

THE CROATIAN PARLIAMENT

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Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION PROMULGATING THE ACT ON THE STATE COMMISSION FOR SUPERVISION OF PUBLIC PROCUREMENT PROCEDURES

I hereby promulgate the Act on the State Commission for Supervision of Public Procurement Procedures, passed by the Croatian Parliament at its session on 1 February 2013.

Class: 011-01/13-01/07

No.: 71-05-03/1-13-2

Zagreb, 6 February 2013

The President of the Republic of Croatia
Ivo Josipović, m.p.

ACT ON THE STATE COMMISSION FOR SUPERVISION OF PUBLIC PROCUREMENT PROCEDURES

Subject matter of the Act

Article 1

This Act regulates the competence of the State Commission for supervision of public procurement procedures (hereinafter: State Commission) and other issues relating to the activities of the State Commission.

Acquis communautaire

Article 2

This Act contains provisions that have been aligned with 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 award of public contracts (OJ L 335, 20.12.2007).

Competence of the State Commission

Article 3

(1) The State Commission shall be an autonomous and independent government body responsible for considering appeals in connection with public procurement procedures, concession award procedures and procedures for selection of private partners in public private partnership projects.

(2) In an appeal procedure, the State Commission shall decide on the legality of procedures, actions, failure to act and decisions taken in public procurement procedures, concession award procedures and procedures for selection of private partners in public private partnership projects and on the legality of public procurement contracts and framework agreements concluded without prior implementation of public procurement procedures.

(3) The State Commission shall also decide on other requests which are available to parties in appeal procedures.

(4) The State Commission shall submit accusatory motions in relation to misdemeanours set forth in this Act and other regulations in the field of public procurement.

(5) In public procurement procedures where the State Commission is the contracting authority, appeals shall not be allowed, but an administrative procedure may be instituted instead before a competent administrative court. A complaint shall have suspensive effect in those cases where pursuant to the Public Procurement Act an appeal forestalls continuation of a public procurement procedure or award of a public procurement contract or a framework agreement.

Responsibility and seat of the State Commission

Article 4

(1) The State Commission shall be accountable for its operation to the Croatian Parliament.

(2) The seat of the State Commission shall be in Zagreb.

Internal structure

Article 5

(1) The internal structure, organisation, method of work and other matters important for the operation of the State Commission shall be governed by the Regulation on the internal structure of the State Commission.

(2) The Regulation on the internal structure of the State Commission referred to in paragraph 1 of this Article shall be adopted by the Government of the Republic of Croatia.

Ban on exerting influence on the State Commission

Article 6

(1) Any attempt to exert influence on the State Commission and its decision-making shall be prohibited.

(2) Any use of public authority, mass communication media, as well as public appearance aimed at exerting influence on the course of an appeal procedure and the State Commission's decision-making shall be prohibited.

Composition of the State Commission and salaries of members of the State Commission

Article 7

(1) The State Commission shall have nine members, one of whom shall act as the Head and two members shall act as Deputy Heads.

(2) The Head of the State Commission shall act on behalf of, represent and manage the State Commission and be responsible for its work.

(3) In the event of unavailability or absence of the Head of the State Commission, the Deputy Head designated by the Head of the State Commission shall substitute for him/her.

(4) During their term in office, the State Commission members shall be entitled to salary.

(5) The coefficient for calculation of salary of the Head of the State Commission, Deputy Head of the State Commission and other members of the State Commission shall be determined by the Government of the Republic of Croatia; however, the said coefficient shall not be higher than is the salary coefficient for the position of Assistant Minister.

Appointment and term of office

Article 8

- (1) The Head, Deputy Heads and other members of the State Commission shall be appointed by the Croatian Parliament upon proposal of the Government of the Republic of Croatia.
- (2) The decision on the appointment shall be published in the Official Gazette.
- (3) Members of the State Commission shall be appointed for a term of office of five years and may be reappointed thereafter.
- (4) At least 60 days prior to expiry of the term of office of a member of the State Commission, the Government of the Republic of Croatia shall propose to the Croatian Parliament to release from duty the member of the State Commission whose term of office is expiring and to reappoint him/her or to appoint a new member of the State Commission.

Requirements for appointment of members of the State Commission

Article 9

- (1) Only nationals of the Republic of Croatia may be appointed to serve as members of the State Commission.
- (2) The Head of the State Commission must have completed a graduate university study or a specialist professional graduate study in law, passed the bar examination and must have at least ten years of work experience in the profession after having passed the bar examination, of which at least three years in the field of public procurement.
- (3) Apart from the Head of the State Commission, at least four other members of the State Commission must have completed a graduate university study or specialist professional graduate study in law and must have at least ten years of work experience in the profession, of which at least three years in the field of public procurement.
- (4) Other members of the State Commission must have completed a graduate university study or a specialist professional graduate study in law, economics, natural sciences or engineering and must have at least ten years of work experience in the profession, of which at least three years in the field of public procurement.

Obstacles for appointment of members of the State Commission

Article 10

- (1) A person who has been convicted of criminal offence based on judgement with final force and effect may not be appointed to serve as a member of the State Commission.
- (2) A person undergoing criminal proceedings for a criminal offence for which the proceedings are instituted *ex-officio* may not be appointed to serve as a member of the State Commission.
- (3) A member of the State Commission shall not pursue an economic, professional or other activity as a self-employment or hold or possess more than 0.5% of shares or holdings owned by a company, and shall not be a member of the management board, supervisory board or other bodies of a business entity.
- (4) A member of the State Commission shall not be a member of a political party throughout the term of his/her office. A member of the State Commission shall not be a member of any form of interest association that could lead to the conflict of interest.

Reputation of the State Commission and its members

Article 11

- (1) A member of the State Commission must maintain his/her reputation, impartiality and independence in decision-making, as well as the reputation, autonomy and independence of the State Commission.
- (2) A member of the State Commission may write and publish professional and scientific papers, participate in the work of professional and scientific gatherings, in implementation of professional and scientific projects and in professional training programmes.

Release from duty of a member of the State Commission prior to expiry of the term of office

Article 12

- (1) The Croatian Parliament may release a member of the State Commission from his/her duties prior to the expiry of the term of office upon proposal of the Government of the Republic of Croatia if:
 1. the release is requested by the member concerned;
 2. the requirements for appointment referred to in Article 9 of this Act are no longer met;

3. the obstacles for the appointment referred to in Article 10 of this Act have been identified;
4. he/she permanently loses the capacity to perform his/her duties;
5. he/she fails to perform the duties of a member of the State Commission without a justified reason;
6. he/she performs the duties in an illegal, untimely and insufficiently professional manner;
7. he/she damages his/her reputation or compromises decision-making impartiality and independence or damages the reputation of the State Commission or challenges its autonomy and independence.

(2) The Head of the State Commission shall immediately after learning of existence of the grounds referred to in paragraph 1 of this Article for the dismissal of a member of the State Commission notify the Government of the Republic of Croatia thereof.

(3) The Deputy Head of the State Commission shall immediately after learning of existence of the grounds referred to in paragraph 1 of this Article for dismissal of the head of the State Commission notify the Government of the Republic of Croatia thereof.

(4) The Government of the Republic of Croatia shall submit to the Croatian Parliament a proposal for dismissal of a member of the State Commission prior to expiry of the term of office and a proposal for the appointment of a new member of the State Commission.

(5) The Government of the Republic of Croatia may appoint an acting member pending the appointment of the member by the Croatian Parliament. The acting member must meet the appointment requirements pursuant to this Act.

Structure of the State Commission's councils

Article 13

(1) In appeal procedures, the State Commission shall take decisions at the council meetings.

(2) Three councils shall be organised within the State Commission. Each council shall consist of three members of the State Commission.

(3) The councils shall be chaired by the Head of the State Commission or by one of his/her deputies. Other members of the State Commission shall be members of the councils and shall take turns in the activities of the councils; each council must consist of at least one member who has completed a graduate university study or a specialist professional graduate study in law.

(4) The manner of rotation of members of the State Commission in the activities of the councils shall be governed by the Regulation on the internal structure of the State Commission.

(5) As and when necessary, the Head of the State Commission may decide that decisions in more complex appeal cases be taken by an *ad hoc* council consisting of a greater number of members. The number of members in an *ad hoc* council must be odd.

(6) The Head of the State Commission shall take account of the dynamics of the council meetings that are held, composition of the council and shall coordinate the council's activities.

Method of the State Commission's decision-making

Article 14

(1) Decisions at the council meetings shall be taken by a majority vote of the council members and no member shall abstain from voting.

(2) The councils shall hold oral discussions in accordance with the provisions of the Public Procurement Act and the Regulation on the internal structure of the State Commission.

(3) Experts in legal or other technical matters may be invited to attend the council meetings.

(4) In the course of an appeal procedure, the State Commission may request from the central public administration bodies to interpret certain provisions of the legislation and other rules and regulations in their field of activity which are important for decision-making in a concrete case.

(5) The introductory paragraph of a decision must contain statements of the members of the State Commission's council which has taken the decision.

Standardizing the State Commission's procedures and practices

Article 15

(1) When the Head of the State Commission detects an unequal treatment or action contrary to the regulations or provisions of the Regulation on the internal structure of the State Commission or deviation from the routine practice, he/she shall convene a meeting of the State Commission in which the controversial issues will be examined with the aim of standardizing procedures and practices. When a member of the State Commission detects the said circumstances, he/she shall notify the Head of the State Commission thereof.

(2) The legal interpretation adopted at the session of the State Commission by a majority vote of all members of the State Commission shall be binding for all councils and members of the State Commission.

(3) When the council takes a decision in a certain appeal case that deviates from the legal interpretation or the routine practice of the State Commission, the Head of the State Commission may decide that delivery of the decision be suspended and that differences in legal interpretations or from the routine practice be discussed at the State Commission's session. If the interpretation adopted at the session differs from the adopted decision, the council that has adopted the decision shall reconsider the case and take a new decision by adherence to the legal interpretation accepted at the session of the State Commission.

Line departments of the State Commission

Article 16

(1) Line departments of the State Commission shall perform professional and general duties to serve the needs of the State Commission.

(2) The professional duties referred to in paragraph 1 of this Article in connection with appeal cases shall include in particular:

1. collection of the information and evidence with a view to establishing process prerequisites for lodging appeals, as well as the factual situation with regard to appeal cases;
2. reporting to the council on the facts and circumstances established in appeal cases;
3. drafting decisions adopted at the council meetings;
4. preparation of the annual report on the activities of the State Commission.

(3) The duties within the State Commission as referred to in paragraph 1 of this Article shall be performed by civil servants and lower-grade government employees.

(4) The number of required civil servants and lower-grade government employees with description of their basic duties and tasks, professional requirements and qualifications, their powers and responsibilities and other issues in connection therewith shall be regulated by the Ordinance on the internal order of the State Commission.

(5) The Ordinance on the internal order of the State Commission shall be passed by the Head of the State Commission.

Financing

Article 17

(1) Funds for the operation of the State Commission shall be provided from the state budget.

(2) Funds for the operation of the State Commission shall include the funds for salaries, funds for expert valuation expenses, funds for material expenses and funds for capital investments in buildings and technical equipment.

Report on the State Commission's activities and publishing obligation

Article 18

(1) The State Commission shall once a year, and no later than 30 June, submit to the Croatian Parliament the report on its activities for the preceding calendar year.

(2) On request of the Croatian Parliament, the State Commission shall also submit reports for periods shorter than a year.

(3) The information and analyses about appeal cases in public procurement procedures, concession award procedures and procedures for selection of private partners in public private partnership projects shall also form an integral part of the annual report.

(4) The report shall contain the information about:

1. the number of appeals received (in public procurement procedures, concession award procedures and procedures for selection of private partners in public private partnership projects);

2. the number of appeals received by individual stages of public procurement procedures, concession award procedures and procedures for selection of private partners in public private partnership projects;

3. the number of cases resolved (appeal procedures that have been dismissed, rejected, upheld or suspended);

4. the number of unresolved cases;

5. the number of decisions on motions for interim measures (motions rejected and those sustained) and the average time for adoption of a decision from the date of completion of dossier;

6. the number of decisions on applications for approval of continuation of the procedure and/or award of a public procurement contract or framework agreement (applications

refused and those granted) and the average time for adoption of a decision from the date of completion of dossier;

7. the number of annulled decisions, procedures and actions of the contracting authorities due to unlawfulness;

8. the number of annulled public procurement contracts or framework agreements or parts thereof;

9. the number of fines levied and the amounts thereof;

10. the number of oral hearings held;

11. average time for adoption of decisions both from the date of receipt of appeal and from the date of completion of the appeal case documentation;

12. the contracting authorities having five or more appeal procedures before the State Commission, including the number of legitimate appeals in such appeal procedures and the total number of implemented appeal procedures related to the concerned contracting authorities;

13. the most common reasons for lodging appeals;

14. the most common irregularities established by the State Commission;

15. legal actions against the State Commission's decisions;

16. the number of submitted accusatory motions;

17. the total amount of fees paid for initiating an appeal procedure and other indicators of financial operations of the State Commission;

18. other relevant indicators in appeal cases;

19. assessment of the situation with regard to legal protection and public procurement in general.

(5) The State Commission shall at least twice a year publish information on the most common reasons for lodging appeals and the most common irregularities established in appeal procedures.

Liability for damages

Article 19

(1) The Republic of Croatia shall be liable for any damage incurred by any party because of unlawful or wrongful acts of the State Commission.

(2) The Republic of Croatia may request recovery from a member of the State Commission for the compensation that has been paid out only when it is established in a procedure carried out in accordance with the relevant legislation that the member of the State Commission has caused the damage intentionally or by gross negligence.

Misdemeanour provisions

Article 20

(1) A legal person and local and regional self-government units shall be fined between HRK 50,000.00 and HRK 1,000,000.00 for misdemeanour if they act contrary to the provisions of Article 6 of this Act.

(2) A natural person, responsible person of the legal entity, responsible person of the state authority or of the local and regional self-government unit shall be fined between HRK 10,000.00 and HRK 100,000.00 for the misdemeanour referred to in paragraph 1 of this Article.

(3) A misdemeanour procedure may not be instituted after expiry of three years from the date when a minor offence is committed.

(4) Absolute statute of limitations shall apply upon expiry of a period that is twice as long as the time elapsed from the date of committing the offence as set out in paragraph 3 of this Article.

Transitional and final provisions

Article 21

(1) Members of the State Commission appointed pursuant to provisions of the Act on the State Commission for Supervision of Public Procurement Procedures (Official Gazette 117/03) and the Act on the State Commission for Supervision of Public Procurement Procedures (Official Gazette 21/10) shall continue to perform their duties until expiry of their terms of office or until the conditions set out in Article 12 of this Act are fulfilled.

(2) The staff employed with the State Commission on the date of entry into force of this Act shall become civil servants and lower-grade government employees and, pending adoption of the Ordinance on the internal order of the State Commission and assignment pursuant to the legislation governing civil servants and lower-grade government employees, they shall continue to perform their duties and retain all rights under the employment which they have acquired under the Act on the State Commission for Supervision of Public Procurement Procedures (Official Gazette 117/03) and the Act on the State Commission for Supervision of Public Procurement Procedures (Official Gazette 21/10). Upon adoption of the Ordinance on the internal order of the State Commission, the staff already employed with the State Commission shall be assigned in

accordance with the legislation governing civil servants and lower-grade government employees.

(3) Within 60 days of the date of entry into force of this Act the Government of the Republic of Croatia shall propose to the Croatian Parliament to appoint the members of the State Commission in accordance with the full composition requirement as laid down in this Act.

(4) The Government of the Republic of Croatia shall adopt the regulation referred to in Article 5, paragraph 2 of this Act within 60 days of the date of entry into force of this Act.

(5) The Head of the State Commission shall adopt the Ordinance on the internal order of the State Commission within 30 days of the date of entry into force of the Regulation on the internal structure of the State Commission subject to prior approval of the central public administration body in charge of employment relations between civil servants.

(6) By virtue of the Ordinance on the internal order of the State Commission, the Head of the State Commission shall issue decisions on assignment of civil servants and on employment contracts for lower-grade government employees within 30 days.

Article 22

On the date of entry into force of this Act, the Act on the State Commission for Supervision of Public Procurement Procedures (Official Gazette 21/10) shall cease to have effect.

Article 23

This Act shall enter into force on the eighth day following its publication in the Official Gazette.

Class: 330-01/12-01/04

Zagreb, 1 February 2013

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament

Josip Leko, m.p.