

# **Government Decree No. 321/2015 (30 October) on the way of certifying suitability and the non-existence of exclusion grounds as well as the definition of public procurement technical specifications in contract award procedures**

The Government, based on the empowerment of Article 198 (1) points 1 and 2 of Act CXLIII of 2015 on Public Procurement and acting within its competence pursuant to Article 15 (3) of the Fundamental Law of Hungary, decrees the following:

## **CHAPTER I**

### **1. Applicable rules**

#### **Article 1**

1. In contract award procedures conducted pursuant to Part Two of Act CXLIII of 2015 on Public Procurement (hereinafter referred to as PPA), unless otherwise provided by the contracting authority pursuant to Article 100 (5) of the PPA, the tenderer or candidate shall certify in advance, according to Chapter II herein, by submitting the European Single Procurement Document (ESPD), in its tender or request to participate, upon the submission of the tender or the request to participate, that it is not subject to Article 62 (1) and (2) or, where the contracting authority provided for it, Article 63 (1) of the PPA, furthermore, that it complies with the suitability criteria established by the contracting authority under Article 65 of the PPA.<sup>1</sup>

2. The economic operator shall, in compliance with the rules applied in the given procedure, upon the request of the contracting authority pursuant to Article 69 (4)-(8) of the PPA or upon the submission of tender or request to participate, certify in compliance with Chapter III and Chapter IV that it is not subject to the exclusion grounds prescribed in the procedure and meets the suitability criteria established by the contracting authority.<sup>2</sup>

3. The certifications referred to in Chapter III and Chapter IV shall not be requested, if the contracting authority in accordance with Article 69 (11) of the PPA has direct access to the databases not mentioned in the Chapters concerned, certifying the non-existence of exclusion grounds or the suitability of the economic operator and the economic operator indicated the access of such databases in the ESPD.

4. The ways of certification referred to in Chapter III and Chapter IV may be replaced pursuant to Chapter V, if by being on the official list of approved tenderers the economic operator concerned proves compliance with the requirements provided for in the procedure.

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<sup>1</sup> This amendment entered into force on 1 January 2017.

<sup>2</sup> This amendment entered into force on 1 February 2020.

5. In the case of economic operators not established in Hungary, the contracting authority shall be entitled to verify the authenticity of the certificates in accordance with Chapter VI.

6. The public procurement technical specifications shall be prepared in accordance with Chapter VII.

7. In terms of exclusion grounds and suitability criteria, certificates issued prior to the beginning of the public procurement may also be submitted (used) until the fact, respectively the data therein is real. Subject to evidence to the contrary, the contracting authority shall presume the veracity of the data without the respective declaration of the tenderer.<sup>3</sup>

8. Upon tendering for lots, the economic operator shall not be requested to submit a declaration or certificate, which has already been submitted by the economic operator in relation to a part of the same public procurement procedure. In such case the economic operator shall declare concerning which part it requests the consideration of a submitted declaration or certificate upon the evaluation.<sup>4</sup>

## ***CHAPTER II***

### **2. The use of the European Single Procurement Document**

#### **Article 2**

1. In contract award procedures conducted pursuant to Part Two of the PPA, except if the European Single Procurement Document shall not be applied in the given procedure under Article 100 (5) of the PPA, the contracting authority shall make available electronically, together with the procurement documents, the sample of the European Single Procurement Document (ESPD) related to the given procedure, which shall contain:<sup>5</sup>

(a) the data required in Part I of the standard form for the ESPD (hereinafter referred to as standard form) enabling the identification of the procedure or, in the case of publication of a notice, the notice serial number published in the Official Journal of the European Union,

(b) the exclusion grounds to be applied in the procedure,

(c) the suitability criteria prescribed in the procedure, except if the contracting authority accepts the simple declaration made by the economic operator pursuant to paragraph 5.

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<sup>3</sup> This amendment entered into force on 1 January 2018.

<sup>4</sup> This amendment entered into force on 1 April 2019.

<sup>5</sup> This amendment entered into force on 1 January 2017.

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3. In addition to the information specified in paragraph 1, the contracting authority may request that the tenderer or candidate shall indicate in the standard form

(a) the subcontractors whose capacities will not be used, if such subcontractors are already known at the time of the submission of the tender or request to participate,

(b) the fact and way of compliance with the quality assurance and environmental standards incidentally prescribed in the procedure.

4. For the purposes of paragraph 1 (b), the exclusion grounds specified in Article 62 (1)(ag) as well as in (e), (f), (g), (k), (l), (p) and (q), furthermore in Article 63 (1)(d) of the PPA if the contracting authority provided for it, shall be indicated in Section D Part III of the standard form.<sup>7</sup>

5. For the purposes of paragraph 1 (c), the contracting authority shall indicate in the standard form whether it accepts the simple declaration made by the economic operator concerned for the prior certification of the suitability criteria or requests the detailed information specified in Part IV of the standard form. If the contracting authority accepts the simple declaration, it is not necessary to indicate the suitability criteria in the standard form. If detailed information is requested, the suitability criteria shall be precisely indicated in the standard form.

6. The use of the ESPD may also be prescribed by the contracting authority in contract award procedures conducted pursuant to Part Four of the PPA. In such cases the rules of the present Chapter shall apply with the proviso that the ESPD may be used as a final certification, should it be allowed by the rules of Chapter III and Chapter IV.

### **Article 3<sup>8</sup>**

1. The tenderer or candidate shall submit, together with its tender or request to participate, pursuant to Articles 4-7 herein, the form filled in as requested by the contracting authority under Article 2.

2. For the purposes of paragraph 1, upon the submission of paper-based tenders or requests to participate or upon the application of an IT system other than the electronic public procurement system (hereinafter: EPS) operated by the minister responsible for public procurement – if the IT system allows the submission of the form not as electronic sheet, but only as simple electronic copy of the paper-based document or at least as a document with advanced electronic signature – the tenderer or candidate shall submit the filled-in form signed by the duly authorized representative.

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<sup>6</sup> This paragraph was repealed on 1 April 2019.

<sup>7</sup> This amendment entered into force on 1 January 2017.

<sup>8</sup> This amendment entered into force on 1 April 2019.

3. If the tenderer or candidate intends to fulfil the set suitability criteria by relying on the capacities of other entities or persons, the tenderer or candidate shall submit the form in representation of the concerned entities or persons. In terms of entities or persons providing their capacities, declaration shall be made concerning only those suitability criteria, on which the tenderer or candidate intends to rely for the certification of its suitability.

4. For the purposes of paragraph (3), upon the paper-based submission of tenders and requests to participate, the tenderer or candidate also submits the separate forms filled-in by each of the entities or persons concerned. Upon the paper-based submission of tenders or requests to participate, also if the IT system other than the EPS allows the submission of the form not as electronic sheet, but only as simple electronic copy of the paper-based document or at least as a document with advanced electronic signature, it shall be submitted with the signature of the duly authorized representative.

5. In the case of joint tenders or requests to participate, the declaration shall be made by the economic operator submitting the tender or request to participate in representation of joint tenderers or candidates.

6. For the purposes of paragraph (5), upon the paper-based submission of tenders or requests to participate, joint tenderers or candidates shall each submit a separate form.

#### **Article 4**

1. The tenderer, candidate or the economic operator participating in the certification of suitability shall certify in advance the non-existence of exclusion grounds specified in Article 62 of the PPA, by submitting the standard form as follows:

(a) with regard to the declaration concerning Article 62 (1)(aa)-(af) of the PPA, the economic operator shall complete Section A Part III of the standard form,

(b) the declaration concerning Article 62 (1)(ag) of the PPA shall be made by the economic operator by completing Section D Part III of the standard form,

(c) with regard to Article 62 (1)(ah) of the PPA, upon completing the standard form in accordance with points (a) and (b), the economic operator not established in Hungary also makes its declaration on similar crimes under its personal law specified in point (ah),

(d) for the purposes of Article 62 (1)(b) of the PPA, it shall make a declaration by completing Section B Part III of the standard form, with the proviso that only those tax, customs duty or social security contribution payment obligations shall be indicated which are more than a year overdue, specifying their maturity date,

(e) for the purposes of Article 62 (1)(c), (d), (h)-(j) and (m) of the PPA, it shall make a declaration by completing the relevant points of Section C Part III of the standard form,

(f) for the purposes of Article 62 (1)(e)-(g), (k), (l), (p) and (q) of the PPA, it shall make a declaration by completing the relevant points of Section D Part III of the standard form,<sup>9</sup>

(g) for the purposes of Article 62 (1)(n)-(o) of the PPA, it shall make a declaration by completing the relevant point of Section C Part III of the standard form.<sup>10</sup>

2. The tenderer, candidate or the economic operator participating in the certification of suitability shall certify in advance the non-existence of exclusion grounds specified in Article 63 of the PPA - if the contracting authority prescribed the application of such exclusion grounds in the given procedure - by submitting the standard form as follows:

(a) in relation to Article 63 (1)(a)-(c) of the PPA, by completing the relevant points of Section C Part III of the standard form,

(b) the declaration concerning Article 63 (1)(d) of the PPA shall be made by the economic operator in Section D Part III of the standard form.

3. If the economic operator concerned, who is subject to an exclusion ground specified in Article 62 (1)(a), (c)-(e), (g)-(q), Article 62 (2) or Article 63 (1) of the PPA, took measures which demonstrate its reliability under Article 64 of the PPA and such fact is certified by the final decision specified in Article 188 (4) of the Public Procurement Authority (hereinafter referred to as Authority) or, in the case of an administrative litigation, a binding judicial decision specified in Article 188 (5) of the PPA, the economic operator shall refer to the existence of the exclusion ground and outline the measures taken in the standard form. The final decision of the Authority specified in Article 188 (4) or, in the case of an administrative litigation, the binding judicial decision specified in Article 188 (5) shall be attached to the standard form.<sup>11</sup>

4. The declaration made based on paragraph 1 (a)-(c) shall also apply to the persons referred to in Article 62 (2) of the PPA.

## **Article 5**

1. For the prior certification of the suitability criteria specified in Article 65 (1) of the PPA, the tenderer, candidate or the economic operator participating in the certification of suitability shall complete Part IV of the standard form as prescribed by the contracting authority in accordance with Article 2 (5).

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<sup>9</sup> This amendment entered into force on 1 January 2017.

<sup>10</sup> This amendment entered into force on 1 February 2020.

<sup>11</sup> This amendment entered into force on 1 January 2018.

2. If the contracting authority set the range of economic operators to be invited to submit a tender in the participation stage of a procedure consisting of more than one stage and defined a method to rank the suitable candidates, the economic operator concerned shall also complete Section V of the standard form.

#### **Article 6**

1. If pursuant to Article 69 (11) of the PPA, the contracting authority has direct access to the databases certifying the non-existence of exclusion grounds and the fulfilment of the suitability criteria, the economic operator shall indicate the access of such databases in the relevant parts of the standard form, except for the databases to be verified by the contracting authority in relation to the certification of exclusion grounds under the present decree.<sup>12</sup>

2. The economic operators shall also indicate in the standard form which body is entitled to issue the certificates specified in Chapter III and Chapter IV, except for the entities operating databases, which the contracting authority is obliged to verify in relation to the certification of exclusion grounds under the present decree.<sup>13</sup>

#### **Article 7**

1. The information included in the standard form submitted in the given procedure may be used by the economic operator in another contract award procedure too, if such information is still accurate and contain the information required by the contracting authority in that other procedure.

2. Upon re-using the standard form, the economic operator shall update the data included in Part I of the standard form in compliance with the new procedure and shall make a declaration that the data included therein are still accurate. In that case the economic operator shall repeat the declarations specified in Part VI.

### ***CHAPTER III***

#### **3. Certification of the non-existence of exclusion grounds**

#### **Article 8**

In the case of tenderers or candidates established in Hungary, in contract award procedures conducted pursuant to Part Two of the PPA, the contracting authority shall accept the following certificates and written declarations concerning Article 62 of the PPA and shall verify the non-existence of exclusion grounds as follows:

(a) with regard to Article 62 (1)(a) and (e) of the PPA - which shall only be certified by economic operators being natural persons - and in the case of persons referred to in

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<sup>12</sup> This amendment entered into force on 1 January 2017.

<sup>13</sup> This amendment entered into force on 1 April 2019.

Article 62 (2) of the PPA, a declaration attested by a notary public or an economic or professional chamber;

(b) with regard to Article 62 (1)(b) of the PPA, it shall be verified by the contracting authority based on the database of taxpayers not having public debts pursuant to Act CL of 2017 on the Rules of Taxation (hereinafter referred to as: 'Art.') or, if the economic operator is not included in such database, the certificate of the competent tax and customs authority or the tax certificate specified in the government decree on the detailed rules of the tax administration procedure;<sup>14</sup>

(c) with regard to Article 62 (1)(c) and (d) of the PPA, it shall be verified by the contracting authority based on the data of the company register accessible electronically free of charge at the Company Information and Electronic Company Registration Service (hereinafter referred to as Company Information Service); with regard to Article 62 (1)(d), if the economic operator shall not qualify as a company under Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings, or apart from the registry court, other authorities are also entitled to suspend the business activities of the entity in question, a declaration attested by a notary public or an economic or professional chamber;

(d) the non-existence of the exclusion ground specified in Article 62 (1)(f) of the PPA shall be verified by the contracting authority based on the data of the company register, accessible electronically free of charge at the Company Information Service; if an economic operator other than a natural person shall not qualify as company, a declaration attested by a notary public or an economic or professional chamber;

(e) the non-existence of the exclusion ground specified in Article 62 (1)(g) of the PPA shall be verified by the contracting authority in the register available on the website of the Authority and based on the data of the company register accessible electronically free of charge, at the Company Information Service;

(f) with regard to Article 62 (1)(h), no separate certificate shall be requested by the contracting authority, as certification of the non-existence of the exclusion ground, the contracting authority shall accept the self-declaration in the ESPD submitted in the procedure, as regards court or Public Procurement Arbitration Board decisions, the non-existence of the exclusion ground shall be verified by the contracting authority based on the data published on the website of the Authority.<sup>15</sup>

(g) with regard to Article 62 (1)(i) of the PPA, the submission of a certificate is not necessary, the non-existence of the exclusion ground is verified by the contracting authority during the procedure;

(h) the non-existence of the exclusion ground specified in Article 62 (1)(j) of the PPA shall be verified by the contracting authority during the procedure; as regards earlier

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<sup>14</sup> This amendment entered into force on 1 January 2018.

<sup>15</sup> This amendment entered into force on 1 January 2017.

contract award procedures, the contracting authority shall accept the self-declaration included in the ESPD submitted in the procedure;

(i) with regard to Article 62 (1)(k) of the PPA:

(ia) with respect to Article 62 (1)(ka) of the PPA, the submission of a certificate or declaration is not necessary, the contracting authority shall verify based on the data included in the company register – which is accessible electronically free of charge at the Company Information Service – whether the economic operator in question is actually registered in Hungary;

(ib) with respect to Article 62 (1)(kb) of the PPA, the declaration of the tenderer or candidate indicating the name and residence of all actual proprietors as defined in Article 3. 38. (a)-(b) or (d) of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter referred to as Act on Money Laundering) shall be submitted; if there is no actual proprietor as defined in Article 3. 38. (a)-(b) or (d) of the Act on Money Laundering, the declaration of the tenderer or candidate thereon shall be submitted;<sup>16</sup>

(ic) with respect to Article 62 (1) (k) (kc) of the PPA, the declaration of the tenderer or candidate stating whether there is a legal person or an entity having legal capacity under its personal right, which owns directly or indirectly a share exceeding 25 % or has right to vote concerning the tenderer or candidate; upon the existence of such entity, the tenderer or candidate shall name it (company name, seat) in a declaration, furthermore, shall make a declaration concerning such entity on the non-existence of the exclusion ground specified in Article 62 (1) (k) (kc) of the PPA;

(j) the non-existence of the exclusion grounds pursuant to Article 62 (1)(l) of the PPA shall be verified by the contracting authority based on the data publicized in the register kept by the Labour Inspectorate pursuant to Article 8/C of Act LXXV of 1996 on Labour Inspection and based on the data publicized on the website of the national body for aliens policing;<sup>17</sup>

(k) with respect to Article 62 (1)(m) of the PPA, the submission of a certificate is not necessary, the non-existence of the exclusion ground shall be verified by the contracting authority during the procedure;

(l) with respect to Article 62(1)(n) of the PPA, as regards the decisions of the Hungarian Competition Authority (hereinafter referred to as HCA) and the final court rulings reviewing such decisions, the existence of the infringement shall be verified by the contracting authority on the website of the HCA in the databases containing the decisions; no further certificate shall be requested by the contracting authority; as regards the non-existence of the possible infringements not included in the databases

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<sup>16</sup> This amendment entered into force on 1 April 2019.

<sup>17</sup> This amendment entered into force on 1 July 2019.

on the website of the HCA, the contracting authority shall accept the self-declaration in the ESPD submitted in the procedure;

(m) with regard to Article 62 (1)(o) of the PPA, the contracting authority shall accept as certificate the self-declaration included in ESPD, submitted in the procedure;

(n) with regard to Article 62 (1)(p) of the PPA, no separate certificate shall be requested by the contracting authority, as certification of the non-existence of the exclusion ground, the contracting authority shall accept the self-declaration included in the ESPD, submitted in the procedure;

(o) with regard to Article 62 (1)(q) of the PPA, no separate certificate shall be requested by the contracting authority, the existence or non-existence of the infringement shall be verified by the contracting authority based on the data published on the website of the Authority.<sup>18</sup>

### **Article 9**

In the case of tenderers or candidates established in Hungary, in procedures conducted pursuant to Part Two of the PPA, as regards Article 63 of the PPA, the contracting authority shall accept the following written declarations, respectively shall verify the non-existence of the exclusion grounds as follows:

(a) with regard to Article 63 (1)(a), (b) and (d) of the PPA, no separate certificate shall be requested by the contracting authority, it shall accept the self-declaration included in the ESPD, submitted in the procedure;

(b) with regard to Article 63 (1)(c) of the PPA, it is not necessary to submit a certificate, the non-existence of the exclusion ground shall be verified by the contracting authority in the register available on the website of the Authority.

### **Article 10**

1. In the case of tenderers or candidates not established in Hungary, in procedures conducted pursuant to Part Two of the PPA, as regards Article 62 of the PPA, the contracting authority shall be obliged to accept the following certificates and written declarations, respectively shall verify the non-existence of the exclusion grounds as follows:

(a) with regard to Article 62 (1)(a), (e)-(f) and Article 62 (2) of the PPA, a document issued by the competent judicial or administrative authority of the Member State or the country of establishment of the economic operator or the person in question, which certifies the fulfilment of the relevant requirements;

(b) with regard to Article 63 (1)(b) of the PPA, a certificate issued by the competent authorities of the country of establishment; the non-existence of the exclusion ground

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<sup>18</sup> This amendment entered into force on 1 January 2017.

with respect to public debts in Hungary shall also be verified by the contracting authority based on the database of taxpayers not having public debts pursuant to the Art.; if the tenderer or candidate is not included in such database, a certificate of the competent tax and customs authority or the tax certificate specified in the government decree on the detailed rules of the tax administration procedure shall also be submitted; if the economic operator does not carry out taxable transactions in Hungary, the related declaration of the economic operator;<sup>19</sup>

(c) with regard to Article 62 (1)(c), (d), (g) of the PPA, a certificate issued by the competent authorities of the country of establishment; with regard to point (g), the non-existence of the exclusion ground related to the prohibition imposed by the Public Procurement Arbitration Board shall be verified by the contracting authority in the register available on the website of the Authority;

(d) with regard to Article 62 (1)(h) of the PPA, no separate certificate shall be requested by the contracting authority, for the certification of the non-existence of the exclusion ground the contracting authority shall accept the declaration included in the ESPD, submitted in the procedure, as regards court or Public Procurement Arbitration Board decisions, the non-existence of the exclusion ground shall be verified by the contracting authority based on the data published on the website of the Authority;<sup>20</sup>

(e) with regard to of Article 62 (1)(i) of the PPA, it is not necessary to submit a certificate, the non-existence of the exclusion ground shall be verified by the contracting authority in the course of the procedure;

(f) with regard to Article 62 (1)(j) of the PPA, the non-existence of the exclusion ground shall be verified by the contracting authority in the course of the procedure; as regards earlier contract award procedures the contracting authority shall accept the declaration included in the ESPD, submitted in the procedure;

(g) with regard to Article 62 (1)(k) of the PPA:

(ga) with regard to Article 62 (1) (k) (ka) of the PPA, a certificate of fiscal domicile issued by the competent authority of the country concerned;

(gb) with respect to Article 62 (1) (k) (kb) of the PPA, the declaration of the tenderer or candidate indicating the name and residence of all actual proprietors as defined in Article 3. 38. (a)-(b) or (d) of the Act on Money Laundering shall be submitted; if there is no actual proprietor as defined in Article 3. 38 (a)-(b) or (d) of the Act on Money Laundering, the declaration of the tenderer or candidate thereon shall be submitted;<sup>21</sup>

(gc) with respect to Article 62 (1) (k) (kc) of the PPA, the declaration of the tenderer or candidate stating whether there is a legal person or a business organization having legal capacity under its personal right, which owns directly or indirectly a share

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<sup>19</sup> This amendment entered into force on 1 April 2019.

<sup>20</sup> This amendment entered into force on 1 January 2017.

<sup>21</sup> This amendment entered into force on 1 April 2019.

exceeding 25 % or has the right to vote; upon the existence of such entity, the tenderer or candidate shall name it (company name, seat) in a declaration, furthermore, shall make a declaration on the non-existence of the exclusion ground specified in Article 62 (1) (k) (kc) of the PPA, with respect to such entity;

(h) with respect to Article 62(1)(l) of the PPA, the non-existence of the exclusion grounds shall be verified by the contracting authority based on the data publicized in the register kept by the Labour Inspectorate pursuant to Article 8/C of Act LXXV of 1996 on Labour Inspection, furthermore, based on the data publicized on the website of the national body for aliens policing;<sup>22</sup>

(i) with regard to Article 62 (1)(m) of the PPA, it is not necessary to submit a certificate, the non-existence of the exclusion ground shall be verified by the contracting authority in the course of the procedure;

(j) with regard to Article 62 (1)(n) and (o) of the PPA, no separate certificate shall be requested by the contracting authority, the declaration included in the ESPD, submitted in the procedure shall be accepted; as regards any past record of infringement committed in Hungary, the contracting authority verifies the non-existence of the exclusion ground specified in point (n) on the website of the Hungarian Competition Authority, in the databases containing the relevant decisions;

(k) with regard to Article 62 (1)(p) of the PPA, no separate certificate shall be requested by the contracting authority, the declaration included in the ESPD, submitted in the procedure shall be accepted;

(l) with regard to Article 62 (1)(q) of the PPA, no separate certificate shall be requested by the contracting authority, the existence or non-existence of the infringement shall be verified by the contracting authority based on the data published on the website of the Authority.<sup>23</sup>

2. If the competent court or authority does not issue extracts or certificates pursuant to paragraph 1(a)-(c) or (ga), or the extracts or certificates do not cover all the cases referred to in the aforementioned points, the contracting authority shall accept the declaration of the tenderer or candidate made under oath or, if such declaration is unknown in the country concerned, a declaration made by the tenderer or candidate before the competent court, authority, chamber of professional association or attested by the notary public.

## **Article 11**

In the case of tenderers or candidates not established in Hungary, in procedures conducted pursuant to Part Two of the PPA, as regards Article 63 of the PPA the

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<sup>22</sup> This amendment entered into force on 1 April 2019.

<sup>23</sup> This amendment entered into force on 1 January 2017.

contracting authority shall be obliged to accept the following written declarations, respectively shall verify the non-existence of exclusion grounds as follows:

(a) with regard to Article 63 (1)(a), (b) and (d) of the PPA, no separate certificate shall be requested by the contracting authority, the declaration included in the ESPD, submitted in the procedure shall be accepted by the contracting authority as certification of the non-existence of the exclusion ground;

(b) with regard to Article 63 (1)(c) of the PPA, no separate certificate shall be requested by the contracting authority, the declaration included in the ESPD, submitted in the procedure shall be accepted by the contracting authority as certification of the non-existence of the exclusion ground, with the proviso that, as regards the performance of contracts concluded with Hungarian contracting authorities, the contracting authority shall verify the non-existence of the exclusion ground in the register available on the website of the Authority.

### **Article 12**

In cases when the official list of approved tenderers pursuant to Articles 28 and 36 – considering the provisions of Articles 30 and 39 – certifies that the economic operator is not subject to any of the exclusion grounds, the fact that the economic operator is included in the electronically available official list of approved tenderers or the certificate submitted by an economic operator established in another Member State of the European Union, issued by the organisation responsible for keeping the list of recognized tenderers of the country of establishment shall be accepted by the contracting authority instead of other ways of certification specified in Articles 8-11.

### **Article 13**

In the case of ongoing amendment notification proceedings, the tenderer or candidate shall attach the request for amendment notification submitted to the court of registration, as well as the certificate of receipt thereof sent by the court of registration to the tender or the request to participate.

### **Article 14**

1. For the purposes of Article 62 (1) (k) (kc) of the PPA – to be certified pursuant to Article 8 (i) (ic) and Article 10 (g) (gc) herein – the terms ‘indirect holding’ and ‘indirect voting right’ shall mean that the tenderer or candidate owns its share and exercises its voting right through the ownership of the share, voting right of another economic operator (intermediary economic operator) having a share or voting right in the tenderer or the candidate. To determine the proportion of the indirect holding, voting right, the voting right or the share of the entity having an indirect share, voting right in the intermediary economic operator shall be multiplied by the voting right or the share – whichever is greater – of the intermediate economic operator in the tenderer or candidate. If the voting right or holding in the intermediate economic operator exceeds 50 %, it shall be treated as a whole.

2. Upon the declaration submitted pursuant to Article 8 (i) (ib) and (ic), furthermore, Article 10 (g) (gb) and (gc), as regards the exclusion ground certified by such declaration the contracting authority has no further obligation of verification – any request to be made towards authorities, other organisations –and unless becoming aware of a proof beyond reasonable doubt shall it be obliged to establish the fact of making false declaration.

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### **Article 15**

1. As regards subcontractors or any other entity participating in the certification of suitability, the tenderer or the candidate shall submit only the ESPD in order to certify the non-existence of the exclusion grounds specified in Article 62 of the PPA and if the contracting authority specified so, in Article 63 of the PPA. As regards subcontractors participating in the certification of suitability, the tenderer or candidate fulfils its obligation of making a declaration under Article 67 (4) of the PPA by submitting the European Single Procurement Document.<sup>25</sup>

2. As regards subcontractors not participating in the certification of suitability, the tenderer or the candidate shall submit the declaration specified in Article 67 (4) of the PPA.

### **Article 16**

1. The certificate of the authorities recording public debts [Article 8 (b)] in accordance with Article 62 (1)(b) of the PPA shall state whether the economic operator has any public debt recorded by the authority at the time of issuing the certificate, respectively if it has public debt, the overdue date of payment obligation of the economic operator, whether any permission for deferred payment was granted, also stating the period of the extension for payment.

2. The official certificate specified in paragraph 1 above – provided such certificate otherwise certifies that the economic operator has no public debts overdue more than a year – shall be accepted by the contracting authority even if it was issued for other purposes or it was issued for the purposes of any other contract award procedure or other procedure, or the issuing authority determined less than one year of validity for the certificate, which already expired.

3. Where an act of legislation sets forth new rates and taxes subject to Article 62 (1)(b) of the PPA, the certificate thereof shall only be attached in procedures, in which the deadline for submission of tenders or participation expires more than one year after the date of entering into force of the provision on the relevant public debts.

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<sup>24</sup> This paragraph was repealed on 1 April 2019.

<sup>25</sup> This amendment entered into force on 1 January 2017.

4. The national body for aliens policing shall publish on its website information on economic operators concerned based on Article 62 (1)(l) of the PPA and being imposed on a penalty for the protection of public policy by the it under the Act on the Admission and Right of Residence of Third-country Nationals, without breaching personal data, for a period of two years after the decision becomes final. If the national body for aliens policing is informed that an administrative litigation was launched concerning its decision, it shall publish data on the exclusion ground by considering the final and enforceable judgement of the court, indicating the binding date of the judgement dismissing the action or reviewing the decision. If the related data have already been published – simultaneously with being informed of the lawsuit –, the data published on the website shall be deleted.<sup>26</sup>

### **Article 17**

1. In contract award procedures conducted pursuant to Part Three of the PPA, the tenderer and candidate shall submit a simple declaration in its tender or request to participate concerning not being subject to the exclusion grounds specified in the contract notice, furthermore, compliance with Article 62 (1) (k) (kb) of the PPA shall be certified pursuant to Article 8 (ib) and Article 10 (gb) herein. The ESPD shall not be applied, however, the contracting authority shall accept the ESPD - used in a previous contract award procedure - submitted by the tenderer or candidate as specified in Article 7 herein, provided that the information included in such ESPD is still accurate and contains the information required by the contracting authority concerning the non-existence of the exclusion grounds and the certification of suitability. The tenderer shall be responsible for the truthfulness of the information included in the ESPD.

2. As regards the subcontractor and, where appropriate, any other entity participating in the certification of suitability, the tenderer or the candidate shall submit a declaration that the economic operators concerned are not subject to the exclusion grounds applicable in the procedure.

3. If pursuant to Article 117 of the PPA, the contracting authority proceeds in line with independent procedural rules developed by itself, it shall lay down the way of certifying the non-existence of exclusion grounds specified in the notice pursuant to the provisions set out in this Decree.

### **Article 18**

1. Guideline shall be issued by the Authority on the certificates, declarations, records and data referred to Articles 8-11 herein to be submitted by economic operators established in Hungary, respectively in the European Union and in the European Economic Area.

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<sup>26</sup> This amendment entered into force on 1 July 2019.

2. The Authority shall issue guideline on the official electronic Hungarian registers complying with Article 69 (11) of the PPA.

3. In addition to the guideline pursuant to Article 187 (10) of the PPA, the Authority shall also publish and make permanently available on its website the list of the member states in international organizations and parties to the agreements referred to in Article 62 (1) (k) (ka) of the PPA.

## **CHAPTER IV**

### **4. Certification of economic and financial standing**

#### **Article 19**

1. In the case of public supply contracts, public works contracts and public service contracts, the certification of financial and economic suitability of the tenderer or candidate necessary for the performance of the contract may be required:<sup>27</sup>

(a) with proper declaration referring to two years preceding the dispatch, – in procedures without publication of a contract notice, the sending – of the call for competition, issued by a financial institution, depending on the date of establishment of the tenderer or candidate, the starting date of its operation, provided such information is available,

(b) with the submission of the annual accounts – or a determined part of it – of itself or of its legal predecessor pursuant to the legislation on accounting (if the law of the country of establishment stipulates the publishing of such annual accounts); if the annual accounts requested by the contracting authority is available on the website of the Company Information Service, the contracting authority shall verify the information related to it and the annual accounts available on the website of the Company Information Service shall not be submitted;

(c) with a declaration of total revenue – net of VAT – and of its revenue – net of VAT – in respect of the subject-matter of the public procurement, both of which may be requested for not more than the previous three tax years closed by balance sheet day – where appropriate, included in the ESPD – depending on the date of establishment of the tenderer or candidate, the starting date of its operation, provided such information is available;<sup>28</sup>

(d) with a certificate regarding the existence of its professional risk indemnity insurance as prescribed by the call for competition.

2. If the tenderer or candidate does not dispose of the document specified in paragraph 1(b) herein for the whole period as required by the contracting authority, because it started to operate after the beginning of the period stipulated by the

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<sup>27</sup> This amendment entered into force on 1 June 2017.

<sup>28</sup> This amendment entered into force on 1 January 2017.

contracting authority, the tenderer or candidate shall be entitled to certify its suitability by the submission of a declaration regarding the revenue in respect of the subject-matter of the public procurement. The contracting authority shall be obliged to establish the suitability of the economic and financial standing of the tenderer or candidate, if, in the period of its operation, its revenue – net of VAT – in respect of the subject-matter of the public procurement equals or exceeds the value set by the contracting authority in the call for competition. For the purposes of the provisions set out in this paragraph, the value of the revenue required from the economic operators established later shall be set by the contracting authority in the call for competition, if it prescribes the submission of the document pursuant to paragraph 1(b).

3. If the legal form in which the tenderer or candidate operates does not allow the submission of such annual accounts or declaration on revenue, and therefore the document specified in paragraph 1(b) or (c) is not at its disposal, it may certify its economic and financial standing by the submission of any other declaration or document considered suitable by the contracting authority in lieu of the suitability requirement and way of certification stipulated in relation to the above-mentioned points. The tenderer or candidate concerned shall be obliged to confirm in the course of a request for additional information that it operates in a legal form, which does not allow the submission of such annual accounts and declaration on revenue, and shall request information on the way of certification of suitability accepted by the contracting authority in lieu of the suitability requirement and way of certification prescribed in relation to the above-mentioned points.

4. For the purposes of paragraph 1(b), the proportion of assets and resources shall be taken into account by using transparent, objective and non-discriminative criteria.

5. For the purposes of paragraph 1(c), the contracting authority is entitled to prescribe either solely the submission of the declaration on the whole revenue or solely the submission of the declaration on the revenue in respect of the subject-matter of the public procurement, or both.

6. In the case of public works contracts, if the documents complying with the requirements set out in paragraph 1 and included in the list of the Hungarian Chamber of Commerce and Industry on contractors certify that the economic operator complies with the criteria set by the contracting authority, the contracting authority shall accept, instead of the submission of documents specified in paragraph 1, the clear identification of the relevant requirement and the access, where the document certifying compliance is available.

7. If the official list of approved tenderers pursuant to Articles 28 and 36 – considering the provisions of Articles 30 and 39 – certifies that the economic operator meets the relevant suitability criteria, the fact that the economic operator is included in the electronically available official list of approved tenderers or the certificate submitted by an economic operator established in another Member State of the European Union and issued by the organisation responsible for keeping the list of recognized tenderers of the country of establishment of the economic operator, shall

be accepted by the contracting authority instead of other ways of certification specified in paragraph 1.

8. If the contracting authority allows lot tendering, this Article shall be applied to each separate lot. If the tender (request to participate) may be submitted for more than one lots pursuant to Article 61 (6) of the PPA, the contracting authority may set the minimum amount of the annual turnover required from the economic operators also for each groups of the lots concerning tenderers (participants) submitting a tender (request to participate) also for more lots to be performed simultaneously.<sup>29</sup>

9. If the contracts based on a framework agreement are awarded by reopening competition, the maximum requirement for the annual turnover referred to in Article 65 (5) of the PPA shall be calculated based on the expected volume of the separate contracts to be performed simultaneously or, should it be unknown, based on the estimated value of the framework agreement. In the case of a dynamic purchasing system, the maximum requirement for the annual turnover referred to in Article 65 (5) of the PPA shall be calculated based on the expected maximum volume of each contract to be awarded in the framework of the above-mentioned system.

10. In contract award procedures conducted pursuant to Part Two of the PPA, the access of the document certifying compliance specified in paragraph 1(b) and paragraph 6 herein shall be indicated by the economic operator in the ESPD.

## **Article 20**

1. In procedures conducted pursuant to Part Three of the PPA, if the contracting authority proceeds pursuant to Article 117 of the PPA, it may prescribe further ways of certification pursuant to Article 117 (4) of the PPA, provided it prescribes any suitability criteria in the procedure.

2. In procedures conducted pursuant to Part Three of the PPA, if the contracting authority proceeds pursuant to Article 115 of the PPA and establishes suitability criteria, the contracting authority may also accept, instead of the ways of certification specified in Article 19 (1), the declaration of the tenderer included in its tender, concerning its compliance with the suitability criteria prescribed by the contracting authority, provided the contracting authority included such possibility in the call for competition. In such case the contracting authority shall set only those suitability criteria, which can be certified with documents specified in Article 19 (1).<sup>30</sup>

3. In cases pursuant to paragraph 2 herein, the tenderer according to its choice, is entitled to certify its suitability by submitting a declaration instead the ways of certification pursuant to Article 19(1) or submit the certificates under Article 19 (1) in its tender. Upon certification with declaration, should the contracting authority have doubts concerning the truthfulness of the declaration during the evaluation process, it

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<sup>29</sup> This amendment entered into force on 1 January 2017.

<sup>30</sup> This amendment entered into force on 1 February 2020.

may request the submission of the certificate specified in Article 19 (1) herein by setting a time limit of five working days.<sup>31</sup>

## 5. Certification of technical and professional suitability

### Article 21

1. For public supply contracts, considering the nature, volume and purpose thereof, – the certification of technical and professional suitability of the tenderer and candidate necessary for the performance of the contract may be required:<sup>32</sup>

(a) with a list of principal deliveries effected during the last three years as of the dispatch – in the case of procedures without publication of a contract notice, as of the sending – of the call for competition; the contracting authority shall consider the performance in the whole period of three years, however, should it deem necessary for ensuring an adequate level of competition, the contracting authority may also consider the deliveries effected during the last six years as of the dispatch (sending) of the call for competition, provided that the contracting authority referred to it in the call for competition;

(b) with the indication of the technicians (technical bodies) envisaged to be involved in the performance, indicating also their qualifications or training, professional experience, especially those responsible for quality control;<sup>33</sup>

(c) with the description of the technical facilities, its quality assurance measures and its study and research facilities;

(d) with the indication of the supply-chain management and tracking systems that the economic operator will be able to apply when performing the contract;

(e) if the products to be supplied are complex or are required for a special purpose, with a check carried out by the contracting authority or by any other organization on the production capacities of the supplier and on its study and research facilities and quality control measures;

(f) with the description of the educational or professional qualifications of the tenderer or candidate or their managerial staff, especially the educational or professional qualifications of those responsible for the performance of the contract, provided that these are not assessed during the evaluation of tenders;

(g) in justified cases, with the indication of the environmental measures the tenderer or candidate will be able to apply when performing the contract;

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<sup>31</sup> This amendment entered into force on 1 February 2020.

<sup>32</sup> This amendment entered into force on 1 June 2017.

<sup>33</sup> This amendment entered into force on 1 June 2017.

(h) with the description, sample and/or photograph of the product to be supplied, the authenticity of which shall be certified upon the request of the contracting authority;

(i) with certificates issued by official quality control institutes (accredited in any national system) attesting conformity to certain specifications or standards of products clearly identified by references to specifications or standards.

(1a)<sup>34</sup> If upon the application of Article 1 (a) herein the contracting authority

a) requires the certification of three years' performance, the contracting authority shall take into account the deliveries ended during the period concerned, but started maximum six years ago,

b) requires the certification of six years' performance, the contracting authority shall take into account the deliveries ended during the period concerned, but started maximum nine years ago.

(1b)<sup>35</sup> If it deems necessary in order to guarantee sufficient level of competition, the contracting authority may also take into account deliveries started earlier than those specified in Article (1a) a)-b) herein; provided that the contracting authority referred to it in the call for competition. In such case, the contracting authority shall indicate in the call for competition the period of years in which it takes into account the deliveries started.

2.<sup>36</sup> For public works contracts, the certification of technical and professional suitability of the tenderer and candidate necessary for contract performance may be required:

(a) with a list of major public works carried out during the last five years as of the dispatch – in the case of procedures without publication of a contract notice, as of the sending – of the call for competition; the contracting authority shall consider the performance in the whole period of five years, however, should it deem necessary for ensuring an adequate level of competition, the contracting authority may consider the public works carried out during the last eight years as of the dispatch (sending) of the call for competition, provided that the contracting authority referred to it in the call for competition;

(b) with the indication of the technicians (technical bodies) envisaged to be involved in the performance, indicating also their qualifications and professional experience, especially those responsible for quality control;

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<sup>34</sup> This amendment entered into force on 1 June 2017.

<sup>35</sup> This amendment entered into force on 1 June 2017.

<sup>36</sup> This amendment entered into force on 1 June 2017.

(c) with the description of the technical facilities, its quality assurance measures and its study and research facilities;

(d) with the indication of the supply-chain management and tracking systems that the economic operator will be able to apply when performing the contract;

(e) with the description of the educational or professional qualifications of the tenderer or candidate or their managerial staff, especially the educational or professional qualifications of those responsible for the delivery of the works, provided that these requirements are not assessed during the evaluation of tenders;

(f) in justified cases, with the indication of the environmental measures that the tenderer or candidate will be able to apply when performing the contract;

(g) with the statement of the contractor's average annual manpower statistics and the number of managerial staff, which may be requested for not more than the last three years;

(h) with the statement of the tools, plant or technical equipment available to the contractor for performing the contract;

(i) with the indication of the part of the contract which the tenderer or candidate intends possibly to subcontract;

(j) if the public works to be delivered are complex or are required for a special purpose, with a check carried out by the contracting authority or by any other organization on their quality control measures.

(2a)<sup>37</sup> If upon the application of Article (2) a) herein the contracting authority

a) requires the certification of five years' performance, the contracting authority shall take into account the public works ended during the period concerned, but started maximum eight years ago,

b) requires the certification of eight years' performance, the contracting authority shall take into account the public works ended during the period concerned, but started maximum eleven years ago.

(2b)<sup>38</sup> If it deems necessary in order to guarantee sufficient level of competition, the contracting authority may also take into account public works started earlier than those specified in Article (2a) a)-b), provided that the contracting authority referred to it in the call for competition. In such case, the contracting authority shall indicate in the call for competition the period of years in which it takes into account the public works started.

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<sup>37</sup> This amendment entered into force on 1 June 2017.

<sup>38</sup> This amendment entered into force on 1 June 2017.

3.<sup>39</sup> For public service contracts – considering the nature, volume and purpose thereof, furthermore, considering that suitability may primarily be assessed based on professional skills, efficiency, experience and reliability – the certification of technical and professional suitability of the tenderer and candidate necessary for contract performance may be required:

(a) with the list of main services provided during the last three years as of the dispatch – in the case of procedures without publication of a contract notice, as of the sending – of the call for competition; the contracting authority shall consider the performance in the whole period of three years, however, should it deem necessary for ensuring an adequate level of competition, the contracting authority may consider the services provided during the last six years as of the dispatch (sending) of the call for competition, provided that the contracting authority referred to it in the call for competition;

(b) with the indication of the technicians (technical bodies) envisaged to be involved in the performance, indicating also their qualifications or training, professional experience, especially those responsible for quality control;<sup>40</sup>

(c) with the description of the measures for ensuring quality and its study and research facilities;

(d) with the indication of the supply-chain management and tracking systems that the economic operator will be able to apply when performing the contract;

(e) if the service is complex or is required for a special purpose, with a check carried out by the contracting authority or by any other organization on the production capacities of the supplier and its study and research facilities and quality control measures;

(f) with the description of the educational or professional qualifications of the tenderer or candidate or their managerial staff, especially the educational or professional qualifications of those responsible for the provision of the service, provided that these requirements are not assessed during the evaluation of tenders;

(g) in justified cases, with the indication of the environmental measures that the tenderer or candidate will be able to apply when performing the contract;

(h) with the statement of the service provider's average annual manpower statistics and the number of managerial staff, which may be requested for not more than the last three years;

(i) with the statement of the tools, plant or technical equipment available to the service provider for performing the contract;

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<sup>39</sup> This amendment entered into force on 1 June 2017.

<sup>40</sup> This amendment entered into force on 1 June 2017.

(j) with the indication of the part of the contract (service) which the tenderer or candidate intends possibly subcontract.

(3a)<sup>41</sup> If upon the application of Article (3) a) the contracting authority

a) requires the certification of three years' performance, the contracting authority takes into account the public services ended during the period concerned, but started maximum six years ago,

b) requires the certification of six years' performance, the contracting authority takes into account the public services ended during the period concerned, but started maximum nine years ago.

(3b)<sup>42</sup> If it deems necessary in order to guarantee sufficient level of competition, the contracting authority may also take into account public services started earlier than those specified in Article (3a) a)-b), provided that the contracting authority referred to it in the call for competition. In such case, the contracting authority shall indicate in the call for competition the period of years in which it takes into account the public services started.

### **Article 21/A<sup>43</sup>**

For the purposes of Article 21 (1) a), (2) a) and (3) a), the contracting authority shall accept as certification of performance the certification if the result or activity included in the reference criteria was implemented as partial performance of the contract.

### **Article 22**

1. In contract award procedures conducted pursuant to Part Two of the PPA, cases specified in Article 21 (1)(a) and (3)(a) shall be certified as follows:

(a) if the other contracting party is an entity pursuant to Article 5 (1)(a)-(c) and (e) of the PPA or in the case of entities not established in Hungary the entity qualifying as contracting authority pursuant to Directive 2014/24/EU of the European Parliament and Council, with the certificate issued or signed by it;

(b) if the contracting party is other than the entities pursuant to point (a) herein, with a certificate submitted by it or the declaration of the tenderer or candidate, or any other entity contributing to the certification of suitability.

2. The certificate or declaration specified in paragraph 1(a) and (b) shall contain at least the following data: the date of performance (start and end date), the other party to the contract concluded, the subject-matter; furthermore quantity of the delivery or service provision, the sum of the consideration and a declaration to the effect that

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<sup>41</sup> This amendment entered into force on 1 June 2017.

<sup>42</sup> This amendment entered into force on 1 June 2017.

<sup>43</sup> This amendment entered into force on 1 June 2017.

performance was in compliance with the relevant regulations and the contract. The contracting authority shall be entitled to stipulate among the content elements of the reference certificate or declaration that further information necessary for the assessment of suitability shall be provided.<sup>44</sup>

3. In contract award procedures conducted pursuant to Part Two of the PPA, the case specified in Article 21 (2)(a) shall be certified with a certificate issued by the other contracting party. Such certificate shall contain at least the subject-matter, furthermore, the quantity of the public works or the amount of the consideration, the time (start and end date) and place of delivery, furthermore, a declaration to the effect that performance was in compliance with the relevant regulations and the contract. The contracting authority shall be entitled to stipulate among the content elements of the reference certificate or declaration that further information necessary for the assessment of suitability shall be provided.<sup>45</sup>

(3a)<sup>46</sup> The contracting authority shall only request the indication of the amount of consideration in the reference certificate or declaration pursuant to Article (2) and (3) herein in the justified case if concerning the earlier performance no qualitative definition can be set, to which the percentage comparison pursuant to Article 65 (5) of the PPA is applicable in order to consider the proportionality of the contracting authority's requirement.

4. In cases specified in paragraphs 1-3, upon conforming performance or conforming partial performance - in the case of public works, following the successful technical handover-takeover (upon partial performance, concerning the given part) -, the other contracting party shall issue the certificate, based on the contents of the contract, free of charge, within two business days after the receipt of the request. In the case of the reference certificate issued based on the partial performance of the contract, for the purposes of the present title, performance shall mean partial performance, the time of performance shall mean the time of the partial performance (start and end date). Data under paragraphs (2) and (3) herein shall be specified in the certificate issued based on the partial performance of the contract, in relation to the partial performance, by the contracting authority also indicating for informational purposes the full subject-matter of the contract affected by the partial performance.<sup>47</sup>

5. In the case referred to in Article 21 (2)(a) and (3)(a), if - due to the indivisibility of the performance - the reference certificate or declaration concerning the public works or public services performed as winning joint tenderer cannot be issued separately for the work carried out or services provided by each tenderer; the contracting authority shall accept the reference certificate or declaration of any of the tenderers participating in the performance, concerning the works or services described, in the proportion

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<sup>44</sup> This amendment entered into force on 1 June 2017.

<sup>45</sup> This amendment entered into force on 1 June 2017.

<sup>46</sup> This amendment entered into force on 1 April 2019.

<sup>47</sup> This amendment entered into force on 1 June 2017.

equalling the proportion of its performance based remuneration received by the tenderer or participant submitting the certificate.<sup>48</sup>

### **Article 23**

In contract award procedures conducted pursuant to Part Three of the PPA, the case specified in Article 21 (1)(a) and (3)(a) shall be certified with a declaration made by the tenderer, the candidate or any other entity contributing to the certification of suitability or a certificate issued by the other contracting party. In contract award procedures conducted pursuant to Part Three of the PPA, the case specified in Article 21 (2)(a) shall be certified pursuant to Article 22 (3).

### **Article 24**

1. If the official list of approved tenderers pursuant to Articles 28 and 36 – also considering the provisions set out in Articles 30 and 39 – certifies that the economic operator meets the relevant suitability criteria, the fact that the economic operator is included in the electronically available official list of approved tenderers or the certificate submitted by an economic operator established in another Member State of the European Union and issued by the organisation responsible for keeping the list of recognized tenderers of the country of establishment, shall be accepted by the contracting authority instead of other ways of certification specified in Article 21 (1)-(3).

2. In the case of public works contracts, if the documents complying with the requirements set out in Article 21 (2) and included in the list of the Hungarian Chamber of Commerce and Industry on contractors certify that the economic operator complies with the criteria set by the contracting authority, the contracting authority shall accept, instead of the submission of documents specified in Article 21 (2), the clear identification of the relevant requirement and the access of the document certifying compliance.

3. If the contracting authority requires the submission of certificates issued by independent bodies for attesting the conformity of the tenderer or candidate with certain quality assurance standards - including standards concerning access for disabled people -, the quality assurance systems based on the relevant European standards series certified by bodies conforming to the relevant European standards series shall be referred to. Contracting authorities shall accept equivalent certificates from bodies registered in other Member States and shall also accept other evidence of equivalent quality assurance measures, if the economic operator concerned had no possibility for obtaining the above-mentioned certificates within the time limit set, for reasons which cannot be attributed to it, provided that the economic operator certifies that the proposed quality assurance measures are in compliance with the quality assurance standards set.

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<sup>48</sup> This amendment entered into force on 25 July 2016.

4. If the contracting authority prescribes that the tenderer or candidate shall provide, in respect of Article 21 (2)(f) or Article 21 (3)(g), a certificate issued by an independent organization certifying compliance with certain environmental management systems, then the contracting authority shall refer to the eco-management and audit scheme (EMAS), to one of the environmental management systems accepted by Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC or to another environmental management standards based on the relevant European or international standards of the accredited bodies. The contracting authority shall also accept any equivalent certification issued by an organization registered in any other Member State of the European Union, furthermore, other certificates of equivalent environmental management measures, if the economic operator in question was unable to obtain such certificates - for reasons which are not attributable to him - within the time limit set, provided the economic operator proves that such measures equal the ones prescribed by the applicable environmental management system.<sup>49</sup>

5. In contract award procedures conducted according to Part Two of the PPA, the access of the document certifying compliance specified in paragraph 2 herein shall be indicated by the economic operator in the ESPD.

## **Article 25**

1. In procedures conducted pursuant to Part Three of the PPA, if the contracting authority proceeds pursuant to Article 117 of the PPA, it may prescribe further ways of certification pursuant to Article 117 (4) of the PPA, provided it prescribes any suitability criteria in the procedure.

2. In procedures conducted pursuant to Part Three of the PPA, if the contracting authority proceeds pursuant to Article 115 of the PPA and establishes suitability criteria, the contracting authority may accept, instead of the ways of certification specified in Article 21 (2), the declaration of the tenderer included in the tender, to the effect that it complies with the suitability criteria prescribed by the contracting authority, provided the contracting authority included such possibility in the call for competition. In such case the contracting authority shall only set a suitability criterion, which can be certified with the documents specified in Article 21 (2).<sup>50</sup>

3. In cases pursuant to paragraph 2, the tenderer, according to its own choice, is entitled to certify its suitability by submitting a declaration instead of the ways of certification pursuant to Article 21 (2) or submit the certificates pursuant to Article 21 (2) in the tender. Upon certification with declaration, should the contracting authority have doubts concerning the truthfulness of the declaration, it may request the

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<sup>49</sup> This amendment entered into force on 1 January 2017.

<sup>50</sup> This amendment entered into force on 1 February 2020.

submission of the certificate specified in Article 21 (2) by setting a time limit of five working days.<sup>51</sup>

## **6. Certification of suitability for the pursuit of a professional activity**

### **Article 26**

1. With regard to Article 65 (1)(c) of the PPA, contracting authorities may require that:

(a)<sup>52</sup> the economic operator be incorporated in the company register or the register of sole proprietors or the economic operator pursuing building construction be incorporated in the building constructor registry pursuant to the Act on the Formation and Protection of Built Environment (hereinafter: BEA); in the case of economic operators not established in Hungary, be incorporated in a similar register pursuant to Annex XI of Directive 2014/24/EU of the European Parliament and the Council and fulfil any other requirement set out in the above-mentioned Annex or

(b) in the case of public service contracts, the economic operator hold the authorisation, licence or membership in the organisation or chamber required for the provision of the service in its country of establishment.

2. As regards the requirement set out in paragraph 1(a), in the case of economic operators established in Hungary, inclusion in the register shall be verified by the contracting authority based on the data in the company register, accessible electronically free of charge at the Company Information Service, in the register of sole proprietors or based on the data of the building constructor registry; in the case of economic operators not established in Hungary, the certificate (extract) referred to in the registers specified in Annex XI of Directive 2014/24/EU of the European Parliament and the Council or other certificate or declaration shall be submitted as supporting documents.<sup>53</sup>

3. With regard to the requirement of paragraph 1 (b), the copy of the authorisation or licence or the certificate of membership in the organisation or chamber shall be submitted.

## **CHAPTER V**

## **7. The official list of approved tenderers held by the Authority and by the chamber**

### **Article 27**

1. The official list of approved tenderers (hereinafter referred to as official list of the Authority) shall be maintained by the Authority pursuant to Article 187 (2)(ab) of the

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<sup>51</sup> This amendment entered into force on 1 February 2020.

<sup>52</sup> This amendment entered into force on 1 June 2017.

<sup>53</sup> This amendment entered into force on 1 June 2017.

PPA and Articles 28-35 herein. The official list prepared by the Authority may also cover the non-existence of the exclusion grounds and the fulfilment of the suitability criteria.

2. The list of approved tenderers held by an economic and professional chamber (hereinafter referred to as the list of the chamber) pursuant to Article 69 (12) of the PPA shall be registered by the Authority under Article 36 herein. Pursuant to Article 40 herein, the list of the chamber shall only cover the certification of suitability criteria applicable within the scope of activity of the chamber's members.

3. Economic operators shall not be obliged to be included on the official list of the Authority or on the list of the chamber as a requirement for the participation in the contract award procedure or conclusion of the contract. The contracting authority shall also accept any other certificate specified in this decree.

4. At the request of any other Member State, the Authority shall disclose all information concerning the documents presented as proof of fulfilment of the criteria to be included in the official list of the Authority or the chamber list or as proof of possession of an equivalent certification by the economic operators of another Member State.

## **Article 28**

1. Inclusion of economic operators in the official list of the Authority shall be subject to the condition that the economic operator fulfils the approval criteria published by the Authority.

2. The approval criteria shall be laid down by the Authority within its scope of responsibility as set forth in Article 187 (2)(ab) of the PPA and shall be published on its website. The Authority may request the opinion of the competent professional chambers upon establishing the approval criteria.

3. Certification of compliance with the approval criteria shall be provided pursuant to Article 62 (1)(a), (c)-(g), (k)-(l) and (n), Article 63 (1), Article 65 (1), (7)-(9) and (11) of the PPA, as well as Article 8-26 of this Decree. Upon establishing approval criteria, the Authority shall be entitled to choose from the non-mandatory exclusion grounds and the suitability criteria. As regards suitability criteria, the Authority shall specify, pursuant to Article 65 (1) of the PPA, the existence, non-existence and level of insufficiency of circumstances precluding the inclusion of the tenderer in the official list of the Authority. When publishing the approval criteria, the Authority shall also indicate the way of certification pursuant to the provisions set out in this paragraph.

4. In the course of establishing the approval criteria, there shall be no discrimination whatsoever of tenderers based on their place of establishment, or otherwise. The Authority shall be entitled to break down the approval criteria by activities or sectors and may also set several levels within the categories created as mentioned above.

5. For the purposes of Article 65 (7) of the PPA, a document shall be attached, which contains the commitment undertaken in a contract, preliminary contract or in other format by the entity (person) providing resources, proving that the resources needed for the performance of the contract will be available during the whole period the tenderer is included in the official list of the Authority.<sup>54</sup>

## **Article 29**

1. The official list of the Authority shall be published on its website. The official list of the Authority is authentic, the data included in it shall be presumed to be real until the contrary is proven.

2. The official list of the Authority shall contain the following information concerning the approved tenderer:

- (a) its name, seat (residence);
- (b) its category within the list;
- (c) its date of registration in the list;
- (d) the approval criteria certified by it.

3. Being the entity managing the official list, the Authority shall be obliged to send its address to all the other Member States of the European Union and to the European Commission.

## **Article 30**

1. The Authority shall issue a certificate of registration certifying that the tenderer is included in the official list. Such certificate shall state a reference to compliance with the approval criteria and the classification given in the list.

2. The official list held by the Authority is also available electronically on the website of the Authority, and such form is also authentic. In contract award procedures, contracting authorities shall accept the fact that a tenderer is included in the official list of the Authority certifying the non-existence of exclusion grounds - with the exception of the case specified in paragraph 3 - and certifying compliance with the requirement (requirements) of suitability, considering paragraph 4.

3. The approved tenderer shall provide a separate certificate under this Decree stating that it does not fall within the scope of Article 62 (1)(b) of the PPA.

4. The approved tenderer shall also provide a separate certificate concerning its suitability for the performance of the contract in relation to suitability criteria, concerning which the contracting authority - in its contract award procedure or in the

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<sup>54</sup> This amendment entered into force on 1 February 2020.

pre-qualification system – lays down stricter criteria and way of certification for the tenderers' financial and economic standing, technical capacity and professional qualification than the approval criteria laid down pursuant to Article 28 (3). The contracting authority shall make specific reference to such stricter suitability criteria in the call for competition.

### **Article 31**

1. If the approved tenderer established in Hungary submits the certificate based on the official list of the Authority in a contract award procedure launched by a contracting authority of another Member State of the European Union, such certificate shall constitute a presumption of suitability only concerning Article 62 (1)(a), (c)-(g), (l) and (n), Article 63 (1) of the PPA, as well as Article 19 (1)(b)-(c), Article 21 (1)(a)-(f) and (h)-(i), (2) (a)-(e) and (g)-(h), (3)(a)-(f) and (g)-(h) of this Decree.

2. Paragraph 1 shall duly apply if in a contract award procedure of a contracting authority under the PPA, the tenderer established in any other Member State of the European Union submits a certificate issued by an authority - including assurance organizations assigned with such task - of the Member State in which the tenderer is established, keeping the list of recognized tenderers.

### **Article 32**

1. Registration in the official list of the Authority shall be applied for in writing at the Authority. The applicant may request its approval and registration in the official list of the Authority at any time, upon the presentation of the required data and facts, and upon attaching the required supporting documents, declarations and other documents.

2. The term of validity of inclusion in the official list of the Authority shall be 12 (twelve) months as of the day following the date of registration and such term may be renewed. If the applicant submits the application between 1 January and 31 May – or the decision on registration is made by the Authority between 1 January and 31 May – and the applicant has no annual accounts concerning the previous year – drawn up pursuant to the legislation on accounting – at the time of the submission of the application (decision of the Authority), the expiry date of the certificate of inclusion in the official list of the Authority shall be 31 July. If the applicant certifies the approval of the annual accounts in compliance with the relevant rules by 31 July and submits once more the declarations issued pursuant to the relevant rules by a financial institution, the Authority shall issue a certificate for one year.

3. Renewal shall be requested in writing at the Authority. If the approval criteria was modified within six months prior to the submission of the application, the applicant shall not be made subject to the approval process and shall not submit the documents required in relation to the modified approval criteria, provided compliance therewith has already been certified.

4. The applicant may also fulfil the approval criteria related to suitability by relying on the capacities of any other entity or person pursuant to the provisions of the PPA and this Decree. In such case the applicant shall certify that the resources complying with the approval criteria will be at his disposal for the period of inclusion in the official list of the Authority. The availability of resources used shall be certified pursuant to Article 28 (5), with the proviso that, as regards the availability of capacities and the references, the applicant shall also indicate the way of the actual usage of the capacities - pursuant to Article 65 (9) of the PPA, where appropriate - and the use of the professional experience during the period of inclusion in the official list of the Authority, in the contracts to be concluded based on the contract award procedures. Article 65 (8) of the PPA shall also apply to the inclusion in the official list, with the proviso that during the period of inclusion of the tenderer in the official list of the Authority, the entity providing resources shall be liable as surety for the performance of the tenderer in each contract award procedure, in which the suitability criterion certified by it is prescribed.

5. The application shall be ruled on by the Authority in a decision within two months upon receipt of the application. Such deadline may be extended once in justified cases with two months.

6. The applicant shall become an approved tenderer as of the date of registration in the official list of the Authority or as of the date of renewal of the term of validity of its inclusion in the official list of the Authority.

### **Article 33**

1. The Authority shall delete the approved tenderer from the official list of the Authority in the event of

(a) failure to fulfil the approval criteria;

(b) exclusion from participation in contract award procedures ordered by a final decision in public procurement review proceeding;<sup>55</sup>

(c) a final decision in public procurement review proceeding ordered the deletion of the tenderer from the official list of the Authority;<sup>56</sup>

(d) request to this effect by the approved tenderer;

(e) expiration without renewal of the term of validity of inclusion in the official list of the Authority;

(f) termination or death of the approved tenderer.

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<sup>55</sup> This amendment entered into force on 1 January 2018.

<sup>56</sup> This amendment entered into force on 1 January 2018.

2. The approved tenderer shall only be entitled to apply for deletion from the official list of the Authority if he is not participating in any ongoing contract award procedure.

3. Upon receiving the decision about the deletion from the official list of the Authority, the approved tenderer shall, without delay, notify the contracting authority of such fact, if it is participating in any ongoing contract award procedure.

#### **Article 34**

The approved tenderer shall notify the Authority of any changes in its data or circumstances relating to the approval criteria, without delay, but no later than five working days from the occurrence of such change. If due to such change the approved tenderer fails to fulfil the approval criteria, the Authority shall delete it from the official list of the Authority.

#### **Article 35**

1. Should the Authority modify the approval criteria and the ways of certification, it shall re-announce the approval criteria and shall inform approved tenderers already registered in the official list of the Authority and persons submitting applications simultaneously, directly and in writing.

2. Upon the modification of the approval criteria, approved tenderers already registered in the official list of the Authority shall also certify, in the manner required, their conformity with the new or modified approval criterion. Approved tenderers shall be called upon to do so during the provision of information specified in paragraph 1. If a submitted application is in the process of evaluation, the Authority shall call upon the applicant to complete the application, as required by the modification.

#### **Article 36**

1. The list prepared by the economic or professional chamber shall be registered by the Authority.

2. The chamber shall establish the conditions for being listed and the approval criteria related to the economic and financial standing, as well as the technical and professional ability of economic operators in compliance with Article 65 of the PPA and the provisions set out in this Decree and then forwards the written application containing the relevant information to the Authority.

3. The Authority shall decide on the registration of the list of the chamber within fifteen business days following the receipt of the application. The Authority shall decide on the application by reviewing whether the conditions for listing comply with the provisions set out in the PPA and in this Decree.

4. The chamber submitting the application shall be notified by the Authority in writing and without delay after the decision was made of the registration of the list or of the refusal of the application.

5. The conditions for registration shall be published by the Authority on its website.

6. The Authority shall send the address of the chamber managing the list to all other Member States of the European Union and to the European Commission.

### **Article 37**

1. Inclusion of economic operators in the list of the chamber shall be subject to the following conditions:

(a) the economic operator shall be the member of the given chamber,

(b) the economic operator shall fulfil the approval criteria published by the chamber.

2. Following the registration of the list of the chamber by the Authority, the chamber shall publish the approval criteria on its website.

3. Certification of compliance with the approval criteria shall be provided pursuant to Article 65 (1), (7)-(9) and (11) of the PPA, as well as Articles 8-26 of this Decree. Upon establishing the approval criteria, the chamber shall be entitled to choose from the suitability criteria. As regards suitability criteria, the chamber shall specify pursuant to Article 65 (1) of the PPA the existence, non-existence and level of insufficiency of circumstances precluding the inclusion of the tenderer in the list of the chamber. Upon publishing the approval criteria, the chamber shall indicate the way of certification pursuant to the provisions set out in this paragraph.

4. In the course of establishing the approval criteria, there shall be no discrimination whatsoever of tenderers based on their place of establishment or otherwise.

5. For the purposes of Article 65 (7) of the PPA, the document containing the commitment undertaken in a contract, preliminary contract or in other format by the entity (person) providing resources shall be attached, proving that the resources needed for the performance of the contract will be available as long as the tenderer is included in the list of the chamber.<sup>57</sup>

### **Article 38**

1. The list of the chamber shall be published on the website of the chamber. The Authority shall publish on its website the internet access of the list of the chamber.

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<sup>57</sup> This amendment entered into force on 1 February 2020.

2. The list of the chamber is authentic, data included shall be presumed to be real until the contrary is proven.

3. The list of the chamber shall contain at least the data referred to in Article 29 (2).

### **Article 39**

1. The chamber shall issue a certificate of registration proving that the economic operator is included in the list. Such certificate shall state a reference to compliance with the approval criteria and the classification given in the list of the chamber.

2. In contract award procedures, contracting authorities - considering paragraph 3 - shall accept the fact that an economic operator is included in the list of the chamber as a certification of compliance with the suitability criterion (criteria).

3. Approved tenderers shall provide a separate certificate concerning their suitability to perform the contract in relation to suitability criteria in the case of which the contracting authority – in its contract award procedure or in the pre-qualification system – lays down stricter criteria and way of certification for the tenderers' financial and economic standing, technical capacity and professional qualification than the approval criteria laid down pursuant to Article 37 (3). The contracting authority shall make specific reference to such stricter suitability criteria in the call for competition.

### **Article 40**

1. If the approved tenderer established in Hungary submits the certificate based on the list of the chamber in a contract award procedure launched by a contracting authority of another Member State of the European Union, the certificate shall constitute a presumption of suitability only as regards Article 19 (1)(b) and (c), Article 21 (1)(a)-(f) and (h)-(i), (2) (a)-(e), (g) and (h), (3) (a)-(f), (g) and (h) of this Decree.

2. Paragraph 1 shall duly apply if in a contract award procedure of a contracting authority within the meaning of the PPA, a tenderer established in any other Member State of the European Union submits a certificate issued by an authority - including assurance organizations assigned with such task - operating in the State in which the tenderer is established, responsible for keeping the list of recognized tenderers.

### **Article 41**

1. Registration in the list of the chamber shall be applied for in writing at the chamber keeping the list. The applicant may request its qualification and registration in the list of the chamber at any time, upon the presentation of the required data and facts, and upon attaching the necessary supporting documents, declarations and other documents.

2. The term of validity of inclusion in the list shall be 12 (twelve) months as of the day following the date of registration and such term may be renewed. If the applicant

submits the application between 1 January and 31 May – or the decision on registration is made by the chamber between 1 January and 31 May – and the applicant has no annual accounts concerning the previous year – drawn up pursuant to the legislation on accounting requirements – at the time of the submission of the application (decision-making), the expiry date of the certificate of inclusion in the list shall be 31 July. If the applicant certifies the approval of the annual accounts in compliance with the relevant rules by 31 July and submits once more the declarations issued pursuant to the relevant rules by a financial institution, the chamber shall issue a certificate for one year.

3. Renewal may be requested in writing at the competent chamber. Should the approval criteria be modified within six months prior to the submission of the application, the applicant shall not be made subject to the approval process and shall not submit the documents required in relation to the modified approval criteria, provided it has already proved compliance therewith.

4. The applicant may also fulfil the approval criteria related to suitability by relying on the resources of any other entity or person pursuant to the provisions set out in the PPA and this Decree. In such case the applicant shall certify that the resources in accordance with the approval criteria will be at its disposal for the period of inclusion in the list of the chamber. The availability of resources used shall be certified pursuant to Article 37 (5), with the proviso that, as regards the availability of capacities and the references, the applicant shall also indicate the way of the actual usage of the capacities - pursuant to Article 65 (9) of the PPA, where appropriate - and the use of the professional experience during the period of inclusion in the list of the chamber, in the contracts to be concluded based on the contract award procedures. Article 65 (8) of the PPA shall also apply to the inclusion in the list of the chamber, with the proviso that, during the period of inclusion of the tenderer in the list of the chamber, the entity providing resources shall be liable as surety for the performance by the tenderer, in each contract award procedure in which the suitability criterion certified by it is prescribed.

5. The deadline for the examination of the application for listing and the further detailed rules thereof, if any, shall be determined by the chamber keeping the list, prior to submitting application for registering the list of the chamber by the Authority. Inclusion in the list of the chamber shall be free of charge.

6. The applicant shall become an approved tenderer as of the date of registration in the list of the chamber or as of the date of renewal of the term of validity of its inclusion in such list of the chamber.

#### **Article 42**

1. The chamber shall delete the approved tenderer from the list in the event of

(a) failure to fulfil the approval criteria;

(b) exclusion from participation in contract award procedures ordered by a final decision in public procurement review proceeding;<sup>58</sup>

(c) a final decision in public procurement review proceeding ordered deletion from the list of the chamber;<sup>59</sup>

(d) request to this effect by the approved tenderer;

(e) expiration without renewal of the term of validity of inclusion in the list;

(f) termination or death of the approved tenderer;

(g) termination of the economic operator's membership in the chamber.

2. The approved tenderer shall only be entitled to apply for deletion from the list if he is not participating in any ongoing contract award procedure.

3. Upon receiving the decision about the deletion from the list, the approved tenderer shall, without delay, notify the contracting authority of such fact, if it is participating in any ongoing contract award procedure.

#### **Article 43**

The approved tenderer shall be required to notify the chamber of any changes in its data or circumstances relating to the approval criteria, without delay, but not later than five working days from the occurrence of such change. If the approved tenderer fails to fulfil the approval criteria due to such change, the chamber shall delete it from the list.

#### **Article 44**

1. If the chamber modifies the approval criteria and the ways of certification, it shall be required to re-announce the approval criteria and approved tenderers already registered in the list and persons submitting applications shall be informed simultaneously, directly and in writing.

2. Upon the modification of the approval criteria, the approved tenderers already registered in the list shall also certify, in the manner required, their conformity with the new or modified approval criterion. Approved tenderers shall be called upon to do so during the provision of information specified in paragraph 1. If a submitted application is in the process of evaluation, the chamber shall call upon the applicant to complete the application, as required by the modification.

### **CHAPTER VI**

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<sup>58</sup> This amendment entered into force on 1 January 2018.

<sup>59</sup> This amendment entered into force on 1 January 2018.

## **8. The use of the Internal Market Information System (IMI)**

### **Article 45**

1. In the case of tenderers, candidates or entities providing their capacities not established in Hungary, the contracting authority may send an inquiry to the competent authorities of another Member State, through the Internal Market Information System (hereinafter referred to as IMI), in order to verify the ESPD, consisting of a self-declaration, and the certificates and declarations specified in Chapter III and Chapter IV.

2. The inquiry referred to in paragraph 1 shall be sent via the Authority. To this effect, the contracting authority shall inform the Authority of the data related to the inquiry by filling in the application form available on the Authority's website. Subsequently, the Authority forwards the inquiry in the IMI system without delay to the competent authority of the Member State. After receiving the response, the Authority shall forward it without delay to the contracting authority submitting the inquiry.

3. The contracting authority shall accept the response received through the IMI system as authentic.

4. In the case of economic operators established in Hungary, the IMI system shall not be used by Hungarian contracting authorities, in such cases Article 69 (13) of the PPA shall apply.

5. If a contracting authority established in another Member State sends an inquiry through the IMI system to the public body responsible for issuing the certificates or maintaining the registers referred to in Chapters III-IV, the body concerned shall answer the inquiry within the deadline set therein, to the extent necessitated by the objective of the inquiry.

6. Detailed rules pertaining to the use of the IMI system are laid down in Act LXXVI of 2009 on General Rules on the Start and Pursuit of Service Activities, as well as in Government Decree No. 354/2013 (7 October) on the functioning of the Internal Market Information System in Hungary and the rules on participation in the IMI and the fulfilment of notification requirements under Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

## **CHAPTER VII**

### ***RULES ON THE PUBLIC PROCUREMENT TECHNICAL SPECIFICATIONS***

#### **9. Definition of the technical specifications**

## Article 46

1. For the purposes of the provisions pertaining to the public procurement technical specification, the following terms shall mean

(a) 'common technical specification': a technical specification in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) No. 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No. 1673/2006/EC of the European Parliament and of the Council;

(b) 'technical recommendation': any document issued not as a standard by the European Standardization Organization, which was developed in a regulated procedure, in order to satisfy market requirements;

(c) 'standard, national standard, European standard, international standard': terms as defined in the Act on National Standardization;

(d) 'European Technical Assessment': the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No. 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.

2. Without prejudice to mandatory technical rules complying with EU law, the technical specifications shall be drawn up, according to the choice of the contracting authority, in one of the following way:

(a) by defining performance or functional requirements, including environmental features ,

(b) with respect to the design, calculation, and execution of public works and the use of the product, by referring to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical recommendations developed by European standards organisations or – where these do not exist – by referring to national standards, national technical approvals, or national technical specifications; or

(c) based on the requirements mentioned in point (a), by referring to the specifications mentioned in point (b) as a means of presuming conformity with those requirements; or

(d) by referring to the specifications mentioned in point (b) concerning certain characteristics, by referring to the requirements mentioned in point (a) concerning other characteristics.

3. Except for cases justified by the subject-matter of the contract, the technical specifications shall not refer to a specific make or origin, a particular process featuring the products or services of a given economic operator, or to trade mark, patent, activity, person, type, a particular origin or production process, with the effect of favouring or eliminating certain economic operators or products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 2 is not possible. Such reference shall be accompanied by the words “or equivalent”.<sup>60</sup>

4. Upon referring to paragraph 2(a), the requirements shall be sufficiently precise in order to allow tenderers to identify the subject-matter of the contract and to allow contracting authorities to award the contract. Upon referring to the aforementioned point, a tender complying with national standards transposing European standards, European technical approvals, common technical specifications, international standards or a technical reference system established by a European standardisation body shall not be declared invalid, if such specifications refer to the performance or functional requirements laid down by the contracting authority. The tenderer shall certify in its tender properly, by any appropriate means that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

5. In the case of paragraph 2(b), the contracting authority shall, in addition to referring to the name of the standard, technical approval, technical specifications, technical reference system, also mention the term “or equivalent”. Tenders shall not be declared invalid exclusively because the works, products or services incorporated thereto do not comply with the technical specifications, if the tenderer certifies - in an appropriate manner, using any appropriate means - that the solutions recommended comply equivalently with the requirements provided in the public procurement technical specification.

6. For the purposes of paragraphs 4-5, appropriate means may in particular be the means of proof referred to in Article 60 of the PPA. Contracting authorities shall also accept certificates issued by recognized bodies seated in other Member States.

#### **Article 47**

1. The public procurement technical specifications shall be drawn up by considering the criterion of equal access to the services by all users, including disabled persons, if applicable considering the subject-matter of the public procurement.

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<sup>60</sup> This amendment entered into force on 1 April 2019.

2. For all subject-matters of the public procurement intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, except in justified cases, be drawn up by considering the accessibility criteria of disabled people and design appropriate for all users, respectively the universal design principles under Article 2 of the Convention on the Rights of Persons with Disabilities proclaimed with Act XCII of 2007.<sup>61</sup>

3. If mandatory accessibility standards are adopted by a legislative act of the Union, the technical specifications shall, as far as the criteria of accessibility for disabled people or design appropriate for all users are concerned, be defined with reference to such act of legislation.

## **10. The content of the public procurement technical specifications**

### **Article 48**

1. The content of the technical specifications shall be determined pursuant to Article 58 of the PPA and paragraphs 2-4 herein. The technical specifications may specify whether the transfer of intellectual property rights will be necessary.

2. Technical specifications may especially include the level of impacts on environment and climate, the definition of the characteristics concerning development, performance, safety and size, meeting all requirements - in particular the criteria of equal access to the services by disabled persons -, including the requirements applicable to the subject-matter of the public procurement as regards terminology, symbols, testing and test methods, packaging, marking, labelling, user's manuals, as well as the manufacturing processes and methods to be applied during certain stages throughout the life cycle of the works, supplies or services.

3. In the case of public works, in addition to the provisions set out in paragraph 2, the public procurement technical specifications may include, in particular, the rules relating to quality assurance, to design and costing, the conditions for testing, inspecting and takeover of the work, the construction methods and technologies, and all other technical conditions, which the contracting authority is in a position to prescribe through general or specific requirements pertaining to the work completed and the material and parts incorporated.

4. In the case of public supply or public services, in addition to the provisions set out in paragraph 2, the public procurement technical specifications may include, in particular, the requirements related to quality, the purpose of the product, the trade name of the product, furthermore, to the certificate of conformity proceedings.

## ***CHAPTER VIII***

### **11. Final provisions**

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<sup>61</sup> This amendment entered into force on 1 June 2017.

## **Article 49**

This Decree shall enter into force on 1 November 2015.

## **Article 50**

1. The provisions set out in this Decree shall be applied for public procurements launched after the entering into force of this Decree.

2. In the case of economic operators already included in the official list of approved tenderers maintained by the Authority at the time of entering into force of this Decree, the term of validity of their listing shall not be affected by the entering into force of this Decree, the term of validity shall expire at the end of the term of validity specified at the time of the listing. After the entering into force of this Decree, the term of validity of inclusion in the official list maintained by the Authority shall be renewed pursuant to the provisions set out in this Decree. At the request of the economic operator included in the official list maintained by the Authority, the Authority shall issue a renewed certificate complying with the provisions set out in the PPA and in this Decree. In contract award procedures launched after 1 November 2015, only certificates issued in compliance with the provisions set out in the PPA and in this Decree shall be used. In the case of applications for registration or applications for renewal already pending upon the entering into force of this Decree, the Authority shall request the economic operator concerned to submit a new application complying with the provisions set out in the PPA and in this Decree.

3. Article 22 (5) of this Decree, laid down by Government Decree No. 207/2016 (VII.21.) on the modification of the Government Decree No. 321/2015 (X.30.) on the way of certifying suitability and the non-existence of exclusion grounds as well as the definition of public procurement technical specifications in contract award procedures (hereinafter: Modification Decree), shall be applied in public procurement procedures launched after the entering into force of the Modification Decree. Article 22 (5) of this Decree, laid down by the Modification Decree, shall also be applied in public procurement procedures in progress upon the entering into force of the Modification Decree, where the time limit for the submission of tenders, respectively the time limit for application in multi-stage procedures, did not expire.<sup>62</sup>

4. The provisions of this Decree laid down by the Government Decree No. 487/2016 (XII.28.) on the modification of certain government decrees in the field of public procurement shall be applied in public procurement procedures launched after the entering into force of Government Decree No. 487/2016 (XII.28.).<sup>63</sup>

5. The provisions of this decree laid down by Government Decree No. 115/2017 (V.19.) on the amendment of certain public procurement government decrees

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<sup>62</sup> This amendment entered into force on 25 July 2015.

<sup>63</sup> This amendment entered into force on 1 January 2017.

(hereinafter: amending decree) shall be applied in public procurement procedures launched after the entering into force of the amending decree.<sup>64</sup>

6. The provisions of this decree laid down by Government Decree No. 66/2019. (III. 27.) on the amendment of certain government decrees related to managing the rules of electronic public procurement [hereinafter: Government Decree No. 66/2019.] shall be applied in public procurement procedures launched after the entering into force of Government Decree No. 66/2019.<sup>65</sup>

### **Article 51**

This Decree shall serve the purpose of compliance with

(a) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts,

(b) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC,

(c) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

### **Article 52<sup>66</sup>**

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<sup>64</sup> This amendment entered into force on 1 June 2017.

<sup>65</sup> This amendment entered into force on 1 April 2019.

<sup>66</sup> This article was repealed on 2 November 2015.