

# **Government Decree 321/2015 (30 October) on the way of certifying suitability and the non-existence of the grounds for exclusion as well as the definition of public procurement technical specifications in contract award procedures**

The Government, on the basis of the empowerment of Article 198(1) points 1 and 2 of the Act CXLIII of 2015 on Public Procurement and acting within its competence according 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 the Act CXLIII of 2015 on Public Procurement (hereinafter referred to as 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.

2. The economic operator, who is called upon by the contracting authority to submit the certifications concerning the suitability criteria and the non-existence of the grounds for exclusion according to Article 69(4)-(8) of the PPA, shall certify in compliance with Chapter III and Chapter IV that it is not subject to the grounds for exclusion prescribed in the procedure and meets the suitability criteria established by the contracting authority.

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 which certify the non-existence of the grounds for exclusion 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 the inclusion of the economic operator concerned in the official list of approved tenderers proves that it complies with the requirements provided for in the procedure.

5. In 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.

## **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, the contracting authority shall make, together with the procurement documents, the sample of the European Single Procurement Document (ESPD) related to the given procedure available electronically, which shall contain:

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

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

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

2. The obligation under paragraph 1 may also be fulfilled by using the web interface created by the European Commission for such purpose. In such cases the contracting authority shall provide the access to the electronic standard form in the procurement documents.

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 the 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 grounds for exclusion specified in Article 62(1)(ag) as well as in (e), (f), (g), (k), (l) and (p), 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.

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, the suitability criteria shall not be indicated 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 the rules of Chapter III and Chapter IV allow.

### **Article 3**

1. The tenderer or candidate shall submit, together with its tender or request to participate, the standard form signed by the duly authorized representative and filled in according to Articles 4-7 by the tenderer or candidate and according to Article 2 by the contracting authority. In case of application of Article 2(2), the economic operator shall complete the standard form by using the web interface created by the European Commission and shall submit such completed and signed standard form to the contracting authority. Where, on the basis of Article 41(6) of the PPA, the contracting authority provides that the procedural actions may also be carried out electronically, the standard form may also be submitted by electronic means, in accordance with Article 41(4) of the PPA.

2. If the tenderer or candidate intends to fulfil the applicable suitability criteria by relying on the capacities of another organisation or person, it shall also submit the separate standard forms duly completed and signed by each of the organisations or persons concerned. In such cases the organisations or persons whose capacities are used by the tenderer or candidate shall only make a declaration concerning those suitability criteria which will be used by the tenderer or candidate for the certification of suitability.

3. In case of joint tenders or requests to participate, each of the joint tenderers or candidates shall submit a separate standard 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 the grounds for exclusion specified in Article 62 of the PPA, by submitting the standard form as follows:

(a) for the purposes of 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) for the purposes of the declaration concerning Article 62(1)(ag) of the PPA, the economic operator shall complete Section D Part III of the standard form,

(c) for the purposes of Article 62(1)(ah) of the PPA, the economic operators not established in Hungary upon completing the standard form in accordance with points (a) and (b) also make their declaration on similar crimes under their 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), and (p) of the PPA, it shall make a declaration by completing the relevant points of Section D Part III of the standard form,

(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, with the proviso that if the economic operator was released from the obligation to pay the fine or reported the infringement to the Hungarian Competition Authority before submitting the tender, it shall refer to such circumstance in the standard form.

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

(a) for the purposes of 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, who is subject to a ground for exclusion specified in Article 62(1)(a), (c)-(e), (g)-(p), Article 62(2) or Article 63(1) of the PPA, has taken measures which are sufficient to demonstrate its reliability according to Article 64 of the PPA and such fact is supported by the final decision specified in Article 188(4) of the Public Procurement Authority (hereinafter referred to as the 'Authority') or, in case of a review thereof, a final judicial decision specified in Article 188(5), the economic operator concerned shall refer to the existence of the relevant ground for exclusion and outline the measures taken in the standard form. The final decision specified in Article 188(4) of the Authority or, in case of a review thereof, the final judicial decision specified in Article 188(5) shall be attached to the standard form.

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

## **Article 5**

1. For the purposes of 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).

2. If the contracting authority has 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 the contracting authority has direct access - according to Article 69(11) of the PPA - to the databases certifying the non-existence of the grounds for exclusion and the fulfilment of the suitability of the criteria, the economic operator shall indicate the access of such databases in the relevant parts of the standard form.

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.

### **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. In case of re-using the standard form, the economic operator shall update the data included in Part I of the standard form according to 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 the grounds for exclusion**

#### **Article 8**

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

(a) for the purposes of Article 62(1)(a) and (e) of the PPA - which shall only be certified by economic operators being natural persons - and in case of persons referred to in Article 62(2) of the PPA, a declaration attested by a notary public or an economic or professional chamber;

(b) for the purposes of Article 62(1)(b) of the PPA, it shall be verified by the contracting authority on the basis of the database of taxpayers not having public debts pursuant to the Act XCII of 2003 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 joint tax certificate specified in the Art.

(c) for the purposes of Article 62(1)(c) and (d) of the PPA, it shall be verified by the contracting authority on the basis of data included in the company register, which may be requested free of charge, electronically from the Company Information and Electronic Company Registration Service (hereinafter referred to as: 'Company Information Service'); in case of Article 62(1)(d), if the economic operator shall not qualify as a company under the 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 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 ground for exclusion specified in Article 62(1)(f) of the PPA shall be verified by the contracting authority on the basis of the data included in the company register, which may be requested free of charge, electronically from 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 ground for exclusion specified in Article 62(1)(g) of the PPA shall be verified by the contracting authority in the register available on the homepage of the Authority and on the basis of data included in the company register, which may be requested free of charge, electronically from the Company Information Service;

(f) for the purposes Article 62(1)(h) no separate certificate shall be requested by the contracting authority, as certification of the non-existence of the ground for exclusion, the contracting authority shall accept the self-declaration included in the ESPD, submitted in the procedure.

(g) for the purposes of Article 62(1)(i) of the PPA, no certificate shall be submitted, the non-existence of the ground for exclusion shall be verified by the contracting authority in the course of the procedure;

(h) the non-existence of the ground for exclusion specified in Article 62(1)(j) of the PPA 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 self-declaration included in the ESPD, submitted in the procedure;

(i) for the purposes of Article 62(1)(k) of the PPA:

(ia) with respect to Article 62(1)(ka) of the PPA, no certificate or declaration shall be submitted, the contracting authority shall verify on the basis of data included in the company register – which may be requested free of charge, electronically from 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 specifying whether it is a company listed or not listed on a regulated stock exchange; in case the tenderer or candidate is not listed on a regulated stock exchange,

a declaration indicating the name and permanent residence of all the actual proprietors – as defined in Article 3(r)(ra)-(rb) or (rc)-(rd) of the Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter referred to as the 'Act on Money Laundering') – shall be submitted; in case there is no actual proprietor as defined in Article 3(ra)-(rb) or (rc)-(rd) of the Act on Money Laundering, the declaration of the tenderer or candidate thereon shall be submitted;

(ic) with respect to Article 62(1)(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 exceeding 25 % or has right to vote concerning the tenderer or candidate; in case of 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 ground for exclusion specified in Article 62(1)(kc) of the PPA, with respect to such entity;

(j) the non-existence of the grounds for exclusion pursuant to Article 62(1)(l) of the PPA shall be verified by the contracting authority on the basis of data publicized in the register kept by the Labour Inspectorate pursuant to Article 8/C of the Act LXXV of 1996 on Labour Inspection and on the basis of data publicized on the homepage of the Office of Immigration and Nationality;

(k) for the purposes of Article 62(1)(m) of the PPA, no certificate shall be submitted, the non-existence of the ground for exclusion shall be verified by the contracting authority in the course of the procedure;

(l) for the purposes of Article 62(1)(n) of the PPA, as regards the decisions of the Hungarian Competition Authority (hereinafter referred to as the '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 maintained on the website of the HCA, the contracting authority shall accept the ESPD, consisting of a self-declaration, submitted in the procedure;

(m) for the purposes of Article 62(1)(o) of the PPA, the contracting authority shall accept the ESPD as proof, consisting of a self-declaration, submitted in the procedure;

(n) for the purposes of Article 62(1)(p) of the PPA, no separate certificate shall be requested by the contracting authority, the ESPD, consisting of a self-declaration, submitted in the procedure shall be accepted.

## **Article 9**

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

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

(b) for the purposes of Article 63(1)(c) of the PPA, no certificate shall be submitted, the non-existence of the ground for exclusion shall be verified by the contracting authority in the register available on the homepage of the Authority.

## **Article 10**

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

(a) for the purposes of 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) for the purposes of Article 63(1)(b) of the PPA, a certificate issued by the competent authorities of the country of establishment; the non-existence of the ground for exclusion with respect to public debts in Hungary shall also be verified by the contracting authority on the basis of 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 joint tax certificate specified in the Art. shall also be submitted; if the economic operator does not carry out taxable transactions in Hungary, the related certificate issued by the National Tax and Customs Administration;

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

(d) for the purposes of 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 ground for exclusion the contracting authority, shall accept the declaration included in the ESPD, submitted in the procedure;

(e) for the purposes of Article 62(1)(i) of the PPA, no certificate shall be submitted, the non-existence of the ground for exclusion shall be verified by the contracting authority in the course of the procedure;

(f) for the purposes of Article 62(1)(j) of the PPA, the non-existence of the ground for exclusion 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) for the purposes of Article 62(1)(k) of the PPA:

(ga) for the purposes of Article 62(1)(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)(kb) of the PPA, the declaration of the tenderer or candidate specifying whether it is a company listed or not listed on a regulated stock exchange; in case the tenderer or candidate is not listed on a regulated stock exchange, a declaration indicating the name and permanent residence of all the actual proprietors – as defined in Article 3(ra)-(rb) or (rc)-(rd) of the Act on Money Laundering – shall be submitted; in case there is no actual proprietor as defined in Article 3(ra)-(rb) or (rc)-(rd) of the Act on Money Laundering, the declaration of the tenderer or candidate thereon shall be submitted; if the economic operator cannot identify its actual owner pursuant to Article 3(ra)-(rb) or (rc)-(rd) of the Act on Money Laundering, a declaration to that effect shall be attached;

(gc) with respect to Article 62(1)(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 exceeding 25 % or has the right to vote; in case of existence of such an 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 ground for exclusion specified in Article 62(1)(kc) of the PPA, with respect to such entity;

(h) the non-existence of the grounds for exclusion pursuant to Article 62(1)(l) of the PPA shall be verified by the contracting authority on the basis of data publicized in the register kept by the Labour Inspectorate according to Article 8/C of the Act LXXV of 1996 on Labour Inspection, furthermore on the basis of the data publicized on the homepage of the Office of Immigration and Nationality;

(i) for the purposes of Article 62(1)(m) of the PPA, no certificate shall be submitted, the non-existence of the ground for exclusion shall be verified by the contracting authority in the course of the procedure;

(j) for the purposes of 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 ground for exclusion specified in point (n) on the website of the Hungarian Competition Authority, in the databases containing the relevant decisions;

(k) for the purposes of 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.

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 a declaration is not known 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 case of tenderers or candidates not established in Hungary, in procedures conducted according to Part Two of the PPA, the contracting authority shall be obliged to accept the following written declarations as regards Article 63 of the PPA, respectively shall verify the non-existence of grounds for exclusion as follows:

(a) for the purposes of 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;

(b) for the purposes of 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, 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 ground for exclusion in the register available on the homepage 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 grounds for exclusion, 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)(kc) of the PPA – to be certified pursuant to Article 8(ic) and Article 10(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. In addition to the declaration submitted pursuant to Article 8(ib) and (ic) as well as Article 10(gb) and (gc) the contracting authority has no further obligation of verification – any request to be made towards authorities, other organisations – as regards the ground for exclusion certified by such declaration and unless becoming aware of a proof beyond reasonable doubt shall it establish the fact of false declaration.

3. For the purposes of Article 8(ib) and Article 10(gb), the term 'regulated stock exchange' shall mean the regulated market as defined in Article 5(1) point 114 of the Act CXX of 2001 on the Capital Market.

## **Article 15**

1. As regards the subcontractor or any other organization participating in the certification of suitability, the tenderer or the candidate shall submit only the ESPD for the purposes of the certification of the non-existence of the grounds for exclusion specified in Article 62 of the PPA and if the contracting authority specified, Article 63 of the PPA.

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 in the case 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. In case 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.

4. The Office of Immigration and Nationality shall publish on its homepage information on economic operators concerned on the basis of Article 62(1)(l) of the PPA and being imposed on a penalty for the protection of public policy by the Office 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 and binding. If the Office of Immigration and Nationality is informed that an action has been filed for the judicial review of its decision, it shall publish data concerning the ground for exclusion 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 homepage shall be deleted.

### **Article 17**

1. In contract award procedures conducted according 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 grounds for exclusions stated in the contract notice, furthermore, compliance with Article 62(1)(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 grounds for exclusion 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 organisation 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 grounds for exclusion applicable in the procedure.

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

### **Article 18**

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

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

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

## ***CHAPTER IV***

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

#### **Article 19**

1. In case of public supply contracts, public works contracts and public service contracts, the suitability of financial and economic standing of the tenderer or candidate required for the performance of the contract shall be certified as follows:

(a) with the relevant statement referring to two years preceding the dispatch, – in procedures without publication of a contract notice, the sending – of the notice launching the procedure, 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 – by itself or by 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 homepage of the Company Information Service, the contracting authority shall verify the information related to it and the annual accounts available on the homepage 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, which may be requested for not more than the previous three closed tax years - 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;

(d) with a certificate regarding the existence of its professional risk indemnity insurance as prescribed by the notice launching the procedure.

2. If the tenderer or candidate started to operate after the beginning of the period stipulated by the contracting authority for the purpose of the document specified in paragraph 1(b) herein and therefore such document is not at its disposal for the whole period as required by the 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 notice launching the procedure. 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 notice launching the procedure, 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 statement 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 statement 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 may prescribe either solely the submission of the statement on the whole revenue or solely the submission of the statement on the revenue in respect of the subject-matter of the public procurement, or both.

6. In 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 the division of the contract into lots, this Article shall be applied separately to each lot. If the tender (request to participate) may be submitted for more than one lots according to Article 61(6) of the PPA and the successful tenderer is awarded several lots to be executed at the same time, the minimum amount of the annual turnover required from the economic operators may be established by the contracting authority for certain groups of the lots.

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 on the basis of the expected volume of the separate contracts to be executed at the same time or, should it be unknown, the estimated value of the framework agreement. In the case of the use of a dynamic purchasing system, the maximum requirement for the annual turnover referred to in Article 65(5) of the PPA shall be calculated on the basis of the expected maximum volume of each contract to be awarded in the framework of the above-mentioned system.

10. In contract award procedures conducted according to Part Two of the PPA, the access, where the document certifying compliance specified in paragraph 1(b) and paragraph 6 herein is available 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 or candidate to the effect concerning compliance with the suitability criteria prescribed by the contracting authority, provided the contracting authority included such possibility in the notice launching the procedure.

3. In cases pursuant to paragraph 2 herein, the contracting authority may only prescribe suitability criteria which may be certified with the documents specified in Article 19(1), the tenderer or candidate may – if the contracting authority allowed –, according to its own choice, certify its suitability by submitting a declaration, in lieu of the ways of certification pursuant to Article 19(1). If, in the course of the evaluation process, the contracting authority has doubts concerning the truthfulness of the declaration, it may stipulate, according to Article 69(7) of the PPA, that the certificate specified in Article 19(1) herein shall be submitted.

## **5. Certification of technical and professional suitability**

### **Article 21**

1. In the case of public supply contracts – considering the nature, volume and purpose thereof – the technical and professional suitability of the tenderer and candidate required for the performance of the contract may be certified:

(a) with a list of principal deliveries effected during the last three years as of the dispatch – in case of procedures without publication of a contract notice, as of the sending – of the notice launching the procedure; the contracting authority shall consider the performance in the whole period of three years, however, should it consider 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 notice launching the procedure, provided that the contracting authority referred to it in the notice launching the procedure;

(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;

(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 in the course of 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;

(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.

2. In case of public works contracts, the technical and professional suitability of the tenderer and candidate required for the fulfilment of the contract may be certified:

(a) with a list of major public works carried out during the last five years as of the dispatch – in case of procedures without publication of a contract notice, as of the

sending – of the notice launching the procedure; the contracting authority shall consider the performance in the whole period of five years, however, should it consider 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 notice launching the procedure, provided that the contracting authority referred to it in the notice launching the procedure;

(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;

(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 in the course of 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 carrying out 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.

3. In the case of 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 technical and professional suitability of the tenderer and candidate required for the performance of the contract may be certified:

(a) with the list of main services provided during the last three years as of the dispatch – in case of procedures without publication of a contract notice, as of the sending – of the notice launching the procedure; the contracting authority shall

consider the performance in the whole period of three years, however, should it consider 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 notice launching the procedure, provided that the contracting authority referred to it in the notice launching the procedure;

(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;

(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 in the course of 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 carrying out the contract;

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

## **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 according to Article 5(1)(a)-(c) and (e) of the PPA or in case of entities not established in Hungary an entity being a 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, the other party to the contract concluded, the subject-matter, quantity of the delivery or service provision, the sum of the consideration and 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.

3. In contract award procedures conducted pursuant to Part Two of the PPA, the case specified in Article 21(2)(a), a certificate issued by the other contracting party shall be provided. Such certificate shall contain at least the subject-matter, the quantity of the public works or the amount of the consideration, the time 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.

4. In cases specified in paragraphs 1-3, if the performance is in compliance with the contract - in the case of public works, following the successful technical handover-takeover -, 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 therefor, but not later than fifteen days after the performance/delivery.

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 by joint tenderers may not be issued separately for the work executed or services provided by each tenderer, the contracting authority shall accept the reference certificate or declaration provided by any of the tenderers, who participated in the execution, for all the works or services concerned, provided that the joint tenderers were jointly responsible for the execution and the percentage of the execution by the tenderer who submitted the certificate represented at least 15%.

### **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 – 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 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.

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.

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 according 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 according 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(1)-(3), the declaration of the tenderer or candidate to the effect that it complies with the suitability criteria prescribed by the contracting authority, provided the contracting authority included such possibility in the notice launching the procedure.

3. In cases pursuant to paragraph 2, the contracting authority shall only prescribe suitability criteria which may be certified with the documents specified in Article 21(1)-(3), and – if the contracting authority allows it – the tenderer or candidate, according to its own choice, may certify its suitability by submitting a declaration, instead of the ways of certification pursuant to Article 21(1)-(3). If, in the course of the evaluation process, the contracting authority has doubts concerning the truthfulness of the declaration, it may stipulate, according to Article 69(7) of the PPA, that the certificate specified in Article 21(1)-(3) shall be submitted.

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

### **Article 26**

1. For the purposes of Article 65(1)(c) of the PPA contracting authorities may require that:

(a) the economic operator be incorporated in the company register or the register of sole proprietors; in case of economic operators not established in Hungary, be incorporated in a similar register pursuant to Annex XI of Directive 2014/24/EU 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 on the basis of data included in the company register, which may be requested free of charge, electronically from the Company Information Service or

on the basis of data included in the register of sole proprietors; in 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 or other certificate or declaration shall be submitted as supporting documents.

3. For the purposes 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 the list of approved tenderers held by the chamber**

#### **Article 27**

1. The official list of approved tenderers (hereinafter referred to as: the 'official list of the Authority') shall be maintained by the Authority pursuant to Article 187(2)(ab) of the PPA and Articles 28-35 herein. The official list prepared by the Authority may also cover the non-existence of the grounds for exclusion and the fulfilment of the suitability criteria.

2. The list of approved tenderers created by an economic and professional chamber (hereinafter referred to as the list of the chamber') on the basis of Article 69(12) of the PPA shall be registered by the Authority according to Article 36 herein. According to Article 40 herein, the list of the chamber may 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 homepage. For the purposes of establishing the approval criteria, the Authority may request the opinion of the competent professional chambers.

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. For the purposes of establishment of the criteria for approval, the Authority shall be entitled to choose from the non-mandatory grounds for exclusion and the suitability criteria. As regards suitability criteria, the Authority shall specify, according 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. For the purposes of establishing the approval criteria, the Authority may break down the 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, the document containing the commitment undertaken in a contract or preliminary contract by the entity (person) providing resources, which proves that the resources needed for the performance of the contract will be available as long as the tenderer is included in the official list of the Authority.

## **Article 29**

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

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

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

3. Being the organisation 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 homepage 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 grounds for exclusion - with the exception of the case specified in paragraph 3 - and certifying compliance with the requirement (requirements) of suitability considering paragraph 4.

3. Approved tenderers shall provide a separate certificate under this Decree stating that they do not fall within the scope of Article 62(1)(b) of the PPA.

4. Approved tenderers shall also provide a separate certificate concerning their suitability for the execution of the contract in relation to suitability criteria in 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 28(3). The contracting authority shall make specific reference to such stricter suitability criteria in the notice launching the procedure.

### **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 as regards 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 the supply of 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 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 may be requested in writing from the Authority. If approval criteria have been modified not more than six months before 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 resources of any other organisation or person pursuant to the provisions of the PPA and this Decree. In such a 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 employed 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 exploitation of the capacities - according 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 on the basis of the contract award procedures. Article 65(8) of the PPA shall also apply to the inclusion in the official list, with the proviso that in 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 strike 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 and binding decision in remedy proceeding related to public procurement;

(c) a final and binding decision in remedy proceeding related to public procurement ordered the deletion of the tenderer from the official list of the Authority;

(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.

2. An 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 be required to 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 be required to re-announce the approval criteria and to inform approved tenderers already registered in the official list of the Authority and persons submitting applications simultaneously, directly and in writing.

2. If the approval criteria are modified, 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 receipt of the application. The Authority shall decide on the application based on compliance of the conditions for listing with the provisions set out in the PPA and in this Decree.

4. Written notification shall be given by the Authority as soon as it has made its decision to the chamber concerned, of the registration of the list or the refusal of the application.

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

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 homepage.

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 Article 8-26 of this Decree. For the purposes of establishment of the criteria for approval, the chamber shall be entitled to choose from the suitability criteria. As regards suitability criteria, it 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 the establishment of 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 or preliminary contract by the entity (person) providing resources shall be submitted, 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.

### **Article 38**

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

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 its compliance with the suitability criterion (criteria).

3. Approved tenderers shall provide a separate certificate concerning their suitability to fulfil the relevant contract in relation to suitability criteria in 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 notice launching the procedure.

### **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 a, 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 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 - 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 preparing the list. The applicant may request its approval and registration in the list of the chamber at any time, upon the presentation of the required data and facts, and the supply of the required 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 has no the 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 from the competent chamber. Should the approval criteria be modified not more than six months before 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 organisation or person pursuant to the provisions set out in the PPA and this Decree. In such a 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 employed 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 exploitation of the capacities - according 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 on the basis of 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, in 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 preparing the list, prior to submission of the application for registration of 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 strike the approved tenderer off 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 and binding decision in remedy proceeding related to public procurement;

(c) a final and binding decision in remedy proceeding related to public procurement has ordered that the tenderer in question be deleted from the list of the chamber;

(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. An 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 due to such change the approved tenderer fails to fulfil the approval criteria, the chamber shall delete it from the list.

### **Article 44**

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

2. In the event that the approval criteria are modified, 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 in the framework of 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***

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

#### **Article 45**

1. In case of a tenderer, candidate or organisation providing its capacities not established in Hungary, the contracting authority may send a request to the competent authorities of another Member State, through the Internal Market Information System (hereinafter referred to as the '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 request 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 request by filling in the application form available on the Authority's homepage. Subsequently, the Authority transfers the request 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 requesting contracting authority.

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

4. In 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 a request 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 comply with the request within the deadline set therein, to the extent necessary in order to achieve the objective identified in such request.

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 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' means 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 has been developed in course of 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' means 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, at the choice of the contracting authority, according to one of the following ways:

(a) in terms of performance or functional requirements, including the environmental aspects,

(b) with respect to the design, calculation, and execution of public works and the use of the product, by reference 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 reference to national standards, national technical approvals, or national technical specifications; or

(c) according to the requirements mentioned in point (a), with reference to the specifications mentioned in point (b) as a means of presuming conformity with those requirements; or

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

3. With the exception of cases justified by the subject-matter of the contract or specified in a legislation, 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”.

4. For the purposes 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. In case of application of the above-mentioned 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 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, mention the term “or equivalent”. No tender may be declared invalid exclusively for the reason that 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. The means of proof referred to in Article 60 of the PPA may be considered, in particular, as appropriate means within the meaning of paragraphs 4-5. Contracting authorities shall also accept certificates from recognized bodies seated in any other Member State.

## **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.

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 duly justified cases, be drawn up by considering the accessibility criteria of disabled people and design appropriate for all users.

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 shall especially include the level of impacts on environment and climate, the definition of the characteristics - concerning development, performance, safety and sizes - 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 a public contract as regards terminology, symbols, testing and test methods, packaging, marking, labelling, users' 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 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 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 in question, the trade name of the product, furthermore to the certificate of conformity proceedings.

## ***CHAPTER VIII***

### **11. Final provisions**

#### **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 according 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 issues 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.

### **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>1</sup>**