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The unofficial consolidated version of the Legal Protection in Public Procurement Procedures Act comprises:

- Legal Protection in Public Procurement Procedures Act – ZPVPJN (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 43/11 of 3 June 2011),
- Act Amending the Classified Information Act – ZTP-D (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 60/11 of 29 July 2011),
- Act Amending the Legal Protection in Public Procurement Procedures Act – ZPVPJN-A (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 63/13 of 26 July 2013),
- Act Amending the State Administration Act – ZDU-1I (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 90/14 of 15 December 2014),
- Act Amending the Legal Protection in Public Procurement Procedures Act – ZPVPJN-B (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 60/17 of 27 October 2017).

THE LEGAL PROTECTION IN PUBLIC PROCUREMENT PROCEDURES ACT (the ZPVPJN)

(Unofficial consolidated version No. 4)

Chapter One

SUBJECT MATTER OF THE ACT AND FUNDAMENTAL PRINCIPLES

Article 1

(Subject matter of the Act)

- (1) This Act shall:
- regulate the legal protection of tenderers and candidates (hereinafter: tenderers), contracting authorities and the public interest, including the legal protection of defence and security interests, in procedures for the award of public contracts (hereinafter: legal protection) and
 - designate bodies responsible for the protection of rights under this Act.
- (2) This Act also lays down legal protection following the conclusion of a contract or framework agreement (hereinafter: contract).
- (3) This Act shall partly transpose the following EU directives into the legislation of the Republic of Slovenia:
- Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the awarding of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33), as last amended by Directive 2007/66/EC of the European Parliament and of the

Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the awarding of public contracts (OJ L 335, 20.12.2007, p. 31) (hereinafter: Council Directive 89/665/EEC);

- Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14), as last amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the awarding of public contracts (OJ L 335, 20.12.2007, p. 31), (hereinafter: Council Directive 92/13/EEC); and
- Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the awarding of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76; hereinafter: Directive 2009/81/EC).

(4) The terms used in this Act shall have the same meanings as defined in the law governing public procurement.

(5) A working day under this Act shall be each day from Monday to Friday, with the exception of days that are defined as work-free days in accordance with the law governing public holidays and work-free days in the Republic of Slovenia.

Article 2 (Legal protection procedures)

Legal protection against infringements in public procurement procedures shall be provided in the following procedures:

- the pre-review procedure, which takes place before the contracting authority;
- the review procedure, which takes place before the National Review Commission for Reviewing Public Procurement Award Procedures (hereinafter: the National Review Commission); and
- first-instance court proceedings, which take place before the district court that has exclusive jurisdiction under the law governing courts (hereinafter: the court).

Article 3 (Parties to the procedure)

(1) An economic operator, as defined by the law governing public procurement, which submits a request for a review or a defender of the public interest as referred to in paragraph two of Article 6 of this Act (hereinafter: a defender of the public interest) may be a party to the pre-review procedure.

- (2) The following may be a party to the review procedure and court proceedings:
- an economic operator, as defined by the law governing public procurement, which submits a request for a review in the pre-review procedure or brings an action in court proceedings or a defender of the public interest or
 - the contracting authority or another entity which conducts or should conduct a public procurement procedure under the law governing public procurement.

(3) A tenderer whose tender has been selected by the contracting authority as the most advantageous (hereinafter: the successful tenderer) shall have the right to participate in the pre-review procedure, review procedure and court proceedings. In such a case, the successful tenderer shall have the same rights and duties as a party to the procedure unless otherwise stipulated by law.

Article 4 (Exceptions and the scope of legal protection)

(1) Public contracts to which the law governing public procurement does not apply or applies only in relation to record-keeping and the reporting of statistics shall not be legally protected pursuant to this Act unless otherwise provided for by the law governing public procurement or this Act.

(2) Services that are included on the list of services in the fields of defence and security B (hereinafter: services in the fields of defence and security B) in accordance with the law governing public procurement and regulations issued on the basis thereof and public contracts for services listed in Annex XIV to Directive 2014/24/EU or Annex XVII to Directive 2014/25/EU (hereinafter: social and other specific services) shall be legally protected in the part regulated by the law governing public procurement.

(3) If the contracting authority carries out a stricter procedure for the awarding of a public contract than is required by the law governing public procurement, the procedure for legal protection shall take full account of the provisions of the stricter procedure that was carried out for said awarding.

Article 5 (Admissibility of legal protection in procedures for the awarding of public contracts)

(1) A request for legal protection in public procurement procedures may be filed in respect of any action on the part of the contracting authority in a public procurement procedure, unless otherwise provided by the law governing public procurement or this Act.

(2) When the contracting authority concludes a contract without carrying out a public procurement procedure although it should have carried out such a procedure under the law governing public procurement, legal protection shall be provided in the pre-review procedure, review procedures and court proceedings.

(3) When a specific contract is awarded on the basis of a framework agreement that is concluded with a large number of tenderers and does not include all the contract terms and conditions, or under a dynamic purchasing system, and the value of the contract equals or exceeds the value requiring publication in the Official Journal of the European Union, legal protection shall be provided in the pre-review procedure, review procedures and court proceedings. In all other cases of specific contracts awarded under a framework agreement or a dynamic purchasing system, legal protection shall be provided in court proceedings in accordance with the law governing obligations.

(4) If the contracting authority, after adopting a contract award decision, withdraws from the public contract, damages may be claimed in court proceedings.

Article 6 (Legal protection of the public interest)

(1) Legal protection of the public interest may be sought by defenders of the public interest referred to in paragraph two of this Article under conditions laid down in this Article; for the purposes of this Act, it shall be deemed that a public interest exists if there is a threat to human life or health or to public security or a risk of damage to property of substantial value.

(2) The following defenders of the public interest may seek legal protection in a procedure for the awarding of a public contract:

- the ministry responsible for public procurement,
- the Court of Audit of the Republic of Slovenia,
- the body responsible for the protection of competition, and
- the body responsible for the prevention of corruption.

(3) A request for the legal protection of the public interest in pre-review and review procedures may be filed in accordance with Article 25 of this Act.

(4) A request for the legal protection of the public interest in court proceedings may be filed in accordance with Article 42 of this Act.

(5) If there is a suspicion that a contracting authority has engaged in conduct violating public procurement regulations, a defender of the public interest may, at any stage during the public procurement procedure or the contract performance, request that the contracting authority provide clarifications or copies of individual documents in relation to the awarding of the public contract. In providing clarifications and submitting copies of individual documents relating to the awarding of the public contract to a defender of the public interest, the contracting authority is not bound by the rules on the confidentiality or protection of information laid down in the law governing public procurement.

Article 7 (Fundamental principles)

Legal protection in public procurement procedures is based on the principles of legality, promptness and efficiency, accessibility, publicity, and the adversarial principle.

Article 8 (Principle of legality)

All participants in the procedure for legal protection shall, throughout the procedure, comply with regulations applicable at the time of the initiation of the contract-award procedure. The contract-award procedure shall be deemed to be initiated upon the adoption of a decision on the initiation of the procedure. If the contracting authority fails to adopt a decision on the initiation of the procedure, the contract award procedure shall be deemed to be initiated upon the issue of an invitation to tender; in the case of a public procurement procedure in which a contract notice is published on the public procurement portal, the procedure shall be deemed to be initiated upon the publication of such a notice.

Article 9 (Principle of promptness and efficiency)

The National Review Commission, the contracting authority, the applicant, the defender of the public interest and other participants in the procedure for legal protection shall endeavour to ensure that the procedure is conducted promptly, yet in such a manner so as to correctly establish the facts regarding any alleged infringements that have or might

have a significant impact on the awarding of the public contract and that a lawful decision is issued.

Article 10
(Principle of accessibility)

Legal protection, which is aimed at protecting the interests guaranteed by public procurement regulations and other regulations and at strengthening public trust in the work of the state and its bodies, shall be available under the same conditions to anyone who is interested in the awarding of a contract.

Article 11
(Adversarial principle)

In the pre-review procedure, review procedure and court proceedings, the contracting authority, the applicant and/or the defender of the public interest and the successful tenderer shall be given an opportunity to be heard on the allegations of the opposing party under the conditions provided for by this Act.

Article 12
(Principle of publicity)

After a decision on a review request, appeal or action to annul a contract has been adopted, decisions and documents in the pre-review procedure, review procedure and court proceedings, with the exception of personal data, parts that are classified in accordance with the law governing classified information, and parts that are classified as trade secrets in accordance with the law governing companies, shall be made public.

Article 13
(Subsidiary application of contentious civil procedure)

(1) In the pre-review procedure, review procedure and appeal procedure, the law governing contentious civil procedure shall apply to issues that are not regulated by this Act.

(2) In court proceedings, the law governing contentious civil procedure shall apply to issues that are not regulated by this Act.

Article 13a
(Service and the eRevizija portal)

(1) The eRevizija (eReview) portal is an online information portal of the National Review Commission, managed by Javno podjetje Uradni list Republike Slovenije, d.o.o.; it is used for the electronic exchange of information and documents in the pre-review procedure, review procedure and appeal procedure and for the provision of information on the course of the pre-review procedure, review procedure and appeal procedure on the public procurement portal.

(2) All information and documents shall be communicated, provided, served and exchanged between the contracting authority, the applicant, the National Review Commission, the successful tenderer and the defender of the public interest by way of their publication on the eRevizija portal, unless otherwise stipulated by this Act. Information on the

course of the pre-review procedure, review procedure and appeal procedure shall be simultaneously automatically published on the public procurement portal in the procurement file to which the procedure for legal protection relates.

(3) In the communication, provision, service, exchange, and publication of information and documents via the eRevizija portal, the integrity and confidentiality of such information and documents and the following shall be ensured:

- a) that the exact date and time of the submission or publication of information or a document and the person who submitted, accessed, received such information or document or became familiar with it in any other way may be precisely determined;
- b) that nobody may access information/data prior to their submission for publication on the eRevizija portal;
- c) that at individual stages of the pre-review procedure, review procedure and appeal procedure, access to the submitted information and documents or to a part thereof may be afforded only to persons who need to have such access in order to be able to exercise the right to legal protection or perform other actions in accordance with this Act;
- č) that access to the submitted information and documents may be provided only by the information system or the authorised person; defenders of the public interest shall have such access automatically via the eRevizija portal;
- d) that infringements of the prohibition of access or of the conditions referred to in points b), c) or č) of this paragraph or attempts to commit such infringements may be identified.

(4) Information or a document shall be deemed to have been submitted to the eRevizija portal when its receipt is automatically confirmed by the information system, unless otherwise stipulated by this Act. Documents enclosed with a request for a review, a completed request, the successful tenderer's statement, an appeal or the contracting authority's decision on the request for a review and other procedural documentation shall be converted into electronic form. If this is not possible, documents shall be served on the addressee directly at their address or by registered post, and on the eRevizija portal the sender shall list the documents that are being served on the addressee directly at their address or by registered post. Information or a document shall be deemed to be served on the date of its publication on the eRevizija portal.

(5) Information and documents submitted or exchanged via the eRevizija portal shall be kept in the database on the pre-review procedure, review procedure and appeal procedure, which is an integral part of the eRevizija portal, for at least seven years after the decision on the request for a review became final. On the eRevizija portal, persons may only access their information and documents and information and documents that have been published on the eRevizija portal and to which they have been granted access on the basis of their participation in the public procurement procedure, pre-review procedure, review procedure and appeal procedure and on the powers granted to them.

(6) If the eRevizija portal is not functioning due to technical issues, the time limits laid down in this Act, which are deemed to be the first future acts at this stage of the pre-review procedure, review procedure or appeal procedure, shall be extended by the time during which the portal did not function. The eRevizija portal shall automatically inform thereof persons that participate or have the right to participate in this stage of the pre-review procedure, review procedure or appeal procedure. The time during which the eRevizija portal did not function shall also be published on the portal.

(7) When the use of non-electronic means of communication is required in the pre-review procedure, review procedure or appeal procedure in order to protect particularly sensitive information which is related to defence or security interests and requires a level of protection that cannot be appropriately ensured on the eRevizija portal, information and documents in the pre-review procedure, review procedure or appeal procedure, including

requests for a review and appeals, shall not be exchanged via the eRevizija portal, but shall be served on the addressee directly at their address or by registered post. The contracting authority shall specify the reasons for the use of non-electronic means of communication in the tender documents or documents regarding the awarding of the public contract (hereinafter: tender documents) or its own documents on the public contract and shall state in the legal instruction of the decision on the awarding of the contract that information and documents shall not be exchanged via the eRevizija portal in the pre-review procedure, review procedure or appeal procedure. In such a case, the law governing administrative procedure shall apply to the service of the contracting authority's decision to dismiss a request for a review or of the contracting authority's decision referred to in paragraph one of Article 28 of this Act; in other cases, the contracting authority shall serve information and documents by registered post with a form of acknowledgment of receipt; in serving information and documents in the pre-review procedure, review procedure or appeal procedure, the National Review Commission shall comply with the law governing contentious civil procedure; other participants in the pre-review procedure, review procedure or appeal procedure shall serve information and documents by registered post with a form of acknowledgment of receipt or directly on the addressee. In the cases referred to in this paragraph, the contracting authority shall send the information on the adoption of a decision referred to in paragraph three of Article 17, the first indent of paragraph two of Article 19, paragraph four of Article 19 and paragraph four of Article 20 and on the submitted request for a review referred to in paragraph one of Article 24 of this Act to all tenderers within three working days.

(8) Information and documents that are needed by the ministry responsible for public procurement to establish the facts regarding an alleged infringement in accordance with Article 57 of this Act and, if necessary, introduce a corrective mechanism shall be served on the addressee directly at their address or by registered post.

(9) After coordination with the National Review Commission, the minister responsible for public procurement shall define the following:

- the method of access to the eRevizija portal;
- the information on the course of the pre-review procedure, review procedure and appeal procedure that is to be published on the public procurement portal and the manner of its publication;
- the method of accessing, submitting, transferring and receiving information and documents and granting authorisations to access, submit, transfer or receive information and documents;
- the information on the course of pre-review procedures, review procedures and appeal procedure that may be accessed by the National Review Commission via the eRevizija portal for the purposes of an annual report referred to in Article 69 of this Act and by the ministry responsible for public procurement for the purposes of analysing the situation in public procurement; and
- other technical rules regarding the use of the eRevizija portal.

Chapter Two

COMMON PROVISIONS IN THE PRE-REVIEW AND REVIEW PROCEDURES

Article 14

(Capacity to bring proceedings in pre-review and review procedures)

- (1) The following persons shall be entitled to bring proceedings:
- any person who has or has had an interest in the awarding of a public contract, the conclusion of a framework agreement, or participation in a dynamic purchasing system

- or qualification system and has incurred or might incur damage due to any alleged infringement;
- a defender of the public interest.

(2) If the time limit for the submission of applications or tenders has expired, it shall be deemed that a person who has submitted their application or tender in due time has demonstrated an interest in the awarding of the public contract. If, following a previous unsuccessful procedure, the contracting authority conducts a competitive dialogue, competitive procedure with negotiation or negotiated procedure without prior publication, taking into account the provisions of the law governing public procurement, a candidate or tenderer who submitted their application or tender in due time in the previous unsuccessful procedure and was not invited to submit a tender in the subsequent procedure, although they should have been invited to do so in accordance with the law governing public procurement, shall also be deemed to have an interest in the awarding of the public contract.

(3) When a joint tender has been submitted in the procedure for the awarding of a public contract, a request for a review may be filed by any of the persons submitting the joint tender. A person who has submitted a joint tender together with other persons and, on their own or together with other persons, submits a request for a review shall have the status of an applicant.

Article 15 **(Obligatory elements of a request for a review)**

- (1) A request for a review shall contain the following:
1. the name and address of the applicant who has submitted the request (hereinafter: the applicant) and the contact person;
 2. the name of the contracting authority;
 3. the reference code of the public contract or the decision on contract award or on the recognition of suitability;
 4. the subject matter of the public contract;
 5. **(deleted);**
 6. **(deleted);**
 7. the power of representation in the pre-review procedure and review procedure if the applicant acts via an authorised representative;
 8. any receipt of payment of a fee referred to in paragraph one, two, three or four of Article 71 of this Act.

(2) In a request for a review, the applicant shall state the alleged infringements and any facts and evidence substantiating them.

Article 16 **(Restriction regarding requests for a review)**

(1) If the applicant has submitted a request for a review in a procedure for the awarding of a public contract and the request has been decided upon or withdrawn, in any subsequent requests submitted in the same procedure for the awarding of the public contract, the applicant cannot allege the same infringements, or any other infringements from that stage of the procedure for the awarding of the public contract that were known or should have been known to the applicant upon the submission of the first request for a review, unless the contracting authority has failed to comply with the decision of the National Review Commission or commits the same infringement again.

(2) Actions that relate to the same or repeated public contract award procedure and on which the contracting authority or the National Review Commission has adopted a final decision stating that they do not constitute an infringement shall not be considered in the pre-review and review procedures.

(3) Alleged infringements relating to the content of a notice, invitation to tender or tender documents shall not be considered in the pre-review and review procedures if the applicant or other potential tenderer could have drawn the contracting authority's attention to such an alleged infringement via the eRevizija portal but failed to do so. It is deemed that the applicant or other potential tenderer could draw attention to an alleged infringement if a contract notice on the basis of which tenderers could submit applications or tenders was published on the public procurement portal in the public procurement procedure.

Article 16a **(Condition for a successful request for a review)**

The contracting authority shall uphold a request for a review in the pre-review procedure and the National Review Commission shall uphold it in the review procedure if, in considering the alleged infringements, they establish that the contracting authority's conduct constitutes an infringement that has or might have a significant impact on the awarding of the public contract.

Article 17 **(Consequences of submitting a request for a review)**

(1) When a request for a review has been submitted in the public procurement procedure, the contracting authority may continue the procedure for the awarding of the public contract, but may not reject all tenders due to circumstances on the part of the contracting authority (hereinafter: the rejection of all tenders), conclude the contract, discontinue the public procurement procedure or initiate a new public procurement procedure for the same subject matter of the procurement, unless the request for a review relates to the awarding of a specific contract under a framework agreement or a dynamic purchasing system.

(2) Notwithstanding the preceding paragraph, the contracting authority may carry out a new public procurement procedure for the same subject matter of the procurement in accordance with the law governing public procurement if, in a public procurement procedure that has already begun, it cannot award a public contract the performance of which is necessary during the pre-review or review procedure in due time due to the submitted request for a review, provided that such a contract is awarded only for the period until the contract has been concluded following the public procurement procedure that has already begun. If the subject matter of the contract is such that, in the new public procurement procedure, is it not possible to award the contract only for the period until the contract has been concluded following the public procurement procedure that has already begun, the contracting authority may award the urgent contract referred to in the preceding sentence if the National Review Commission has previously issued a decision referred to in the fourth indent of paragraph one of Article 20 this Act.

(3) Upon receiving a request for a review, the contracting authority may issue a decision suspending the public procurement procedure pending the decision by the National Review Commission. The contracting authority shall submit the information that it has adopted such a decision via the eRevizija portal and simultaneously publish it in the procurement file on the public procurement portal.

Article 18
(Withdrawal of a request for a review)

(1) The applicant may withdraw their request for a review in writing at any time during the pre-review or review procedures.

(2) The contracting authority shall issue a decision on the discontinuation of the pre-review procedure within three working days of receipt of the written withdrawal of the request for a review (hereinafter: the withdrawal of the request) if it has not yet adopted a decision referred to in paragraph three or four of Article 26 or in paragraph one of Article 28 of this Act. If the contracting authority has rejected the request for a review, it shall refer the withdrawal of the request to the National Review Commission for consideration within three working days of its receipt. If the contracting authority has dismissed the request for a review or upheld it, the withdrawal of the request shall be deemed to be irrelevant.

(3) The National Review Commission shall issue a decision on the discontinuation of the review procedure within three working days of receipt of the withdrawal of the request for a review if it has not yet adopted a decision referred to in paragraph three or four of Article 31 or in paragraph one of Article 39 of this Act. If the National Review Commission has already adopted a decision on the request for a review, the withdrawal of the request shall be deemed to be irrelevant.

(4) The contracting authority shall send the decision on the discontinuation of the pre-review procedure to the applicant, the successful tenderer and tenderers who submitted tenders in due time in the public procurement procedure. The National Review Commission shall send the decision on the discontinuation of the review procedure to the contracting authority, the applicant, the successful tenderer and tenderers who submitted tenders in due time in the public procurement procedure.

(5) The contracting authority's decision on the discontinuation of the pre-review procedure and the National Review Commission's decision on the discontinuation of the review procedure shall be final.

Article 19
(Suspension of the public procurement procedure)

(1) Upon submitting a request for a review, the applicant may submit a proposal for the issue of a decision on the suspension of the contract award procedure to the contracting authority. A proposal for the issue of a decision on the suspension of the contract award procedure may also be submitted at any time by a defender of the public interest.

(2) Within three working days of receipt of the proposal referred to in the preceding paragraph, the contracting authority shall:

- suspend any further activities in the contract award procedure, on which it shall adopt a decision, or
- refer the proposal for the issue of a decision on the suspension of the contract award procedure to the National Review Commission; in this process, it may state its opinion as to the suspension of the contract award procedure.

(3) The National Review Commission shall adopt a decision on the proposal referred to in paragraph one of this Article within five working days of its receipt.

(4) If, after examining all relevant circumstances of the case, the National Review Commission establishes that continuing the contract award procedure could have a

significant impact on the effectiveness of legal protection, it shall, on the basis of the proposal referred to in paragraph one of this Article or of his own accord, adopt a decision on the suspension of any further activities in the contract award procedure.

(5) By way of the decision on the suspension of the contract award procedure, any further activities in the contract award procedure shall be suspended until the contracting authority or the National Review Commission has adopted a final decision on the request for a review. When the proposal referred to in paragraph one of this Article is put forward by a defender of the public interest, the National Review Commission shall, irrespective of whether a request for a review has been submitted in the contract award procedure, suspend any further activities in the contract award procedure until the defender of the public interest is informed of the facts in accordance with Article 57 of this Act.

(6) The contracting authority or the National Review Commission shall submit the information that the contracting authority or the National Review Commission has adopted a decision on the suspension of the contract award procedure via the eRevizija portal and simultaneously publish such information in the procurement file on the public procurement portal.

Article 20

(Contracting authority's proposal for the conclusion of the contract or the discontinuation of the public procurement procedure, the rejection of all tenders or the initiation of a new public procurement procedure)

(1) Upon receipt of a request for a review or at any time during the pre-review or review procedure, the contracting authority may send to the National Review Commission a proposal for the issue of a decision permitting, despite the submitted request for a review, the following:

- conclusion of the contract,
- discontinuation of the public procurement procedure,
- rejection of all tenders, or
- initiation of a new public procurement procedure for the same subject matter of the procurement.

(2) The contracting authority shall also send the proposal referred to in the preceding paragraph to the applicant, who may submit its opinion on the proposal to the National Review Commission within three working days of its receipt.

(3) The National Review Commission shall adopt a decision on the proposal referred to in paragraph one of this Article within five working days of the expiry of the time limit within which the applicant may submit its opinion on the proposal referred to in paragraph one of this Article.

(4) Notwithstanding the provisions of Article 17 of this Act, the National Review Commission shall grant the contracting authority's proposal referred to in paragraph one of this Article if, after examining all relevant circumstances of the case and taking into account the relationship between the harmful consequences of granting the proposal and benefits to the public interest and to persons who might have incurred damage, it establishes that there are overriding reasons relating to the public interest, including defence and security interests, that require that such a proposal be granted. Economic interests alone cannot constitute overriding reasons relating to the public interest. Overriding reasons relating to defence and security are the reasons relating to the implementation of a defence or security programme of which the public contract is part. The National Review Commission shall reject the

proposal referred to in the fourth indent of paragraph one of this Article if the performance of the contract is not urgent.

(5) The contracting authority shall submit the information that the National Review Commission has granted the proposal referred to in paragraph one of this Article via the eRevizija portal and simultaneously publish it in the procurement file on the public procurement portal.

Article 21 (Abuse of the right to legal protection)

(1) The contracting authority and the National Review Commission shall endeavour to conduct the pre-review and review procedures without delay and with the minimum cost and to prevent any abuse of the rights of persons referred to in Article 3 of this Act in the procedure.

(2) The National Review Commission shall impose a fine of up to EUR 1,300 on persons referred to in Article 3 of this Act, their statutory representatives and authorised persons who abuse the rights to which they are entitled under this Act with a view to causing harm to another person or for a purpose that is contrary to good practice.

Article 22 (Legal instruction)

The contracting authority and the National Review Commission shall inform the applicant and the successful tenderer of the available legal remedies, time limits and the method of pursuing such remedies in invitations to complete the request for a review, invitations to submit a statement and decisions adopted in the pre-review procedure, review procedure and appeal procedure.

Article 23 (Deleted)

Chapter Three PRE-REVIEW PROCEDURE

Article 24 (Submission of a request for a review)

(1) A request for a review shall be submitted via the eRevizija portal.

(2) The information that a request for a review has been submitted shall be immediately automatically published via the eRevizija portal in the procurement file on the public procurement portal.

Article 25 (Time limits for submitting a request for a review)

(1) A request for a review that relates to the content of a notice, invitation to tender or tender documents shall be submitted within ten working days of the date of publication of

the contract notice or receipt of the invitation to tender. When the contracting authority modifies or completes statements in a notice, an invitation to tender or tender documents, a request for a review in respect of the modified, completed or clarified content of the notice, invitation to tender or tender documents, or to a statement in the original notice, invitation to tender or tender documents that is directly related to such content, shall be submitted within ten working days of the date of publication of the notice of additional information, information on an incomplete procedure or a corrigendum if such a notice amends or modifies the requirements or criteria for the selection of the successful tenderer.

(2) A request for a review referred to in the preceding paragraph may not be submitted after the time limit for the receipt of tenders, unless in the public procurement procedure the contracting authority has set a time limit for the receipt of tenders of less than ten working days. In such a case, a request for a review may be submitted within ten working days of the date of publication of the contract notice.

(3) After the expiry of the time limit for the submission of tenders, the applicant may not allege infringements that were known or should have been known to them before the expiry of the time limit, unless so permitted by this Act and unless the applicant demonstrates that it was not possible to objectively identify the alleged infringements before this time limit.

(4) After a decision on contract award or on the recognition of suitability has been adopted, the time limit for submitting a request for a review shall be eight working days of receipt of such a decision.

(5) In the case of a low-value contract procedure or a tendering procedure with prior publication of a contract notice, the time limit for submitting a request for a review in respect of the contract award decision or the decision on the recognition of suitability shall be five working days of receipt of such a decision.

(6) In the case of a negotiated procedure without prior publication, competitive dialogue or competitive procedure with negotiation that was conducted by the contracting authority following a previous unsuccessful contract award procedure, taking into account the provisions of the law governing public procurement, and in which no contract notice was published, a tenderer who was not invited to participate in such a procedure but should have been invited to participate in accordance with the law governing public procurement may submit a request for a review in respect of the invitation to tender, tender documents or the contract award decision within eight working days of the date when he learned or should have learned of an infringement, but no later than eight working days of the date of publication of an ex ante transparency notice on the public procurement portal. If no such notice was published, the tenderer may submit a request for a review within eight working days of the date of publication of the contract award notice on the public procurement portal. If the contracting authority did not publish an ex ante transparency notice or a contract award notice, the tenderer may submit a request for a review no later than six months from the commencement of the performance of the contract.

(7) If the contracting authority did not publish a contract notice but should have published it in accordance with the law governing public procurement, the tenderer may submit a request for a review in respect of the invitation to tender, tender documents or the contract award decision within eight working days of the date when he learned or should have learned of such an infringement, but no later than eight working days from the date of publication of the contract award notice on the public procurement portal. If no such notice was published, the tenderer may submit a request for a review within six months of the commencement of the performance of the contract.

(8) Notwithstanding the provisions of paragraphs one to seven of this Article, a defender of the public interest may submit a request for a review at any stage of the contract award procedure within 45 working days of the date when it learned of an infringement, but no later than 12 months from the commencement of the performance of the contract or a specific contract awarded under a framework agreement or a dynamic purchasing system.

Article 26

(Preliminary examination of a request for a review in the pre-review procedure)

(1) After receiving a request for a review, the contracting authority shall verify the following:

- whether the request for a review was submitted in due time;
- whether it contains all the obligatory elements referred to in Article 15 of this Act;
- whether it was submitted by a person with capacity to bring proceedings referred to in Article 14 of this Act;
- whether no restrictions referred to in Article 16 of this Act exist; and
- whether the request for a review is admissible.

(2) If a request for a review meets the conditions referred to in the preceding paragraph, the contracting authority shall accept it for consideration.

(3) If the contracting authority finds that procedural conditions referred to in the first, third, fourth or fifth indent of paragraph one of this Article are not met, it shall issue a decision dismissing the request for a review no later than three working days from its receipt.

(4) If the contracting authority finds that the request for a review does not contain all the obligatory elements referred to in paragraph one of Article 15 of this Act, and the missing elements are not evident from the content of the documents on the contract award procedure, it shall immediately, and no later than within three working days of receipt of the request for a review, invite the applicant to complete the request within three working days of receipt of the invitation to do so. In the invitation, the contracting authority shall clearly state which part of the request should be completed and draw the applicant's attention to the legal consequences of failure to complete the request in time or to complete it appropriately. If the applicant fails to complete the request for a review within the set time limit or fails to appropriately complete it, the contracting authority shall issue a decision dismissing the request for a review within three working days of the expiry of the time limit for completion. If the applicant appropriately completes the request for a review in due time, the contracting authority shall accept it for consideration. In the case of the request for a review being completed with the obligatory element referred to in point 8 of paragraph one of Article 15 of this Act, the completion shall be deemed to be appropriate and made in due time if the applicant submits to the contracting authority a receipt of payment of a fee referred to in paragraph one, two, three or four of Article 71 of this Act, showing that the required amount of the fee was paid no later than on the day of submission of the request for a review.

(5) The applicant may lodge an appeal against the decision on the dismissal of the request for a review in accordance with Chapter Six of this Act. If the applicant does not lodge an appeal against the decision on the dismissal of the request for a review, the contracting authority, within three working days of the expiry of the time limit for lodging an appeal, shall notify the tenderers who submitted their tenders in due time in the public procurement procedure of the dismissal of the request for a review.

(6) The contracting authority's decision on the dismissal of the request for a review shall become final when no appeal may be lodged against it or when no procedure may be conducted after an appeal has been lodged.

Article 27
(Statement of the successful tenderer)

(1) When a request for a review is submitted in respect of the contract award decision, the contracting authority shall send a copy of the request to the successful tenderer no later than three working days of receipt of the request for a review.

(2) The successful tenderer may submit their statement on the applicant's allegations to the contracting authority within three working days of the receipt of the request for a review.

Article 28
(The contracting authority's decision-making on a request for a review and time limits for the adoption of a decision)

- (1) The contracting authority shall:
- dismiss the request for a review as unfounded if it establishes that, taking into account the allegations in the request, it would not have adopted a different decision in the contract award procedure or that its conduct in the contract award procedure does not or cannot have a significant impact on the public contract award or
 - grant the request for a review and annul the public procurement procedure in full or in part or remedy the infringement.

(2) In decision-making, the contracting authority shall perform all the necessary actions to establish a particular fact and assess the allegations in the request for a review, particularly actions that it did not perform in the contract award procedure, although it should have performed them, take into account the allegations of the applicant, the defender of the public interest and the successful tenderer, state its position on these allegations, and substantiate its views.

(3) When the request for a review relates to the content of a notice, invitation to tender or tender documents, the contracting authority shall adopt a decision referred to in paragraph one of this Article and submit it to the applicant within eight working days of receipt of the complete request for a review. If the request for a review relates to the contract award decision or the decision on the recognition of suitability, the contracting authority shall adopt a decision referred to in paragraph one of this Article within eight working days of the expiry of the time limit within which the successful tenderer may submit their statement. The contracting authority shall also forward its decision on the request for a review to the successful tenderer, and, if it granted the request, to tenderers who submitted their tenders in due time in the public procurement procedure.

(4) If the applicant does not receive the contracting authority's decision referred to in paragraph one of this Article or the decision referred to in paragraph three or four of Article 26 of this Act (hereinafter: the silence of the contracting authority) within 20 working days of the date of receipt of the applicant's complete request for a review by the contracting authority, the applicant may initiate the review procedure before the National Review Commission. In such a case, the applicant shall, no later than 25 working days of the date of receipt of the applicant's complete request for a review by the contracting authority, submit a proposal for the initiation of the review procedure to the contracting authority and send a copy thereof to the National Review Commission and the ministry responsible for public procurement. In the proposal, the applicant shall refer to the silence of the contracting authority in the pre-review procedure.

(5) The pre-review procedure shall be deemed to be completed when the contracting authority has adopted a decision referred to in paragraph one of this Article, paragraph two of Article 18, and paragraph three or four of Article 26 of this Act. In the event of the silence of the contracting authority, the pre-review procedure shall be deemed to be completed when the time limit referred to in the second sentence of the preceding paragraph has expired.

(6) The contracting authority's decision referred to in the second indent of paragraph one of this Article shall be final.

Article 29

(Legal protection after the completion of the pre-review procedure)

(1) When the contracting authority rejects a request for a review, it shall, no later than three working days of the adoption of the decision referred to in paragraph one of the preceding Article, refer the request for a review, together with all documents on the contract award procedure and the pre-review procedure, to the National Review Commission for further consideration.

(2) When the contracting authority grants a request for a review and only partially annuls the public procurement procedure, the applicant may submit a proposal for the initiation of the review procedure to the contracting authority within three working days of receipt of the contracting authority's decision on the request for a review. The contracting authority shall send all documents on the contract award procedure and the pre-review procedure to the National Review Commission within the time limit referred to in the preceding paragraph.

(3) The contracting authority shall also send all documents on the contract award procedure and the pre-review procedure to the National Review Commission within the time limit referred to in paragraph one of this Article when, in the event of silence on its part, it receives a proposal for the initiation of the review procedure referred to in paragraph four of the preceding Article and has not yet sent its decision on the request for a review to the applicant.

(4) Documents referred to in paragraphs one and two of this Article shall be handed over in full and shall include a list of documents; otherwise the National Review Commission shall, within three working days of receipt of the documents, request that the contracting authority complete the documents. The contracting authority shall be obliged to complete the documents within three working days of receipt of the National Review Commission's invitation to do so.

(5) If, in accordance with the law governing public procurement, non-electronic means of communication were used for communications at any stage of the public procurement procedure and these communications cannot be converted into electronic form, notwithstanding paragraph one of Article 13a of this Article, the contracting authority shall send the original communications to the National Review Commission by registered post with a form of acknowledgment of receipt. If, in accordance with paragraph seven of Article 13a of this Act, information and documents in the pre-review procedure, review procedure and appeal procedure are not exchanged via the eRevizija portal, the contracting authority shall send in such a manner all documents referred to in paragraph one or two of this Article to the National Review Commission. The National Review Commission shall return the documents to the contracting authority by registered post with a form of acknowledgment of receipt within three working days of the adoption of the decision on the request for a review.

(6) The applicant may, within three working days of receipt of the decision referred to in the first or second indent of paragraph one of Article 28 of this Act, provide their statement on the contracting authority's statements in the decision, but may not allege new infringements, introduce new facts or present new evidence, unless they demonstrate that they were unable to do so in the pre-review procedure through no fault of their own. The applicant shall send the statement referred to in this paragraph to the National Review Commission and the contracting authority.

Chapter Four REVIEW PROCEDURE

Article 30 (Initiation of the review procedure)

The review procedure shall be initiated when the National Review Commission receives a request for a review from the contracting authority under paragraph one, two or three of the preceding Article. If the applicant disagrees with the initiation of the review procedure, they shall submit a proposal for the withdrawal of the request for a review to the National Review Commission.

Article 31 (Preliminary examination of a request for a review in the review procedure)

(1) After receiving a request for a review, the National Review Commission shall verify the following:

- whether the request for a review was submitted in due time and to the contracting authority;
- whether it contains all the obligatory elements referred to in Article 15 of this Act;
- whether it was submitted by a person with capacity to bring proceedings referred to in Article 14 of this Act;
- whether no restrictions referred to in Article 16 of this Act exist; and
- whether the request for a review is admissible.

(2) If a request for a review meets the conditions referred to in the preceding paragraph, the National Review Commission shall accept it for consideration.

(3) If the National Review Commission finds that procedural conditions referred to in the first, third, fourth or fifth indent of paragraph one of this Article are not met, it shall issue a decision dismissing the request for a review within three working days of its receipt.

(4) If the request for a review does not contain all the obligatory elements referred to in paragraph one of Article 15 of this Act, and the missing elements are not evident from the request and the contracting authority failed to invite or inappropriately invited the applicant to complete the request, the National Review Commission shall immediately, and no later than three working days of receipt of the request for a review, invite the applicant to appropriately complete the request within three working days. In the invitation, the National Review Commission shall clearly state which part of the request should be completed and draw the applicant's attention to the legal consequences of a failure to complete the request in time or to complete it appropriately. If the applicant fails to complete the request for a review within the set time limit or fails to appropriately complete it, the National Review Commission shall issue a decision dismissing the request for a review within three working days of the expiry of the time limit for completion. If the applicant appropriately completes the

request for a review in due time, the National Review Commission shall accept it for consideration. In the case of the request for a review being completed with the obligatory element referred to in point 8 of paragraph one of Article 15 of this Act, the completion shall be deemed to be appropriate and made in due time if the applicant submits to the National Review Commission a receipt of payment of a fee referred to in paragraph one, two, three or four of Article 71 of this Act, showing that the required amount of the fee was paid no later than on the day of submission of the request for a review.

(5) If the applicant is unable introduce facts and present evidence referred to in paragraph two of Article 15 because they believe that the contracting authority has violated their right to access documents as defined by the law governing public procurement, the applicant shall state facts and present evidence with regard to the alleged infringement of the right to access documents in the request for a review. In this case, the National Review Commission shall establish that the contracting authority violated the applicant's right to access documents and, taking into account the provisions of the law governing public procurement, shall grant the applicant access to the documents, allowing them to complete or modify their request for a review by including new infringements, facts and evidence obtained during access to the documents within five working days of the date of access. The applicant shall inform the National Review Commission and the contracting authority of the completed or modified request for a review; the contracting authority may provide its opinion on the completed or modified request for a review within three working days of its receipt.

(6) The decision of the National Review Commission on the dismissal of a request for a review shall be final.

Article 32 (Collecting procedural documentation)

(1) In the review procedure, the National Review Commission shall present all evidence which it considers will contribute to a lawful and correct decision on the request for a review. In so doing, it shall not be limited only to the evidence proposed by the applicant, the successful tenderer or the contracting authority. It may use as evidence anything that is appropriate for establishing the facts of the case.

(2) The National Review Commission may also establish facts that were not introduced by the applicant, the successful tenderer or the contracting authority if it assesses that this is necessary in order for a lawful decision to be taken on the request for a review.

(3) The contracting authority, the applicant or the successful tenderer shall have the right to state their position on the evidence, facts and allegations obtained by the National Review Commission before the National Review Commission adopts a decision referred to in paragraph one of Article 39 of this Act. Such a right shall be limited if the contracting authority, the applicant or the successful tenderer might, without a justified cause, become acquainted with information that is protected in accordance with the law.

Article 33 (Obligation to provide clarifications, opinions, information and other documents)

(1) The contracting authority, the applicant, the successful tenderer and other participants in the contract award procedure shall submit additional clarifications and documents to the National Review Commission on request and enable it to take note of the facts regarding the contract award procedure.

(2) Persons governed by public or private law that have information required for decision-making by the National Review Commission, following a reasoned written request by the National Review Commission, shall provide the National Review Commission with information and opinions that are necessary for the performance of its tasks, notwithstanding the law governing classified information, the law governing personal data protection and the law governing trade secrets. Persons governed by public law shall provide information referred to in this paragraph to the National Review Commission free of charge, taking into account the provisions of the law governing contentious civil procedure.

Article 34 (Establishment of the facts)

Within the review procedure, the National Review Commission may convene an oral hearing, obtain a professional or expert opinion, and perform other actions that are necessary for establishing a particular fact.

Article 35 (Oral hearing)

(1) On the initiative of the applicant or the contracting authority or on its own initiative, the National Review Commission may hold an oral hearing with a view to obtaining more detailed clarifications regarding the actual circumstances on which the decision in the review procedure depends. If the National Review Commission considers that the facts can be correctly and fully established on the basis of the documents relating to the public procurement procedure, pre-review procedure or review procedure, it shall reject the initiative of the applicant or the contracting authority.

(2) The contracting authority, the applicant and the successful tenderer, or independent specialists and experts, shall be invited to attend an oral hearing. Persons who have been invited to attend an oral hearing shall be provided with sufficient time to be able to prepare themselves and attend the hearing in due time and without extraordinary costs; to that end, as a rule, an oral hearing shall be convened no sooner than three working days after the service of the invitation to the hearing. If, for the purposes of consideration at an oral hearing, it is necessary that the persons invited are familiar with documents, sketches and other items, they shall be given access to such documents, sketches and items upon the convocation of the hearing, or it shall be stated in the invitation to the hearing when and where they may access them. Participants in an oral hearing may state their position on the facts and evidence. The contracting authority or the applicant may not introduce new facts or present new evidence at an oral hearing unless they demonstrate that it was not possible to objectively establish them before the hearing.

(3) An oral hearing shall be held at the head office of the National Review Commission and shall not be public. Minutes shall be taken of the hearing.

(4) At the beginning of an oral hearing, the chair of the panel which conducts the review procedure shall establish the presence of the persons who have been invited and, with regard to persons who are not present, verify whether invitations have been correctly served on them. If any of the persons invited fails to attend the oral hearing without justified cause despite having been appropriately invited, the panel shall hold the hearing without their presence.

(5) The chair of the panel which conducts the review procedure shall take all necessary steps to conduct an oral hearing without delay and, if possible, without

adjournment or postponement. If the subject matter cannot be considered at a single hearing, the chair of the panel shall adjourn the hearing. They shall take all the steps prescribed for the convening of an oral hearing in order for the hearing to continue and shall inform the persons present of when and where the hearing will be continued.

Article 36
(Expert opinion and independent specialists and experts)

(1) If expert knowledge is required in the review procedure to establish or assess a fact in the contract award procedure and the National Review Commission does not have such knowledge, the National Review Commission, on the initiative of the contracting authority or the applicant or on its own initiative, may order that an expert opinion be obtained or include independent specialists or experts in the review procedure.

(2) When the contracting authority or the applicant proposes that an expert opinion be obtained or specialists or experts be included in the procedure, the contracting authority or the applicant shall make an advance payment. When the National Review Commission, on its own initiative, orders that an expert opinion be obtained or that specialists or experts be included, it shall impose on the contracting authority and the applicant to pay half of the amount of the advance payment each.

(3) If the National Review Commission orders that an expert opinion be obtained or includes specialists or experts in the review procedure, but the contracting authority or the applicant fails to make an advance payment within the set time limit, the National Review Commission may:

- omit to present the proposed evidence or
- advance money and then present the proposed evidence if it assesses that this is necessary in order for a correct and lawful decision to be taken on the request for a review.

Article 37
(Time limit for the adoption of the decision)

(1) If the National Review Commission accepts a request for a review for consideration, it shall take a decision on the request and issue a decision on it no later than 15 working days of receipt of the complete request and all pertaining documents. In justified cases, the National Review Commission may extend the time limit by a maximum of 15 working days, of which it shall inform the contracting authority, the applicant and the successful tenderer before the expiry of the time limit referred to in the preceding sentence.

(2) The National Review Commission shall send the decision referred to in the preceding paragraph to the contracting authority, the applicant and the ministry responsible for public procurement. The decision shall also be sent to the successful tenderer if the request for a review was submitted after the contracting authority had made the contract award decision. The National Review Commission shall publish its decisions on the internet.

Article 37a
(Priority decision-making in the review procedure)

The National Review Commission shall decide, as a matter of priority, on requests for a review alleging infringements in the procedure for the award of a contract co-financed by EU funds.

Article 38
(Limits of decision-making)

(1) The National Review Commission shall make decisions within the limits of a request for a review, i.e. on all the alleged infringements in the contract award procedure.

(2) If a request for a review relates to the content of a notice, invitation to tender or tender documents, the National Review Commission may make decisions outside the limits of the request if the contracting authority continued the contract award procedure in which the request for a review has been submitted and made a decision on the award of the contract or the exclusion of a tenderer.

(3) Regardless of whether the request for a review or the alleged infringement relates to one or several lots of the contract, the National Review Commission may adopt a decision on all the lots in which the same infringement was found.

Article 39
(Decision of the National Review Commission on a request for a review)

- (1) The National Review Commission shall:
- dismiss the request for a review as unfounded if it establishes that, taking into account the allegations in the request for a review, the contracting authority would not have adopted a different decision or that the conduct of the contracting authority in the contract award procedure does not or cannot have a significant impact on the public contract award;
 - grant the request for a review and annul the public procurement procedure in full or in part or impose on the contracting authority the obligation to remedy the infringement;
 - establish whether the request for a review is well founded when the infringements found in the review procedure cannot be remedied.

(2) Notwithstanding paragraph one of the preceding Article, if the contract has not yet been concluded, the National Review Commission shall annul the public procurement procedure in full in the following cases:

1. if, despite the fact that conditions are not met, the contracting authority carries out:
 - a competitive dialogue or a competitive procedure with negotiation following a previous unsuccessful contract award procedure and fails to publish a contract notice in such a dialogue or procedure or
 - a negotiated procedure without prior publication;
2. if the contracting authority fails to publish a contract notice despite being bound to do so in accordance with the law governing public procurement;
3. if other serious infringements of the law governing public procurement or of this Act have been committed.

(3) In decision-making, the National Review Commission shall take account of the allegations of the applicant, the defender of the public interest, the contracting authority and the successful tenderer and state its position on such allegations, taking into account the previous Article. In its decision, the National Review Commission shall state the reasons for such decisions and give instructions to the contracting authority on how to correctly carry out the annulled part of the procedure.

(4) The decision of the National Review Commission shall be final.

Article 40

(Guaranteeing the protection of the public interest)

(1) When the National Review Commission adopts a decision referred to in the first or second indent of paragraph one of the preceding Article and, following its consideration of the request for a review and the documents on the contract award procedure, suspects that serious infringements were committed in the contract award procedure, it shall, within three working days of the adoption of the aforementioned decision, notify the defenders of the public interest thereof and initiate, *ex officio*, minor offence procedure under this Act or the law governing public procurement.

(2) Following the notification referred to in the preceding paragraph, a defender of the public interest may submit a request for legal protection in the contract award procedure if conditions are met or take other measures within its power.

Article 41

(Response reports on the elimination of infringements in the public procurement procedure)

(1) Upon the adoption of a decision on a request for a review or within six months of the adoption of such a decision, the National Review Commission may request that the contracting authority submit a response report on the implementation of the public procurement procedure in which the request for a review was submitted or on the repeated contract award procedure.

(2) In the case referred to in the preceding paragraph, the National Review Commission may request that, together with a response report, the contracting authority also submit documents on the contract award procedure or the performance of the contract.

(3) A response report on the implementation of the public procurement procedure shall include the following:

- the public contract in respect of which the review procedure has been conducted;
- the decision of the National Review Commission;
- a description of the irregularities found by the National Review Commission;
- a description of the instructions given by the National Review Commission, if any;
- a description of how the irregularities have been eliminated.

(4) The contracting authority shall submit a response report within the time limit set by the National Review Commission, which may not be shorter than one month or longer than three months. If the National Review Commission establishes that the response report does not show that irregularities have been eliminated or its instructions have been complied with, or if the contracting authority fails to submit a response report, it shall initiate, *ex officio*, minor offence proceedings.

Chapter Five JUDICIAL PROTECTION

Article 42

(Challenging a contract)

(1) Under conditions referred to in this Act, a contract or a specific contract awarded by the contracting authority under a framework agreement or a dynamic purchasing system (hereinafter: a specific contract) may be challenged by a person who has a legal interest or by a defender of the public interest. A person who has or has had an interest in

the awarding of a public contract or a specific contract and has incurred or might incur damage due to an alleged infringement shall be deemed to have a legal interest. A contract or a specific contract may be challenged by a defender of the public interest if the Republic of Slovenia, its authority or administrative organisation within such an authority, which is a legal person, is not the party to the contract. In this case, the contract or specific contract shall be challenged by the Republic of Slovenia, which shall be represented by the State Attorney's Office of the Republic of Slovenia.

(2) A contract or a specific contract may be challenged within six months of the publication of an ex ante transparency notice, contract award notice or notice on the modification of a contract during its validity on the public procurement portal. If no such notice was published, a contract or a specific contract shall be challenged within six months of the day when the person bringing an action learned or should have learned of the infringement. A contract or a specific contract may not under any circumstances be challenged after 12 months have elapsed from the conclusion of the contract or the award of the specific contract or after 12 months have elapsed from the conclusion of an annex to the contract if the infringement was committed in the modification of the contract.

Article 43 **(Suspension and interim injunction)**

(1) The plaintiff may propose that an interim injunction be issued to suspend the performance of the contract or a specific contract or to temporarily regulate the situation.

(2) The court, upon the request of the plaintiff, shall prohibit the performance of the contract or specific contract until a final decision is issued if the performance of the contract or the specific contract would cause damage to the plaintiff, other interested person or the public interest. In accordance with the principle of proportionality, in decision-making, the court shall take into consideration the harm to the interests of the contracting authority and the successful tenderer and to the public interest.

(3) For reasons referred to in the preceding paragraph, the plaintiff may also request that an interim injunction be issued to temporarily regulate the situation in respect of the contentious contract or specific contract if they demonstrate with high probability that such regulation, particularly in long-lasting contracts, would be required to prevent damage that is difficult to repair.

(4) The court shall issue a decision on the request for the issue of an interim injunction within five working days of receipt of the request. The court may tie the issue of an interim injunction to the condition that the plaintiff lodges a security deposit for any damage that may be incurred by the opposing party because of the issue of the interim injunction.

(5) The parties to the court proceedings may lodge an appeal against the decision referred to in the preceding paragraph within three days. An appeal shall not stay the execution of an issued interim injunction. The competent court shall decide on the appeal against the decision without delay and no later than ten working days of receipt of the appeal.

(6) The appeal proceedings referred to in the preceding paragraph shall be subject to the provisions of the law governing contentious civil procedure unless such provisions are in contravention of the preceding paragraph.

Article 44

(Grounds on which a contract is voidable)

(1) A contract shall be voidable:

1. if its content is a result of a criminal offence committed by the contracting authority or the successful tenderer or its responsible person;
2. if the contracting authority has concluded the contract without carrying out a contract award procedure, although it should have carried out such a procedure under the law governing public procurement;
3. if the contract, in contravention of the law governing public procurement, significantly differs from the draft contract in the tender documents, and the contracting authority or the successful tenderer or its responsible person or a person connected with any of these persons has gained proceeds from this; a connected person shall be deemed to be a person who is in a business relationship with or is related in up to and including the fourth degree of lineal or collateral kinship to, is or was married to, cohabits with, is in a civil union with, or is related by affinity in up to the third degree to the contracting authority or the successful tenderer or its responsible person;
4. if the contracting authority has carried out a negotiated procedure without prior publication and the conditions for carrying out such a procedure are not met;
5. if, taking into account the provisions of the law governing public procurement, the contracting authority has carried out a competitive dialogue or a competitive procedure with negotiation following a previous unsuccessful contract award procedure, but has failed to publish a contract notice in such a dialogue or procedure, although it should have published one, and the conditions for carrying out such a procedure are not met;
6. if the contracting authority has modified the contract despite the fact that such modification is not allowed by the law governing public procurement;
7. if the contracting authority did not publish a contract notice or notice on the modification of a contract during its validity, although it should have published one on the public procurement portal or in the Official Journal of the European Union in accordance with the provisions of the law governing public procurement;
8. if, irrespective of the law governing public procurement or this Act, the contracting authority fails to comply with the standstill period as defined by the law governing public procurement (hereinafter: the standstill period), provided that the contracting authority committed an infringement affecting a tenderer's prospects of being selected as the successful tenderer;
9. if, in contravention of paragraphs one and two of Article 17 of this Act and notwithstanding paragraph four of Article 20 of this Act, the contracting authority enters into a contract with the successful tenderer after a request for a review has been submitted, provided that, in the contract award procedure, the contracting authority committed an infringement affecting a tenderer's prospects of being awarded the contract.

(2) A specific contract shall be voidable in the following cases:

- if, in the awarding of a specific contract under a framework agreement which is concluded with several tenderers and which re-opens competition between the parties to the framework agreement, the contracting authority acted contrary to the provisions of the law governing public procurement relating to the procedure for the awarding of a specific contract, provided that the value of the specific contract equals or exceeds the value requiring publication in the Official Journal of the European Union and that the contracting authority failed to comply with the standstill period when awarding the specific contract;
- if, in the awarding of a specific contract under a dynamic purchasing system, the contracting authority acted contrary to the provisions of the law governing public procurement relating to subsequent inclusion in a dynamic purchasing system, thereby preventing a tenderer from participating in the procedure for the awarding of the specific contract, provided that the value of the specific contract equals or exceeds the value

requiring publication in the Official Journal of the European Union and that the contract authority failed to comply with the standstill period when awarding the specific contract.

Article 45 **(Maintaining the validity of a contract)**

(1) In the cases referred to in point 2 and points 4 to 9 of paragraph one and paragraph two of the preceding Article, the court may rule that the contract or specific contract remains valid despite the infringements or may shorten its duration if it establishes that there are overriding reasons relating to the public interest or defence or security interests requiring that the contract or specific contract remains partially or fully valid. In so doing, the court shall not be bound by the claim brought and shall take into consideration all circumstances, such as the nature and scope of the public procurement, the extent to which the obligations stipulated in the contract or specific contract have been fulfilled, and the severity and significance of any infringements found.

(2) An overriding reason relating to the public interest which requires that the contract remains valid may also be an economic interest, but only in exceptional cases when challenging the contract might lead to disproportionate consequences for the operation of the contracting authority or the state. However, regardless of the above, an economic interest in the performance of the contract shall not be an overriding reason requiring that the contract remains valid. An economic interest in the performance of the contract shall also include:

- costs incurred due to delays in the performance the contract;
- costs of the initiation and conduct of a new contract award procedure;
- costs incurred by replacing the contractor performing the contract or due to such replacement; and
- costs of legal obligations that arise as a result of the decision on the challenged contract.

(3) An overriding reason relating to defence or security interests which requires that the contract remains valid shall also include an interest in preventing the implementation of a defence or security programme that is vital for the security interests of the Republic of Slovenia from being seriously jeopardised due to the consequences of challenging the contract.

(4) In the event of an infringement referred to in point 7 of paragraph one of the preceding Article, the court may decide that the contract remains valid if the contracting authority:

1. carried out
 - a competitive dialogue or a competitive procedure with negotiation following a previous unsuccessful contract award procedure and failed to publish a contract notice in such dialogue or procedure in accordance with the law governing public procurement, or
 - a negotiated procedure without prior publication under conditions laid down by the law governing public procurement;
2. published a voluntary ex ante transparency notice on the public procurement portal; and
3. complied with the standstill period.

(5) The court shall also send decisions maintaining the validity of a contract despite infringements on the grounds of overriding reasons relating to the public interest or defence and security interests to the ministry responsible for public procurement and, in so doing, shall state the overriding reasons relating to the public interest or defence and security interests. The ministry responsible for public procurement shall inform the European Commission (hereinafter: the Commission) annually of such decisions.

Article 46
(The consequences of challenging a contract under this Act)

(1) In the case referred to in Article 44 of this Act, the court may annul a contract or a specific contract on the day it enters into force or at any time after its entry into force. In so doing, the court shall not be bound by the claim brought and, in deciding on the contract, shall take into consideration all relevant circumstances, such as the nature and scope of the public procurement, the extent to which the obligations stipulated in the contract have been fulfilled, and the severity and significance of any infringements found.

(2) When the court annuls a contract or a specific contract in part or in full or decides that a contract or a specific contract shall remain valid in accordance with the preceding Article of this Act, it shall send a proposal for the initiation of minor offence proceedings referred to in point 8 of paragraph one of Article 78 of this Act to the National Review Commission.

Article 47
(Priority decision-making)

Matters in judicial protection proceedings under this Act shall be urgent and shall be dealt with as a priority by the court.

Article 48
(The position of the National Review Commission on the subject of court proceedings)

The National Review Commission shall provide its position on the dispute in question to the court on request and within the specified time limit.

Article 49
(Compensation for damage)

(1) Liability for damage caused due to the consequences of challenging a contract or due to the infringement of public procurement rules shall be assessed in accordance with the rules of the law of obligations on liability without fault.

(2) Anyone who believes that they have incurred damage due to unlawful conduct on the part of the contracting authority in the contract award procedure may bring an action against the contracting authority for compensation for damage. When the contracting authority did not carry out a contract award procedure, although it should have carried one out in accordance with the law governing public procurement, compensation for damage may be claimed in an action for challenging a contract as referred to in Article 42 of this Act.

Chapter Six
APPEAL PROCEDURE

Article 50
(Admissibility of an appeal in the pre-review procedure)

This chapter regulates appeals against the contracting authority's decision on the dismissal of a request for a review and on costs of the pre-review procedure. The decision of the National Review Commission on an appeal shall be final.

Article 51 (Lodging an appeal)

(1) If this Act provides for a possibility of lodging an appeal against a decision taken by the contracting authority in the pre-review procedure, an appeal shall be lodged no later than three working days of receipt of the decision of the contracting authority.

(2) An appeal shall be lodged in writing via the eRevizija portal.

Article 52 (Elements of an appeal)

An appeal shall include:

- the name and address of the person lodging the appeal;
- the name of the contracting authority;
- the reference code of the public contract or the decision on the public contract award or on the recognition of suitability or the decision on the acknowledgement of costs;
- the subject matter of the public contract;
- the reference code of the decision that is being challenged by the appeal;
- the alleged infringements;
- facts and evidence substantiating the alleged infringements;
- power of representation in the appeal procedure if the person lodging the appeal acts via an authorised representative.

Article 53 (Handing over documents)

(1) The contracting authority, within three working days of receipt of an appeal, shall hand over the appeal, together with all the documents on the public procurement procedure and the documents on the pre-review procedure, to the National Review Commission. Documents shall be handed over in full and shall include a list of documents.

(2) If documents referred to in the previous paragraph are not handed over in full or do not include the list of documents, the National Review Commission, within three working days of receipt of the appeal and the documents, may request that the contracting authority should complete the documents.

(3) If, in accordance with the law governing public procurement, non-electronic means of communication were used for communications at any stage of the public procurement procedure and these communications cannot be converted to electronic form, notwithstanding paragraph one of Article 13a of this Act, the contracting authority shall send the original communications to the National Review Commission by registered post with a form of acknowledgment of receipt. If, in accordance with paragraph seven of Article 13a of this Act, information and documents in the pre-review procedure, review procedure or appeal procedure are not exchanged via the eRevizija portal, the contracting authority shall send in such a manner all documents referred to in paragraph one or two of this Article to the National Review Commission. The National Review Commission shall return the documents to the contracting authority by registered post with a form of acknowledgment of receipt within three working days of the adoption of the decision on the appeal.

Article 54 (Preliminary examination of an appeal)

(1) After receiving an appeal, the National Review Commission shall verify the following:

- whether it was lodged in due time;
- whether it contains all the obligatory elements referred to in Article 52 of this Act;
- whether it was lodged by the applicant, the successful tenderer or the contracting authority.

(2) If the National Review Commission establishes that the appeal was not lodged in due time or that it was not lodged by the applicant, the successful tenderer or the contracting authority, it shall issue a decision dismissing the appeal.

(3) If the National Review Commission finds that the appeal does not contain all the elements referred to in Article 52 of this Act, it shall immediately, and no later than three working days of receipt of the appeal, invite the person lodging the appeal to complete it within three working days of receipt of the invitation to do so. In the invitation, the National Review Commission shall clearly state which part of the appeal should be completed and draw the attention of the person lodging the appeal to the legal consequences of a failure to complete the appeal in time or to complete it appropriately. If the person lodging the appeal fails to complete the appeal within the set time limit or fails to appropriately complete it, the National Review Commission shall issue a decision dismissing the appeal within three working days of the expiry of the time limit for completion. If the person lodging the appeal appropriately completes the appeal in due time, the National Review Commission shall accept it for consideration.

Article 55

(Decision-making by the National Review Commission regarding an appeal)

(1) The National Review Commission shall issue a decision either dismissing an appeal as unfounded or upholding it.

(2) When the National Review Commission upholds an appeal lodged pursuant to paragraph five of Article 26 of this Act, it may impose on the contracting authority the obligation to decide on the request for a review in accordance with paragraph one of Article 28 of this Act or may accept the request for a review for consideration.

(3) The National Review Commission shall adopt a decision on an appeal within eight working days of receipt of all the documents referred to in paragraph one of Article 53 of this Act.

(4) When the review procedure is initiated in respect of the contracting authority's decision on a request for a review, the National Review Commission may decide to take a decision on the appeal against the contracting authority's decision on costs incurred in the pre-review procedure in the review procedure.

Chapter Seven

THE CORRECTIVE MECHANISM OF THE COMMISSION

Article 56

(Corrective mechanism procedure)

A corrective mechanism procedure is a specific procedure laid down in Council Directive 89/665/EEC, Council Directive 92/13/EEC and Directive 2009/81/EC; the Commission shall initiate such a procedure when it considers that a serious infringement of

the law of the European Union in the field of public procurement has been committed during a contract award procedure.

Article 57
(Establishing the facts regarding the alleged infringement)

(1) Following a notice of initiation of a corrective mechanism procedure, the ministry responsible for public procurement shall carry out the necessary activities to establish the facts regarding the alleged infringement. Contracting authorities and the bodies of the Republic of Slovenia shall inform the ministry responsible for public procurement of activities and any decisions regarding the alleged infringement no later than five working days of being invited by the ministry to do so.

(2) The ministry responsible for public procurement may request that the contracting authority, no later than within five working days, should:

- hand over the documents on the contract award procedure in which an infringement was allegedly committed and
- submit its opinion on the alleged infringements of the law of the European Union.

Article 58
(Preventing damage due to an alleged infringement)

(1) If the Commission initiates a corrective mechanism procedure and no request for a review referred to in paragraph one of Article 24 of this Act has been submitted or no action for challenging the contract or specific contract referred to in Article 42 of this Act has been brought in the contract award procedure in question or the alleged infringement has not been remedied, the ministry responsible for public procurement shall immediately submit a request for a review and, in accordance with paragraph one of Article 19 of this Act, propose that the contracting authority should suspend any further activities in the contract award procedure.

(2) The ministry responsible for public procurement may also propose that the contracting authority should suspend any further activities in the contract award procedure in other cases when the Commission initiates a corrective mechanism procedure.

Article 59
(Informing the Commission of the remedying of the infringement)

(1) The ministry responsible for public procurement, within 15 working days of receipt of a notice of initiation of a corrective mechanism procedure, shall inform the Commission of the following:

- that the alleged infringement has been remedied;
- the reasons why the alleged infringement has not been remedied; or
- that any further activities in the contract award procedure concerned have been suspended.

(2) A justified reason why the infringement has not been remedied shall be the fact that the alleged violation is already subject to the pre-review, review or appeal procedure or court proceedings.

(3) In cases referred to in the second and third indents of paragraph one of this Article, the ministry responsible for public procurement shall inform the Commission on the decision adopted in the pre-review, review or appeal procedure or court proceedings and on

the decision on the suspension of any further activities in the contract award procedure within 15 working days of a such decision becoming final or of being informed of such a decision.

Chapter Eight THE NATIONAL REVIEW COMMISSION

Article 60 (National Review Commission)

(1) The National Review Commission shall be a special, independent and autonomous state body that decides on the legality of the awarding of public contracts at all stages of the public procurement procedure.

(2) The National Review Commission shall have a round stamp with the words "*Republika Slovenija – Državna revizijska komisija za revizijo postopkov oddaje javnih naročil*" (the Republic of Slovenia – the National Review Commission for reviewing public contract award procedures) and the coat of arms of the Republic of Slovenia in the centre.

(3) The funds for the work of the National Review Commission shall be earmarked in the budget of the Republic of Slovenia upon the proposal of the National Review Commission. The National Review Commission shall decide on the use of such funds.

Article 61 (Appointment and dismissal of the chairman and members)

(1) The National Review Commission shall have a chairman or chairwoman (hereinafter: the chairman) and four members. The chairman and members shall be appointed for a term of eight years and may be reappointed. In the event of early dismissal, the new chairman or member shall be appointed for a term of eight years.

(2) The chairman and members shall have the status of state officials.

(3) The chairman and members shall be appointed and dismissed by the National Assembly of the Republic of Slovenia at the proposal of its commission responsible for public office and elections. The commission responsible for public office and elections shall publish a call for applications for the selection of the chairman and members and shall verify whether the candidates who applied meet the conditions for appointment. The commission responsible for public office and elections shall publish the public call for applications at least six months before the expiry of the term of office of the existing chairman and members or no later than 15 days after an early dismissal.

(4) The chairman and members shall meet the following conditions:

- they are citizens of the Republic of Slovenia and have an active command of the Slovenian language;
- they have the capacity to contract and general health capacity;
- they are at least 30 years old;
- they have suitable personal qualities for holding such office;
- they have not been members of a body of a political party in the last three years before the publication of the call for applications.

The chairman and two members shall hold a degree in law obtained in a second-cycle study programme or a degree that corresponds to a degree in law obtained in a second-cycle study programme and the other two members shall hold a degree obtained in a second-cycle study

programme other than a degree in law or a degree that corresponds to such a degree obtained in a second-cycle study programme.

(5) A person shall be deemed not to have suitable personal qualities for holding the office of chairman or member:

- if their previous work, actions and conduct reasonably lead to the conclusion that they will not discharge tasks in a professional, honest or conscientious manner or that they will fail to safeguard the reputation of the National Review Commission and the impartiality and independence of its decision-making;
- if they have been convicted by a final judgment of a criminal offence which constitutes grounds for dismissal in accordance with paragraph seven of this Article; or
- if they have committed a minor offence under this Act or the law governing public procurement and the minor offence authority or the court has issued a final decision on this.

(6) The chairman and members shall have at least six years of work experience in public procurement. The chairman shall also be required to meet the additional condition of having passed the state law examination.

(7) The chairman and members may be prematurely dismissed in the following cases:

- if they submit their resignation to the National Assembly of the Republic of Slovenia;
- if they have been sentenced by a final judgment to imprisonment for committing a criminal offence;
- if they have been sentenced by a final judgment to a non-prison sentence for committing a criminal offence against property, the economy, legal transactions, or official duties and public powers;
- if they are permanently disabled from performing their duties;
- if they fail to act in accordance with the law and the Constitution; or
- they have been convicted by a final judgment of a minor offence under this Act or the law governing public procurement.

Article 61a **(Assuming office as chairman and members)**

(1) The newly appointed chairman and members of the National Review Commission shall assume office no later than three months after their appointment.

(2) If the term of office of the current chairman or member of the National Review Commission has not yet expired, the newly appointed chairman or member of the National Review Commission shall, notwithstanding the preceding paragraph, assume office on the day following the expiry of the term of office of the current chairman or member of the National Review Commission.

(3) If the term of office of the current chairman or member of the National Review Commission has expired and a new chairman or member of the National Review Commission has not yet been appointed, the current chairman or member of the National Review Commission shall discharge their duties until the appointment of the new chairman or member of the National Review Commission.

Article 62 **(Chairman of the National Review Commission)**

(1) The chairman shall represent, manage and organise the work of the National Review Commission.

(2) The chairman may authorise individual members to organise and manage certain areas of work of the National Review Commission.

Article 63
(Ceased to be in force)

Article 64
(Rules of Procedure of the National Review Commission)

(1) The National Review Commission shall lay down in detail the organisation and method of its work in its Rules of Procedure.

(2) The Rules of Procedure shall be adopted by the chairman of the National Review Commission in agreement with the National Assembly of the Republic of Slovenia.

Article 65
(Method of decision-making by the National Review Commission)

(1) In the pre-review and review procedures, decisions shall be made by a three-member panel of the National Review Commission.

(2) The method of work and the appointment of panels shall be regulated in detail in the Rules of Procedure of the National Review Commission. The chairman of the National Review Commission shall assign individual cases for consideration in accordance with the Rules of Procedure.

Article 65a
(Plenary session of the National Review Commission)

(1) A plenary session of the National Review Commission shall be convened to consider issues that are important for the uniform application of laws and for the practice of the National Review Commission.

(2) The chairman of the National Review Commission shall convene a plenary session no later than on the tenth working day following receipt of a written and reasoned request to do so from at least two members of the National Review Commission. When the chairman of the National Review Commission considers that the issue at hand is not one of importance for the uniform application of laws and for the practice of the National Review Commission, they shall not convene a plenary session but shall explain their position in writing to all members of the National Review Commission within three working days of receipt of the request. Following such an explanation by the chairman of the National Review Commission, the majority of members of the National Review Commission may again request the convocation of a plenary session within three working days of receipt of the chairman's position. In this case, the chairman of the National Review Commission shall convene a plenary session no later than on the tenth working day following receipt of a request to do so from the majority of members of the National Review Commission.

(3) The chairman of the National Review Commission shall convene a plenary session by sending a notice in writing to the members of the National Review Commission at

least three working days before the plenary session. All documents that are to be discussed shall be enclosed with the notice.

(4) A plenary session of the National Review Commission shall be attended by the chairman and members of the National Review Commission and chaired by the chairman. At the session, the chairman and members shall adopt a principled legal opinion on the issue that is important for the uniform application of laws and for the practice of the National Review Commission. The chairman and members of the National Review Commission shall have one vote each. Their votes shall be of equal value and the voting shall be public. A proposal shall be adopted if it receives the majority of votes. The opinion shall then be published on the website of the National Review Commission and shall be taken into account in the work of the National Review Commission. It may be modified at another plenary session.

Article 66 (Exclusion)

(1) The chairman, a member or an employee of the National Review Commission may not decide on or participate in decision-making on a case if they are in a business relationship with or are related in up to and including the fourth degree of lineal or collateral kinship to, are or was married to, including if the marriage has terminated, cohabit with, are in a civil union with, or are related by affinity in up to the third degree to the applicant or tenderer, or the statutory representative of the applicant or tenderer or the person authorised by the applicant or tenderer, or statutory representatives, members of management or supervisory bodies of the applicant or tenderer or responsible persons of the contracting authority, or if other grounds for exclusion laid down in the law governing contentious civil procedure exist.

(2) The chairman, a member or an employee of the National Review Commission may not decide on or participate in decision-making on a case if they, directly or via other legal persons, hold more than a five per cent share of the founder's rights, management or equity of the applicant, tenderer or contracting authority.

(3) The chairman, a member or an employee of the National Review Commission may not decide on or participate in decision-making on a case if they were employed by the tenderer or contracting authority and two years have not yet elapsed since the termination of such employment.

(4) The exclusion of the chairman, a member or an employee of the National Review Commission may also be proposed by the contracting authority, the applicant or the successful tenderer or the defender of the public interest.

(5) The exclusion of a member or an employee of the National Review Commission shall be decided by the chairman of the National Review Commission. The exclusion of the chairman of the National Review Commission shall be decided at a plenary session of the National Review Commission, which shall be convened and chaired by the member who is deputy chairman.

Article 67 (Protection of confidence)

In its work, the National Review Commission shall protect personal and classified information and information marked as a trade secret and shall handle such information in accordance with the regulations governing their protection.

Article 68
(Reporting to the National Assembly of the Republic of Slovenia)

The National Review Commission shall report annually on its work to the National Assembly of the Republic of Slovenia.

Article 69
(Annual reports)

(1) The annual report referred to in the preceding Article shall contain the following information, disaggregated by individual laws governing public procurement, the type of procedures and the subject matter of the public contract:

1. the total number of received requests for a review;
2. separately for the review procedure before and after the contract award decision has been made:
 - the number of received requests for the review of public contracts and the value of such contracts;
 - the number of dismissed requests for the review of public contracts, the value of such contracts and information on whether such contracts are co-financed by the European Cohesion Policy funds and if so from which funds;
 - the number of rejected requests for a review, the value of the contracts concerned and information on whether such contracts are co-financed by the European Cohesion Policy funds and if so from which funds;
 - the number of requests for a review that were upheld in part by the National Review Commission, the value of the contracts concerned and information on whether such contracts are co-financed by the European Cohesion Policy funds and if so from which funds;
 - the number of requests for a review that were upheld by the National Review Commission, the value of the contracts concerned and information on whether such contracts are co-financed by the European Cohesion Policy funds;
3. separately for the review procedure before and after the contract award decision has been made:
 - the number and value of the annulled contract award procedures;
 - information on whether such contracts are co-financed by the European Cohesion Policy funds and if so from which fund; and
 - grounds for annulment referred to in paragraph two of Article 39 of this Act.

(2) In the annual report, the National Review Commission shall also include the following data:

1. the data referred to in the fourth and fifth indents of points 2 and 3 of the preceding paragraph, disaggregated by:
 - individual laws governing public procurement;
 - type of procedure;
 - subject matter of the public contract;
 - the review procedure before and after the contract award decision has been made; and
 - the contracting authority;
2. data on the number of dismissed, rejected and upheld requests for a review, disaggregated by:
 - individual laws governing public procurement;

- type of procedure;
- the review procedure before and after the contract award decision has been made; and
- the contracting authority.

(3) The annual report shall also include:

1. information on the considered minor offences and penalties imposed for such offences under this Act and the law governing public procurement, disaggregated by minor offences committed by the contracting authority, tenderer or subcontractor and its responsible person, the amount of the fine imposed, and other important circumstances;
2. information on the National Review Commission's cooperation with defenders of the public interest.

(4) The annual report may also include other information and findings which the National Review Commission considers relevant for the legislative regulation of public procurement.

(5) The National Review Commission shall communicate information and data referred to in this Article to the Government of the Republic of Slovenia by no later than the end of March for the previous year.

Chapter Nine COSTS OF THE PRE-REVIEW PROCEDURE, REVIEW PROCEDURE AND COURT PROCEEDINGS

Article 70 (Reimbursement of costs of pre-review and review procedures)

(1) The costs of pre-review and review procedures shall be the following:

- the fee for the pre-review and review procedures (hereinafter: the fee);
- other expenses, including labour costs incurred during the pre-review, review and appeal procedures or due to such procedures.

(2) The applicant, the contracting authority and the successful tenderer shall first cover their own costs incurred as a result of the submission of a request for a review unless, in accordance with paragraph two of Article 36 of this Act, the National Review Commission imposes on the contracting authority or the applicant the obligation to make an advance payment in order to obtain an expert opinion or include specialists and experts in the process. Lawyers' fees incurred by the applicant, the successful tenderer and the contracting authority in the pre-review, review and appeal procedures shall be recognised in accordance with the law governing attorneys.

(3) If the request for a review is well-founded, the contracting authority shall reimburse, out of its own funds, the applicant and the successful tenderer for the necessary costs incurred in the pre-review and review procedures, including the fee. Regardless of whether it upheld or rejected the request for a review, the contracting authority shall reimburse the applicant and the successful tenderer for the necessary costs incurred if, in the pre-review procedure, it performed actions that were necessary in order to establish a particular fact pursuant to paragraph two of Article 28 of this Act and did not perform such actions in the contract award procedure, although it could have performed them. If the appeal is well-founded, the contracting authority shall reimburse, out of its own funds, the applicant and the successful tenderer for the necessary costs incurred in the appeal procedure.

(4) If the request for a review is unfounded, except in the case referred to in the preceding paragraph, or the applicant withdraws the request for a review, the applicant shall reimburse the contracting authority and the successful tenderer for the necessary costs incurred in the pre-review and review procedures. If the appeal is unfounded, the applicant shall reimburse the contracting authority for the necessary costs incurred in the appeal procedure.

(5) The applicant may claim reimbursement of costs incurred in the pre-review procedure within five working days of submission of the request for a review; they may claim reimbursement of the necessary costs incurred in the review procedure until the decision of the National Review Commission on the request for a review; they may claim reimbursement of costs incurred in the appeal procedure until the decision of the National Review Commission on the appeal. In the request for the reimbursement of costs, the applicant shall define the costs for which reimbursement is sought.

(6) The successful tenderer may claim reimbursement of the necessary costs incurred in the pre-review procedure in the statement referred to in paragraph two of Article 27 of this Act; they may claim reimbursement of costs incurred in the review procedure until the decision of the National Review Commission on the request for a review; they may claim reimbursement of costs incurred in the appeal procedure until the decision of the National Review Commission on the appeal. In the request for reimbursement of costs, the successful tenderer shall define the costs for which reimbursement is sought.

(7) The contracting authority may claim reimbursement of costs incurred in the review procedure until the decision of the National Review Commission on the request for a review; they may claim reimbursement of costs incurred in the appeal procedure until the decision of the National Review Commission on the appeal. In the request for reimbursement of costs, the contracting authority shall define the costs for which reimbursement is sought.

(8) The contracting authority shall decide on its costs and other necessary costs for which reimbursement is sought by the applicant or the successful tenderer, provided that such costs were incurred in the pre-review procedure, in its decision referred to in paragraph three or four of Article 26 of this Act or paragraph one of Article 28 of this Act. The National Review Commission shall decide on the necessary costs incurred in the review procedure in its decision referred to in paragraph three or four of Article 31 of this Act or paragraph one of Article 39 of this Act and on the necessary costs incurred in the appeal procedure in its decision referred to in paragraph one of Article 55 of this Act.

(9) If the National Review Commission establishes that the contracting authority violated the applicant's right to access documents and that, after the applicant accessed the documents and completed the request for a review, the request for a review was still unfounded, it may, depending on the circumstances of each particular case, decide that the contracting authority or the successful tenderer or both should reimburse the applicant for all or part of the necessary costs incurred in the pre-review or review procedure.

(10) An appeal shall be allowed against the contracting authority's decision on costs in accordance with Chapter Six of this Act. The decision of the contracting authority on the costs of the pre-review procedure shall become final on the day of expiry of the time limit for lodging an appeal if no appeal has been lodged or on the day the appeal is dismissed or rejected by the National Review Commission. The final decision of the contracting authority on the necessary costs incurred in the pre-review procedure and the decision of the National Review Commission on the necessary costs incurred in the pre-review, review or appeal procedure shall be an enforceable instrument.

Article 71 (Fee)

(1) When the request for a review relates to the content of a notice, an invitation to tender or tender documents, the fee shall amount to:

- EUR 2,000 if the contract is awarded under a low-value contract procedure or tendering procedure with prior publication of a contract notice;
- EUR 4,000 if the contract is awarded under an open procedure, qualitative selection procedure, restricted procedure, competitive procedure with negotiation, negotiated procedure with prior publication, negotiated procedure without prior publication, innovation partnership or competitive dialogue.

(2) When the request for a review relates to the contracting authority's decision on the awarding of the contract, the fee shall amount to two percent of the value of the most economically advantageous admissible tender (inclusive of VAT) for a lot or public contract and, in the case of public procurement in the fields of defence and security, two percent of the value of the most economically advantageous complete tender (inclusive of VAT) but not less than EUR 500 and not more than EUR 25,000. Notwithstanding the above, the fee for such a decision shall amount to EUR 2,000 if the decision relates to the parties' decision to conclude a framework agreement made in the low-value contract procedure or tendering procedure with prior publication of a contract notice and EUR 6,000 if the decision relates to the parties' decision to conclude a framework agreement made in any other public procurement procedure. When the request for a review relates to the decision on the discontinuation of the public procurement procedure or the recognition of suitability, rejection or exclusion of all tenders, the fee shall amount to EUR 1,000.

(3) When it is not possible to calculate the fee in accordance with paragraphs one and two of this Article, the fee shall amount to EUR 1,000.

(4) Notwithstanding paragraphs one and two of this Article, the fee shall amount to EUR 1,000 if the request for a review relates to social and other specific services or services in the fields of defence and security B or the awarding of a specific contract under a framework agreement or dynamic purchasing system or an open competition.

(5) In each particular case, the amount of the fee shall be determined by the contracting authority, taking into account paragraphs one, two and three of this Article. The fee shall be paid to an appropriate sub-account opened with the Bank of Slovenia for the purpose of the payment of fees for pre-review and review procedures in accordance with the regulation governing sub-accounts and methods of payment of mandatory contributions and other general government revenue.

(6) A request for a review submitted by a defender of the public interest shall be exempt from the payment of the fee.

Article 72 (Refund and payment of fees)

- (1) The applicant shall be entitled to a refund of the fee if:
- they do not submit a request for a review despite having paid the fee for the pre-review and review procedure;
 - the request for a review relates to a procedure which is not a contract award procedure by nature.

(2) An applicant who withdraws the request for a review after having received the contracting authority's decision rejecting their request for a review shall be entitled to a refund of half of the fee paid until the National Review Commission adopts the decision referred to in paragraph one of Article 39 of this Act.

(3) The applicant shall address a claim for a refund of the fee to the National Review Commission. In the case referred to in the first indent of paragraph one of this Article, a claim for a refund of the fee shall be submitted within ten working days of payment of the fee; in the case referred to in the second indent of paragraph one of this Article, a claim for a refund of the fee shall be submitted within 20 working days of receipt of the decision of the contracting authority or the National Review Commission on the dismissal of the request for a review; in the case referred to in the preceding paragraph, a claim for a refund shall be submitted within three working days of receipt of the contracting authority's decision rejecting the request for a review.

(4) When the National Review Commission finds that the applicant has paid an incorrect amount of fee, regardless of the amount of fee specified in the legal instruction of the contract award decision of the contracting authority, it shall:

- invite the applicant to make the required additional payment or
- impose on the ministry responsible for finance the obligation to refund the applicant the overpaid fee.

(5) Upon the proposal of the National Review Commission, the ministry responsible for finance shall pay a refund of the fee in accordance with regulations governing public finance.

Article 73 (Record of fees)

The National Review Commission shall keep a record of paid, overpaid, insufficiently paid and refunded fees. The content of the record and the method of record-keeping shall be defined by the National Review Commission in cooperation with the ministry responsible for finance.

Article 74 (Costs of court proceedings)

(1) The costs of court proceedings shall be costs incurred during or due to court proceedings and shall also include attorney remuneration for the work of attorneys who are entitled to such remuneration under the law.

(2) The amount of the fee for court proceedings, the method of payment of such fees and the time limit for payment shall be laid down in the law governing court fees.

Article 75 (Method of assessment of costs)

Unless otherwise stipulated by this Act, the costs of legal protection in the pre-review procedure, review procedure and court proceedings shall be assessed in accordance with the law governing contentious civil procedure.

Chapter Ten
MINOR OFFENCE AUTHORITY AND PENAL PROVISIONS

Article 76
(Minor offence authority)

The authority responsible for establishing minor offences referred to in this Act shall be the National Review Commission.

Article 77
(Deciding on a minor offence)

(1) Minor offence procedures shall be conducted and decided upon by an authorised official of the National Review Commission who meets the conditions under the law governing minor offences and the regulations adopted on the basis thereof.

(2) The contracting authority and the responsible person of the contracting authority, no later than three working days of receipt of the invitation from the National Review Commission to do so, shall hand over to the National Review Commission all the documents requested by it, in accordance with this Act, for the purpose of:

- establishing whether the conditions exist for the initiation of the minor offence procedure against the contracting authority and the responsible person of the contracting authority or
- collecting additional information and evidence of a minor offence possibly committed by the contracting authority and the responsible person of the contracting authority.

Article 78
(Minor offences)

(1) A fine of between EUR 5,000 and EUR 25,000 shall be imposed for an offence on a legal person whose accounts show a revenue not exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is not considered to be a medium-sized or large company in accordance with the law governing companies where this person, in its capacity as contracting authority:

1. despite the submission of a request for a review, concludes a contract with the successful tenderer although this is not permitted by law (paragraph one of Article 17);
2. fails to refer or fails to refer in due time the proposal for the suspension of the contract award procedure (paragraph two of Article 19);
3. fails to send to the applicant the proposal that the National Review Commission should issue a decision permitting, despite the submitted request for a review, the conclusion of the contract or the discontinuation of the public procurement procedure or the rejection of all tenders or the initiation of a new public procurement procedure for the same subject matter of the procurement (paragraph two of Article 20);
4. fails to adopt a decision on the request for a review within the time limit laid down in this Act (paragraphs three and four of Article 26 and paragraph one of Article 28);
5. fails to send the request for a review to the successful tenderer as required by law (paragraph one of Article 27);
6. fails to send, or fails to send within the specified time limit, the request for a review or all the documents on the contract award procedure or pre-review procedure or the appeal to the National Review Commission (paragraphs one, two and three of Article 29 and paragraph one of Article 53);

7. fails to submit the response report to the National Review Commission on request within the specified time limit (paragraph four of Article 41);
8. commits an infringement due to which the contract or specific contract is not or should not be valid under paragraphs one or two of Article 44 of this Act;
9. fails to hand over the documents on the contract award procedure or submit an opinion on the alleged infringements of the law of the European Union to the ministry responsible for public procurement (paragraph two of Article 57);
10. fails to comply with or implement the decision of the National Review Commission or acts in contravention of its decision (paragraph one of Article 60).

(2) A fine of between EUR 10,000 and EUR 50,000 shall be imposed for an offence referred to in the preceding paragraph on a legal person whose accounts show a revenue amounting to or exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is considered to be a medium-sized or large company in accordance with the law governing companies.

(3) A fine of between EUR 2,000 and EUR 7,500 shall be imposed on a sole trader or a self-employed person for an offence referred to in paragraph one of this Article.

(4) A fine of between EUR 300 and EUR 1,000 shall be imposed for an offence referred to in paragraph one of this Article on the responsible person of a legal person referred to in paragraph one of this Article; a fine of between EUR 700 and EUR 2,000 shall be imposed for an offence referred to in paragraph two of this Article on the responsible person of a legal person referred to in paragraph two of this Article or the responsible person of a state body or a body of a self-governing local community, and a fine of between EUR 200 and EUR 500 shall be imposed on the responsible person of a sole trader committing an offence referred to in paragraph one of this Article.

Article 79 **(Offences that are particularly serious in nature)**

If the nature of the offence referred to in point 1, 8 or 10 of paragraph one of the preceding Article is particularly serious due to the amount of the damage caused or the amount of proceeds of crime or due to the perpetrator's intent or self-serving interests:

- a) a fine of between EUR 30,000 and EUR 100,000 shall be imposed on a legal person whose accounts show a revenue not exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is not considered to be a medium-sized or large company in accordance with the law governing companies;
- b) a fine of between EUR 60,000 and EUR 200,000 shall be imposed on a legal person whose accounts show a revenue amounting to or exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is considered to be a medium-sized or large company in accordance with the law governing companies;
- c) a fine of between EUR 10,000 and EUR 30,000 shall be imposed on a sole trader or a self-employed person;
- č) a fine of between EUR 900 and EUR 3,000 shall be imposed on the responsible person of a legal person referred to in paragraph one of the preceding Article; a fine of between EUR 2,700 and EUR 6,000 shall be imposed on the responsible person of a state body or a body of a self-governing local community or the responsible person of a legal person referred to in paragraph two of the preceding Article; a fine of between EUR 600 and EUR 1,500 shall be imposed on the responsible person of a sole trader referred to in paragraph three of the preceding Article.

Article 80
(Fines in a fast-track procedure)

A fine in an amount exceeding the minimum fine under this Act may be imposed in a fast-track procedure for the offences referred to in this Act.

The Legal Protection in Public Procurement Procedures Act – ZPVPJN (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 43/11) contains the following transitional and final provisions:

"Chapter Eleven
TRANSITIONAL AND FINAL PROVISIONS

Article 81
(Cessation of validity of regulations)

(1) On the date of entry into force of this Act, the Auditing of Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 78/99, 90/99 – corrigendum, 110/02, 14/03 – official consolidated text, 2/04 – ZPNNVSM, 42/04, 99/04 – official consolidated text, 61/05, 95/05 – official consolidated text, 78/06, 26/07 – official consolidated text, 53/07, and 94/07 – official consolidated text) shall cease to be in force.

(2) On the date of entry into force of this Act, the Rules of Procedure of the National Review Commission (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 44/05) shall cease to be in force and shall continue to apply until the date of application of the Rules of Procedure referred to in Article 64 of this Act.

Article 82
(Completion of procedures initiated under the hitherto applicable regulations)

(1) A review procedure that was initiated following the submission of a request for a review prior to the entry into force of this Act shall be completed pursuant the provisions of the Auditing of Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 94/07 – official consolidated text).

(2) Court proceedings relating to public procurement procedures which were initiated prior to the entry into force of this Act shall be completed pursuant to the regulations governing this area before the entry into force of this Act.

Article 83
(Acquiring personnel security clearances for the appointed president and members of the National Review Commission)

For the president and members of the National Review Commission who were appointed prior to the entry into force of this Act, the National Review Commission shall, within three working days of the entry into force of this Act, initiate a procedure for acquiring personnel security clearances referred to in paragraph one of Article 63 of this Act.

Article 84

(Terms of office of the current president and members of the National Review Commission)

The president and members of the National Review Commission who were appointed prior to the entry into force of this Act shall hold office until the expiry of their term of office.

Article 85

(Annual report)

The National Review Commission shall prepare an annual report in accordance with Article 69 of this Act for the first time for 2011. For 2010 the National Review Commission shall prepare an annual report in accordance with Article 33 of the Auditing of Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 94/07 – official consolidated text).

Article 86

(Regulations issued on the basis of this Act)

(1) The National Review Commission shall adopt the Rules of Procedure referred to in Article 64 of this Act within six months of the entry into force of this Act.

(2) The National Review Commission shall define the content of the record of fees and the method of record-keeping referred to in Article 73 of this Act within nine months of the entry into force of this Act.

Article 87

(Entry into force)

This Act shall enter into force on the thirtieth day following its publication in the Official Gazette of the Republic of Slovenia."

The Act Amending the Classified Information Act – ZTP-D (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 60/11) amends Article 83 of the Act to read as follows:

"Article 83
(Ceased to be in force)";

and contains the following final provision:

"Article 3

This Act shall enter into force on the day following its publication in the Official Gazette of the Republic of Slovenia."

The Act Amending the Legal Protection in Public Procurement Procedures Act – ZPVPJN-A (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 63/13) contains the following transitional provisions and final provision:

"TRANSITIONAL PROVISIONS AND FINAL PROVISION

Article 13

The National Review Commission shall harmonise the Rules of Procedure referred to in Article 64 of this Act with Article 37a of this Act within three months of the entry into force of this Act.

Article 14

(1) A pre-review procedure that was initiated prior to the entry into force of this Act shall be completed pursuant the hitherto applicable regulations.

(2) A review procedure that was initiated prior to the entry into force of this Act or following a pre-review procedure carried out under the existing regulations shall be completed pursuant the hitherto applicable regulations.

(3) An appeal procedure that was initiated prior to the entry into force of this Act or following a pre-review procedure carried out under the existing regulations shall be completed pursuant the hitherto applicable regulations.

Article 15

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia."

The Act Amending the State Administration Act – ZDU-1I (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 90/14), contains the following final provision:

"Article 24

This Act shall enter into force on the day following its publication in the Official Gazette of the Republic of Slovenia."

The Act Amending the Legal Protection in Public Procurement Procedures Act – ZPVPJN-B (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 60/17) contains the following transitional and final provisions:

"TRANSITIONAL AND FINAL PROVISIONS

Article 42

(Completion of procedures initiated under the hitherto applicable regulations)

(1) A pre-review procedure that was initiated following the submission of a request for a review prior to the entry into force of this Act, and a review procedure that was initiated prior to the entry into force of this Act shall be completed pursuant to the hitherto applicable regulations. A review procedure that was initiated following a request for a review submitted prior to the entry into force of this Act shall be completed pursuant the hitherto applicable regulations.

(2) An appeal procedure that was initiated following the lodging of an appeal prior to the entry into force of this Act shall be completed pursuant the hitherto applicable regulations. An appeal procedure against the decision of the contracting authority on a request for a review submitted prior to the entry into force of this Act shall be completed pursuant the hitherto applicable regulations.

(3) Court proceedings initiated prior to the entry into force of this Act in accordance with Chapter Five of the Legal Protection in Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos 43/11, 60/11 – ZTP-D, 63/13 and 90/14 – ZDU-1) shall be completed pursuant the hitherto applicable regulations.

Article 43

(Regulations issued on the basis of this Act)

(1) The minister responsible for public procurement shall issue the regulation referred to in paragraph nine of Article 13a of the Act by 30 June 2019.

(2) The National Review Commission shall harmonise the Rules of Procedure referred to in Article 64 of this Act with Articles 35 and 65 of this Act within three months of the entry into force of this Act.

Article 44

(eRevizija portal)

(1) Javno podjetje Uradni list Republike Slovenije, d.o.o., shall establish the eRevizija portal by 30 September 2019.

(2) The eRevizija portal shall begin to be used on the ninetieth day following its establishment unless the pre-review, review or appeal procedure is initiated prior to that date.

(3) In the period from the establishment of the eRevizija portal until the beginning of its use, information and documents in the pre-review, review and appeal procedure shall be exchanged through the eRevizija portal if in the pre-review procedure the applicant submits a request for a review through this portal.

(4) If in the pre-review procedure a request for a review is not submitted through the eRevizija portal, until the beginning of the use of the portal, information and documents, including procedural documentation, in the pre-review, review or appeal procedure shall be submitted in writing directly to the addressee or by registered post with a form of acknowledgment of receipt. They may be also be submitted by electronic means where the addressee has an information system enabling the receipt of electronic applications pursuant

to the law governing electronic commerce and electronic signatures. In such a case, the information or document shall be signed with a secure electronic signature authenticated with a qualified certificate.

(5) Notwithstanding the preceding paragraph, until the beginning of the use of the eRevizija portal, the law governing the administrative procedure shall apply to the service of the contracting authority's decision to dismiss a request for a review and of the contracting authority's decision referred to in paragraph one of Article 28 of this Act, and the law governing contentious civil procedure shall apply to the service of the information and documents of the National Review Commission.

(6) If in the pre-review procedure a request for a review is not submitted through the eRevizija portal, until the beginning of the use of the eRevizija portal, the contracting authority shall send the information on the adoption of a decision referred to in paragraph three of Article 17, paragraph four of Article 19 and paragraph four of Article 20, and on the submitted request for a review referred to in paragraph one of Article 24 of the Act to all tenderers within three working days in accordance with paragraph four of this Article.

Article 45

(Amendment to the Official Gazette of the Republic of Slovenia Act)

At the end of the third indent of Article 13 of the Official Gazette of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos 112/05 – official consolidated text, 102/07, 109/09 and 38/10 – ZUKN), the semicolon shall be replaced by a comma and the following text shall be added to read as follows: 'and the law governing legal protection in public procurement procedures;'.

Article 46

(Entry into force)

This Act shall enter into force on the thirtieth day following its publication in the Official Gazette of the Republic of Slovenia."