked according to the price offered;

10.3. in the event of the same highest price, being offered by more than one bidder, the auction shall proceed between them by open bidding, starting from the price offered and with a bidding step determined in accordance with point 1.2;

10.4. the auction shall be deemed to have been won by the bidder, offering the highest price or, where applicable, the lowest price in the light of the decision of the enterprise, referred to in Para. 1, which shall be announced to all participants, and the auction shall be closed.

11. . The decision of the enterprise to hold a competition shall contain:

11.1. a description of the object of the competition;

11.2. the starting price;

11.3. the general and special conditions of the competition and the requirements for the participants;

11.4. if a fee is provided for the receipt of the tender documentation, the amount of the fee, the place and time limits for receipt or purchase of the auction documentation and for submission of the tenderers' proposals, as well as the amount, if any, of the participation deposit;

11.5. the time and manner of inspection of the site;

11.6. a comprehensive list of documents to be submitted by applicants;

11.7. other conditions of the enterprise, in accordance with the objectives of the competition;

11.8. the composition of the selection board and a decision, approving the competition dossier.

12. The competition commission shall be appointed by the enterprise and shall consist of 3 to 7 members, including a lawyer. The order, appointing the panel shall also specify the two alternate members and the remuneration of the panel members, if any.

13. The decision, referred to in points 11.1 to 11.7 shall be published on the websites of the enterprise and of the Agency for Public Enterprises and Control at least 14 days before the date of the competition.

14. Bidders shall submit their bids in a sealed envelope, which shall contain an introduction of the bidder, specific proposals on the terms of the tender, price, method and conditions of payment.

15. The competition commission shall rank the participants in order of their satisfaction of the competition conditions and shall propose to the enterprise to appoint the successful participant. At its discretion, the enterprise may require the tenderers to submit additions and/or amendments to their proposals in line with the objectives of the competition, and may negotiate with the applicants, ranked third. The ranking and selection in this case shall be based on the supplemented and/or amended proposals.

16. The successful applicants shall be the one, whose proposal best satisfies the competition conditions. The tenderers shall be notified of the ranking and the results of the competition and the tenderers' deposits shall be returned, the successful tenderer's deposit being retained and offset against the price. The notification to the successful tenderer shall also specify the deadline for the conclusion of the contract. In the event, that the contract is not concluded within the prescribed period through no fault of the successful tenderer, the deposit of that tenderer shall be forfeited and the next successful tenderer, who has satisfied the conditions of the competition shall be declared the successful tenderer, if he has not withdrawn his deposit.

17. The conclusion of contracts with employees of public enterprises for the rental of dwellings,

studios and offices for individual creative activity, garages and parking spaces for private motor vehicles - fixed assets of the enterprise - shall be carried out on the basis of an accommodation order, issued by the managers, executive directors or chairmen of the boards of directors of the enterprises concerned on the basis of the criteria, laid down in the collective agreement.

18. Where the enterprise does not have a collective labour agreement, the accommodation in the facilities, referred to in item 17 and the termination of tenancy for them shall be carried out in accordance with the provisions of item 17 under the terms of the State Property Act and its implementing Rules.

19. The sale of dwellings, studios, offices and garages to employees of the enterprise, as well as to former employees, who have at least 10 years of service and have changed their employer under the conditions of Art. 1 of the Labour Code or whose employment relationship has been terminated due to the acquisition of pension rights, shall be carried out with the permission of the general assembly under the conditions and in accordance with the procedure of the Obligations and Contracts Act, and the prices of the objects shall be determined in accordance with Art. 29, Para. 4.

20. The authorisation, referred to in item 19 shall be valid for a period of 6 months from its issue.

Annex No 2 to Art. 56, Para. 2

Indicators and criteria for determining the score in public enterprises

№	Indicators	Criteria		score
1	2	3		4
1.	Value of assets	1.1.	to BGN 500 thousand	2,0
		1.2.	Above BGN 500 thousand to 1500 thousand	2,5
		1.3.	Above BGN 1500 thousand to 5000 thousand	3,0
		1.4.	Above BGN 5000 thousand to 15 000 thousand	3,5
		1.5.	Above BGN 15 000 thousand	4,0
2.	Average N of staff	2.1.	to 50 persons	2,0
		2.2.	from 51 to 100 persons	2,5

		2.3.	from 101 to 500 persons	3,0
		2.4.	from 501 to 1500 persons	3,5
		2.5.	above 1500 persons	4,0
3.	Change in profitability of operating income	3.1.	Decrease of profitability	-
		3.2.	Maintaining the profitability	1,0
		3.3.	Increase of profitability	2,0
4.	Change of financial results	4.1.	maintaining and increasing the loss or reducing the profit	-
		4.2.	Maintaining the profit	1,0
		4.3.	Decrease of loss	1,5
		4.4.	Increase of profit	2,0
5.	Change in value added per employee	5.1.	decrease	-
	изменение на	5.2.	Maintaining or increasing	2,0
6.	Liabilities of the enterprise	6.1.	missed deadlines on current debts and/or regular arrears on contracts, concluded for their repayment	-
		6.2.	deadlines met for current obligations and regularly serviced contractual arrears for their repayment	2,0

Remarks:

1. The "Asset value" indicator is established by the book value of fixed and current assets at the end of the reporting quarter of the entity's balance sheet.

2. The indicator 'Average number of staff' shall include the average number of staff for the quarter under review, excluding persons on leave under Art. 163, Para. 1 and Art. 164, Para. 1 of the Labour Code.

The average number of staff shall also include the number of staff, working abroad.

3. The indicator "Change in profitability of operating income" is established by comparing the profitability indicators for the reporting quarter and the previous quarter. Profitability of operating income is defined as a percentage of the ratio of accounting profit to net operating income, as shown in the profit and loss/profit and loss account. The accounting profit and net operating income figures for the quarter under review are established as the difference between their figures for the period from the beginning of the year and the period preceding the quarter under review. Where an enterprise has reported an accounting loss for the quarter under review, it is not profitable.

4. The indicator "Change in financial result" is established by the income statement/statement of income, when comparing the financial result - accounting profit or loss, for the quarter under review and the previous quarter. The amount of the accounting profit (loss) for the quarter under review and the previous quarter shall be determined as the difference between its figures for the period from the beginning of the year and the period preceding the quarter under review. Where an accounting profit has been made for the quarter under review and an accounting loss has been recognised for the preceding quarter, the 'Loss Reversal' criterion shall be applied. Where an accounting loss has been made for the quarter under review against an accounting profit for the preceding quarter, the 'Reduction in profit' criterion shall apply.

5. The indicator "Change in value added per employee" for the reporting period, compared to the base period is determined according to the Methodology of the National Statistical Institute for calculating the coefficient of change in value added per employee.

6. Compliance or non-compliance with the deadlines for the indicator "Liabilities of the enterprise" shall be established on the basis of the liabilities for the quarter under review, including liabilities for principal and interest on bank loans; for principal and interest on loans/loans between public enterprises (including those, participating in a group within the meaning of § 1, item 2 of the Additional Provisions of the Accounting Act); liabilities to the state or municipal budget (including contributions to compulsory social and health insurance, value added tax, excise duty, corporate taxes, local taxes and fees, income tax from employment or management and control contracts, etc.); payables to suppliers, payables to staff, payables under other duly concluded contracts, etc. It shall be verified whether the enterprise is in arrears or in arrears in relation to the due date for payment. If it has such prior period debts, does it regularly service them according to the repayment agreements, entered into.

Payables to suppliers' means payables for supplies (including services and intra-Community acquisitions or imports), related to the enterprise's production and operating activities, other than supplies for the enterprise's administrative needs. Where the supplier has fulfilled its obligations and the debtor is in arrears for payment, the enterprise is not regularly servicing its obligations. In cases, where obligations are repaid in accordance with the terms agreed for current and prior periods, no arrears are considered to exist.

Default on even just one of the items in this group is classified as 'unmet deadlines'.

7. Public enterprises with seasonal production and sales may use the information for the relevant quarter of the previous year as the basis for establishing indicators N 3, 4 and 5.

8. In case of specific conditions for business activity, such as prices fixed by state or municipal authorities for production or services or for raw materials, materials and energy carriers used, provision of subsidies from state and/or municipal budgets, expediency of economical use of natural resources or in case of assigned tasks for investment or renewal of production, as well as in case of assigned duties to perform a public service or to meet public policy objectives, the General Assembly may determine other approach and criteria instead of indicators No 4 and 5, keeping the same size for the score units of the criteria.

9. In the event of non-compliance with the deadlines for the payment of social security and health insurance contributions, the score and the remuneration, referred to in Art. 56, Para. 6 shall be reduced by 25 per cent.

10. All indicators shall be calculated on the basis of information from the financial statements of the public enterprise and, for parent companies, on the basis of their individual financial statements, prepared in accordance with the applicable accounting standards.

11. An indicator is retained if there is a deviation of up to 5 per cent in either direction from the value of the indicator for the previous quarter.