

- a) any legal person or any entity having legal capacity under its personal right subject to the situations set out in Article 62(1)(kb) owns directly or indirectly a share exceeding 25% in the successful tenderer or has the right to vote;
- b) the successful tenderer acquires directly or indirectly a share exceeding 25% in any legal person or any entity having legal capacity under its personal right, which is subject to the situations set out in Article 62(1)(kb).

PART SIX

JUDICIAL REMEDIES AVAILABLE FOR PUBLIC PROCUREMENT

CHAPTER XXI

RULES PERTAINING TO REVIEW PROCEDURES

Article 144

1. Against acts or defaults in violation of the legislation applicable to public procurements, procurement procedures, works or service concessions, as well as concession award procedures, judicial remedy pursuant to the provisions of this Part shall be available.

2. Jurisdiction shall be reserved to the court in civil-law claims related to procurement procedures, concession award procedures, contracts concluded pursuant to procurement procedures, as well as works or service concessions and the amendment thereto or the performance thereof, with the exception of Article 145(3a).³²⁶

3. Wherever this Part refers to public procurement or procurement procedure, such reference shall also include concession award procedure and design contest.

General provisions pertaining to the proceedings of the Public Procurement Arbitration Board

Article 145

1. The provisions of Act CL of 2016 on General Public Administration Procedures (hereinafter referred to as GPAP) shall apply to the proceedings of the Public Procurement Arbitration Board, with the consideration of the additional or diverging provisions of this Act and the implementation decree based on the empowerment of this Act.³²⁷

1a. In review procedures before the Public Procurement Arbitration Board

- a) unless otherwise provided by this act, communication by electronic means stipulated in the Act on the General Rules for Electronic Administration and Trust Services (hereinafter referred to as REATS) shall be compulsory;
- b) no summary procedures shall apply;
- c) the Public Procurement Arbitration Board may call the applicant or the body initiating the procedure ex officio to provide the missing information on several occasions;
- d) the missing procurement documents shall not be substituted with the statement of the party concerned.³²⁸

2. Proceedings initiated against any infringement of the legislative provisions applicable to public procurements, procurement procedures, works or service concessions and concession award procedures, including the proceeding initiated against the rejection of the request for prequalification and the deletion from the prequalification list specified in the separate act of legislation referred to in Article 21(4) (hereinafter referred to as 'review procedures initiated in prequalification cases'), shall fall within the

³²⁶ This amendment entered into force on 1 January 2018.

³²⁷ This amendment entered into force on 1 January 2018.

³²⁸ This paragraph entered into force on 1 January 2018.

competence of the Public Procurement Arbitration Board, with regard to procurement procedures or concessions award procedures.

3. With the exception of civil-law claims related to the amendment to or performance of contracts, the Public Procurement Arbitration Board shall have the competence to conduct proceedings initiated against an amendment to or the performance of contracts, which were concluded on the basis of a procurement procedure or concession award procedure, in a manner violating the Act on Public Procurement or the Gov. Decree based on the empowerment of the Act on Public Procurement, as well as proceedings initiated against any misconduct or failure violating the procedural rules laid down independently by the contracting authority in compliance with Article 117.³²⁹

3a. The Public Procurement Arbitration Board shall have the competence to state that the contract is null and void on the basis of the infringement pursuant to Article 137(1) and to state, on the basis of the circumstances stipulated in Article 137(3), whether the contract involving an infringement pursuant to Article 137(1) is not null and void. Furthermore, the Public Procurement Arbitration Board has the competence to state, in case of a contract which is null and void for an infringement stipulated in Article 137(1), whether or not the original condition can be restored in the course of applying the legal consequences of invalidity of the contract.³³⁰

4. Jurisdiction shall also be reserved to the Public Procurement Arbitration Board in legal disputes related to infringements within the meaning of paragraph 1 and 2, committed by any organisation or natural person applying this Act on a voluntary basis.

5. The Public Procurement Arbitration Board shall have jurisdiction in the whole territory of Hungary.

6. In the course of review procedures related to non-application of this Act, the Public Procurement Arbitration Board may not review the decision taken by the competent Committee of the Parliament to grant an exemption from the application of this Act. The Public Procurement Arbitration Board may have jurisdiction over the infringements of rules on defence and security related procurements, furthermore, procurements, procurement procedures which concern qualified data and the fundamental security and national security interests of the country, or whose execution must be accompanied by special security measures, if so required by law.

7. Representation by an accredited public procurement consultant, a legal advisor of the chamber or a lawyer is mandatory in review procedures before the Public Procurement Arbitration Board.³³¹

Public procurement commissioners

Article 146

1. In the cases determined in Article 145(2)-(4) (hereinafter referred to as 'public procurement cases'), with the exception described in paragraph 4, the Public Procurement Arbitration Board shall act in a panel consisting of three public procurement commissioners, passing its decision by a majority vote.

2. The members and the president of the acting panel shall be appointed by the Chairperson of the Public Procurement Arbitration Board. At least two of the appointed members of the panel handling the case shall have the bar examination, in the case of public procurement cases affected by European Union support at least one of the members shall have experience in public contracts carried out using subsidies and one of the members shall have a degree in higher education closely related to the subject-matter of the case. The president of the acting panel shall only be a public procurement commissioner who has obtained the Bar examination.

3. The president of the acting panel shall be responsible for preparing and presiding over the proceeding. Apart from the interim measures, the decrees resulting in the closure of the public procurement

³²⁹ This amendment entered into force on 1 January 2019.

³³⁰ This paragraph entered into force on 1 January 2018.

³³¹ This amendment entered into force on 1 January 2018.

case, the decision on the extension of the procedure [Article 158(1)] and the decision on the substance of the public procurement case (hereinafter referred to as 'substantial decision') [(Article 165), the president of the acting panel may take any measures and make any decisions which, under the provisions of this Act, fall within the competence of the Public Procurement Arbitration Board.³³²

4. In matters specified in Article 153(1)(b), a single public procurement commissioner of the Public Procurement Arbitration Board shall proceed. Only public procurement commissioners having qualified for the Bar can be appointed as single acting commissioners by the Chairperson of the Public Procurement Arbitration Board. Any reference in this Act to the acting panel or president shall also include single acting commissioners.³³³

Article 147

1. In addition to the cases specified in Article 22 and Article 23(1) of GPAP, the public procurement commissioner shall be prohibited from acting in the public procurement case, if³³⁴

- a) he has ownership of or indirectly owns a share exceeding 50% in the contracting authority or in an entity which has unlawfully failed to adopt the procurement procedure in its procurement, or own a share in a tenderer or in any other interested entity having initiated the procedure (hereinafter jointly referred to as 'client organisation');
- b) he has ownership of or indirectly owns a share exceeding 50% in an entity which maintains regular business relations with the client organisation;
- c) he has been an employee of the client organisation, or has been in any other legal relationship for the purpose of employment therewith, or has held a membership therein, or has been an executive officer or a member of the supervisory board, or has had ownership thereof or indirectly owned a share exceeding 50% therein within the last two years preceding the commencement of the review procedure.

2. Public procurement commissioners shall be prohibited from acting in a public procurement case, if any of their relatives living in the same household³³⁵

- a) is employed by, or has any other legal relationship for the purpose of employment with the client entity or is a member thereof, or an executive officer or board member thereof;
- b) has ownership of or indirectly owns a share exceeding 50% in the client entity;
- c) is employed by, or has any other legal relationship for the purpose of employment with or is a member of, or an executive officer or board member of an entity which maintains regular business relations with the client entity, or has ownership thereof or indirectly own a share exceeding 50% therein;
- d) have civil servant, governmental official or tax and customs authority service relationship with an entity which is either responsible for the supervision of the client entity or is subordinated to it, or has been granting the client entity any support or exclusive rights.³³⁶

3. The public procurement commissioner shall notify without delay and not later than within 3 (three) days the Chairperson of the Public Procurement Arbitration Board, if he is subject to any ground for exclusion pursuant to this Article or Article 22 and Article 23(1) of the GPAP. The public procurement commissioner shall assume disciplinary and financial liability for any failure of or delay in filing such notification.³³⁷

4. The decision in exclusion cases shall be made by the Chairperson of the Public Procurement Arbitration Board. Where the Chairperson of the Public Procurement Arbitration Board participates in the proceeding as a member of the acting panel, the chairperson of the Public Procurement Authority shall decide on his exclusion.

³³² This amendment entered into force on 1 January 2018.

³³³ This amendment entered into force on 1 January 2019.

³³⁴ This amendment entered into force on 1 January 2018.

³³⁵ This amendment entered into force on 12 December 2015.

³³⁶ This amendment entered into force on 1 January 2021.

³³⁷ This amendment entered into force on 1 January 2018.

5. For the purposes of this Act, indirect holding shall mean a share held through the share of another organisation having a share in the client organisation (hereinafter referred to as the 'intermediate organisation'). The proportion of the indirect holding is to be calculated by multiplying the share owned by the entity - which has that indirect holding - in the intermediate organisation by the share owned by the intermediate organisation in the client organisation. Where the share in the intermediate organisation exceeds 50%, it shall be considered full ownership.

Review procedures

Article 148

1. The Public Procurement Arbitration Board shall proceed upon application or ex officio. The application to launch a procedure and the document initiating a procedure ex officio shall be submitted to the Public Procurement Arbitration Board only in writing, in accordance with Article 145(1a).³³⁸

2. An application may be submitted by the contracting authority, the tenderer, in the case of a joint tender any of the tenderers, the candidate, in the case of a joint request to participate any of the candidates, or any other interested party whose right or legitimate interest is being harmed or risks being harmed by an activity or default which is in conflict with this Act. Chambers or representative associations having an activity related to the subject-matter of procurement may submit an application regarding the illegal nature of the contract notice, the invitation for submission of tenders, the invitation to participate, the procurement documents or any amendment thereto. (Those included in this paragraph are hereinafter jointly referred to as 'applicant'.)³³⁹

3. The application may be submitted, subject to the derogation referred to in paragraphs 4-5, within fifteen days from the date when the applicant learned of the infringement and in cases of infringing decisions closing a procurement procedure within ten days from the date when the applicant learned of the infringement. No application may be submitted more than 90 days following the occurrence of the infringement.

4. Contrary to the provision set out in paragraph 3, in the case of a procedure under Article 115, the application may be submitted within fifteen days from the date when the applicant learned of the infringement and in cases of infringing decisions closing a procurement procedure within five days from the date when the applicant learned of the infringement. No application may be submitted more than 90 days following the occurrence of the infringement.

5. The application related to the contract notice, the invitation to tender or the invitation to participate, the procurement documents or their modification may be submitted not later than five days before the expiry of the, in case modified, time limit to submit tenders or time limit to participate, however if the time limit stipulated in paragraph 3 or 4 expires later, the applicant is entitled to submit its application till the date stipulated in paragraph 3 and 4, respectively. As regards the contract notice, the invitation to tender or the invitation to participate, the procurement documents or any amendment thereto the contracting authority may submit an application regarding an infringement committed by itself, by the date of sending of the written summary concerning the tenders.

6. No separate application for review may be submitted in respect of an infringing procedural act under Article 69(4)-(7), the application related to that infringement may be included in the application for review against the unlawful decision closing the procurement procedure. The application in respect of an infringing procedural act under Article 69(4)-(7) does not constitute an element of application other than the one related to the unlawful decision closing the procurement procedure and, when calculating the time limit specified in paragraphs 3-4, the date when the applicant learned of the infringement and the date when the infringement was committed shall be the date to be taken into account in the case of the application for review against the unlawful decision closing the procurement procedure.

³³⁸ This amendment entered into force on 1 January 2018.

³³⁹ This amendment entered into force on 1 January 2020.

7. When compliance with the time limit referred to in paragraphs 3-4 is examined, the infringement shall be deemed to have become known at:

- a) the date of the publication of the notice launching the procurement procedure with unlawful contents or the receipt of the direct invitation with unlawful contents or, in the case of procurement documents with unlawful contents the accessibility thereof;³⁴⁰
- b) where a notice is dispatched after the expiry of the relevant time limit, the fifteenth day after the publication of the notice;³⁴¹
- c) in relation to the infringement in the decision closing the procurement procedure in connection with the documents reviewed, the date of closing the access to documents for review which was indicated within the time limit under Article 45(1) and was completed as a result thereof;³⁴²
- d) where preliminary dispute settlement has been requested in relation to the infringement referred to in the application and
 - (da) the contracting authority has sent its position on time but no further measure has been made, the date of sending the position of the contracting authority;
 - (db) the contracting authority failed to send its position within the relevant time limit, the date of expiry of the time limit for sending the position of the contracting authority;
- e) in the case of an amendment to or performance of a contract, which was concluded on the basis of a procurement procedure, in violation of this Act, the thirtieth day after the publication of the notice concerning the amendment of the contract or after the publication of the data concerning performance [Article 43(1)(c)] in CoRe.³⁴³

7a. If, in connection with a specific infringement, preliminary dispute settlement under Article (7)d) was also initiated after access to documents pursuant to Article (7)c), Article (7)d) shall be applicable to setting the date of learning about the infringement.³⁴⁴

8. When compliance with the time limit referred to in paragraphs 3-4 is examined, the infringement shall be deemed to have become known at:

- a) in the case of the notice launching the procurement procedure with unlawful contents the date of publication of the notice, in case of a direct invitation the date when the invitation was sent;³⁴⁵
- b) where the notice is dispatched after the expiry of the relevant time limit, the date of publication of the notice;³⁴⁶
- c) in case of a procurement without the conduct of a procurement procedure the date of the conclusion of the contract, or if this date cannot be established, the commencement of its performance by either party.

9. If the applicant learned that the procurement was conducted without the conduct of a procurement procedure after the expiry of the time limit set out in paragraphs 3-4, the application may be submitted within one year following the conclusion of the contract or, if it cannot be established, following the date when any of the parties began to perform the contract.

10. Failing to meet the time limits set out in paragraphs 3 and 9 shall result in the forfeiture of rights.

11. The Public Procurement Arbitration Board shall publish without delay the designation and subject-matter of the procedure concerned by the application, the indication of the names of the parties and the date of receipt of the application on the homepage of the Public Procurement Authority following the submission of the application.

³⁴⁰ This amendment entered into force on 1 February 2020.

³⁴¹ This amendment entered into force on 1 February 2020.

³⁴² This amendment entered into force on 1 February 2020.

³⁴³ This amendment entered into force on 1 April 2019.

³⁴⁴ This paragraph entered into force on 1 January 2018.

³⁴⁵ This amendment entered into force on 1 February 2020.

³⁴⁶ This amendment entered into force on 1 February 2020.

12. Prior to the submission of the application, the applicant specified in paragraph 1 shall notify the contracting authority or the procurer of this fact – by designating the infringement assumed by him – in the same way as the application was submitted by him.

Article 149

1. The application shall state:
 - a) the name and seat (residence) of the applicant and its representative pursuant to Article 145(7), and the facts supporting the eligibility of the applicant;³⁴⁷
 - b) the name and seat of the contracting authority of the procurement procedure concerned in the application, the subject-matter of the procurement and, in the case of division of the contract into lots, the lot concerned by the remedy, or, in the case of a purchase carried out without the conduct of a procurement procedure the name, and seat of the purchaser and the subject-matter of the purchase;
 - c) the date when the infringement occurred and the date when the applicant learnt thereof, in such a way that allows clear identification as regards each element of the application;
 - d) the infringed provision of law in regard to each element of the application, as well as the infringement and the evidences thereof;³⁴⁸
 - e) the motion for the decision of the Public Procurement Arbitration Board and the reasons for such a decision in such a way that allows clear identification as regards each element of the application;
 - f) the motion for ordering an interim measure (Article 156) and the reasons therefor;
 - g) the name and seat (residence) known to the applicant of any entities possibly interested in the public procurement case;
 - h) the conduct of the preliminary dispute settlement, if any, its results and the answer of the contracting authority, which shall be attached to the application.

2. The number of copies of the application which are to be lodged shall be the number of potential parties concerned in the proceedings as can be known to the applicant, plus one.

3. An electronic version of the submitted application, which was written using IT tools and may be edited, shall be made available to the Public Procurement Arbitration Board and, if it is submitted by email, the receipt thereof shall be confirmed by the Public Procurement Arbitration Board within one business day.

Article 150

1. The proceeding of the Public Procurement Arbitration Board initiated with an application shall be subject to the payment of an administrative service fee, the level of which shall be set, as a proportion of the estimated value of the public contract, in a Decree issued by the Minister competent in public procurements. The document showing that the fee has been paid shall be attached to the application.

2. Chambers having an activity related to the subject-matter of the procurement shall be exempted from the payment of the fee specified in paragraph 1 in the case of review procedures for the illegal nature of the contract notice, the invitation for submission of tenders, the invitation to participate, the procurement documents or any amendment thereto. In review procedures, where the application is submitted by the contracting authority in respect of its own unlawful activity or omission, the contracting authority shall be exempted from the payment of the fee, specified in paragraph 1, in relation to the application submitted by the contracting authority.³⁴⁹

3. If, in the course of the procedure, a new element is added by the applicant to the application for review, the administrative service fee shall be paid by the applicant, at the request of the Public Procurement Arbitration Board, in respect of the new element of application as well. If the applicant fails

³⁴⁷ This amendment entered into force on 1 January 2019.

³⁴⁸ This amendment entered into force on 1 January 2018.

³⁴⁹ This amendment entered into force on 1 February 2020.

to adjust the amount of the administrative service fee, the Public Procurement Arbitration Board is not obliged to act in respect of the new element of application.

Article 151

1. The review procedure shall be launched by the Public Procurement Arbitration Board, at the latest, on the business day following the day of receipt of the application pursuant to Articles 148(1)-(9), 149(1)-(2) and 150(1)-(2).

2.³⁵⁰ The Public Procurement Arbitration Board shall issue a request for the submission of missing information and set a time limit of five days if ³⁵¹

- a) the request fails to include the data as provided for in Article 149(1);
- b) there is no supporting document attached to show that the fee provided for in Article 150(1) has been paid;
- c) the authorization of the authorized representative is not attached; or
- d) the request and the obligatory annexes thereto have not been submitted by electronic means as provided for in REATS.

If the applicant fails to fulfil the request for the submission of missing information, the Public Procurement Arbitration Board shall reject the request, unless paragraph 3 is applicable.³⁵²

3. Where the estimated value of the public contract may not be known to the applicant on the basis of the documents of the procurement procedure concerned by the review procedure, the applicant shall refer to this circumstance in its application for review. In that case, the Public Procurement Arbitration Board, on the basis of the data available, informs the applicant, in a request for the submission of missing information, of the amount of the estimated value on which the administrative service fee is based.

4. When establishing the estimated value - in the case of the division of the contract into lots the value of the lot concerned by the remedy - the Public Procurement Arbitration Board may request that the contracting authority supply information and the contracting authority shall do so within two business day.

5. The Public Procurement Arbitration Board shall dismiss the procedure within five days if it concludes that the contracting authority has legally withdrawn its notice, invitation launching the procurement procedure.³⁵³

6. ³⁵⁴

7. The applicant may withdraw his application initiating the proceeding or certain elements thereof until a decision has been passed [Article 165] on the substance of the case.

8. If the Public Procurement Arbitration Board rejects the application for judicial remedy or dismisses the review proceeding, the administrative service fee shall be reimbursed to the applicant. If the application or certain elements thereof is/are withdrawn, the applicant may claim the reimbursement of the administrative service fee taking account of the elements maintained and in line with the stipulations set out in a separate act of legislation.³⁵⁵

9. If the Public Procurement Arbitration Board makes a decision in accordance with Article 165(2)c)-f) of PPA in the substantial decision closing the review case, the amount of the paid administrative service fee in excess of HUF 300 thousand shall be due back to the applicant within 8 days of dispatch of the substantial decision of the Public Procurement Arbitration Board. HUF 300 thousand of the sum of the

³⁵⁰ This paragraph entered into force on 1 January 2018.

³⁵¹ This amendment entered into force on 1 January 2019.

³⁵² This amendment entered into force on 1 January 2019.

³⁵³ This amendment entered into force on 1 February 2020.

³⁵⁴ This paragraph was repealed on 1 January 2018.

³⁵⁵ This amendment entered into force on 1 January 2018.

administrative service fee shall, even in this case, constitute the own revenues of the Public Procurement Authority, and the Public Procurement Arbitration Board shall decide about the way of incurring such in agreement with the general rules applicable to procedural costs under GPAP. The fee shall not be refunded if the request is unsubstantiated; the applicant shall bear the total sum of the administrative service fee.³⁵⁶

10. If the applicant applied for the statement of more than one infringement in its application for review but the Public Procurement Arbitration Board sustains the application only in part in its decision on the substance of the case, the amount of the administrative service fee less the own revenues of the Public Procurement Authority provided in paragraph 2 shall be refunded to the applicant with the consideration of the ratio of substantiated and unsubstantiated applications.³⁵⁷

Article 152

1. An ex officio proceeding of the Public Procurement Arbitration Board may be initiated by the following entities or persons on the grounds that they have, in the performance of their duties, learned of any behaviour or default in violation of the act on public procurement or the decree based on the empowerment of the act on public procurement:³⁵⁸

- a) the President of the Public Procurement Council;
- b) the State Audit Office;
- c) the government body responsible for control;
- d) the body responsible for the legal supervision of local governments;
- e) the Hungarian State Treasury;
- f) the Commissioner for Fundamental Rights;
- g) the entity granting support for the public procurement, or the entity co-operating pursuant to law in the use of the support;
- h) the central purchasing body appointed by the Government;
- i) the Hungarian Competition Authority;
- j) the body auditing European Union supports;
- k) the minister competent in the supervision of the national property;
- l) the public prosecutor;
- m) the minister competent in public procurements;
- n) the minister responsible for the use of EU funds.³⁵⁹

2. The ex officio proceeding of the Public Procurement Arbitration Board may be initiated by a person or entity specified in paragraph 1 within sixty days from learning of the infringement but

- a) not later than within three years after the occurrence of the infringement,
- b) in the case of procurements without the conduct of a procurement procedure, contrary to point (a), within five years from the conclusion of the contract or, if it cannot be established, from the start of performance by any of the parties or
- c) in the case of public procurements to be realised using support, contrary to points (a) and (b), within the period required to keeping documents as stipulated in the relevant separate act of legislation on granting and use of the given support, however, that period may not be shorter than five years after the occurrence of the infringement, in the case of procurements without the conduct of a procurement procedure, within five years from the conclusion of the contract or, if it cannot be established, from the start of performance by any of the parties.

2a. For an entity specified in paragraph (1)g), the day of launching the irregularity procedure concerning the infringement of procurement shall be considered as the day of learning about the infringement, to calculate the time limit under paragraph 2.³⁶⁰

3. Unless otherwise provided in paragraph 2, Article 148(8) shall apply accordingly in respect of the date of committing the infringement. Contrary to paragraph 2, in the case set out in Article 153(1)(d), the

³⁵⁶ This paragraph entered into force on 1 January 2018.

³⁵⁷ This paragraph entered into force on 1 January 2018.

³⁵⁸ This amendment entered into force on 1 January 2019.

³⁵⁹ This point entered into force on 1 January 2019.

³⁶⁰ This paragraph entered into force on 1 January 2019.

President of the Public Procurement Authority may initiate the ex officio proceeding of the Public Procurement Arbitration Board within the time limit set in Article 189(1).

4. The document initiating the ex officio proceeding of the Public Procurement Arbitration Board shall contain the data listed in Article 149(1)(a)–(d) and (g), and a proposal may be made concerning points (e) and (f). The initiating document shall be accompanied by copies of the documents available in relation to the purchase or public procurement involving an infringement. An electronic version of the submitted initiating document, which was written using IT tools and may be edited, shall be made available to the Public Procurement Arbitration Board and, if it is submitted by email, the receipt thereof shall be confirmed by the Public Procurement Arbitration Board within one business day.

5. The Public Procurement Arbitration Board shall reject the ex officio initiation if it is not submitted by the entitled party defined in paragraph 1.³⁶¹

6. If the initiation does not contain the data set out in paragraph 4, the Public Procurement Arbitration Board shall call upon the entity or person concerned to provide the missing information. Article 151(2) shall apply accordingly to the supply of missing information.

7. The Public Procurement Arbitration Board shall publish without delay the designation and subject-matter of the procedure concerned by the initiation, the indication of the names of the parties and the date of receipt of the initiation on the homepage of the Public Procurement Authority following the submission of the initiation.

8. Dismissal of the initiation and termination of the proceeding shall be governed by Article 151(5)–(8) as appropriate.³⁶²

9. For a control pursuant to Article 187(2)(j)), the delivery of the minutes on the control shall be considered as the day of learning about the infringement, to calculate the time limit set in paragraph 2.³⁶³

Article 153

1. The President of the Public Procurement Authority shall launch the ex officio proceeding of the Public Procurement Arbitration Board

- a) ³⁶⁴
- b) if the given entity does not fulfil its obligations of registration and declaration on the list of contracting authorities covered by this Act, notwithstanding a request from the Public Procurement Authority,
- c) if, on the basis of the outcome of the official control according to Article 187(2)(j) or without the carrying out of the official control, there is indicative evidence that an amendment to or the performance of the contract violated this Act, in particular where an infringement specified in Article 142(2) was committed or
- d) if, upon the examination of the documents sent to the Public Procurement Authority in relation to the launching of a negotiated procedure without prior publication of a contract notice, there are reasonable grounds to consider that rules and principles pertaining to public procurement and procurement procedures have been violated.

2. In addition to paragraph 1, the President of the Public Procurement Authority may initiate the ex officio proceeding of the Public Procurement Arbitration Board, in particular, where the contracting authority fails to publish, within the time limit set, the data, information, documents specified in Article 43(1)(a)–(c) and Article 43(2)(a)–(c) in CoRe and, if there is an obligation set out by an act of legislation based

³⁶¹ This amendment entered into force on 1 January 2018.

³⁶² This amendment entered into force on 1 January 2018.

³⁶³ This paragraph entered into force on 1 January 2019.

³⁶⁴ This point was repealed on 1 April 2019.

on the empowerment of this Act in regard to certain documents, data, in the EPPS, in spite of a request by the Public Procurement Authority.³⁶⁵

3. Article 152(2)-(8) shall apply to the initiation set out in paragraphs 1-2.

4. In the case of a review procedure initiated in agreement with paragraph (1)c), the day of learning about the information coincides with the day of closing the official control conducted in accordance with Article 187(2)j).³⁶⁶

Article 154

1. The Public Procurement Arbitration Board shall notify the applicant or the party initiating the procedure, the contracting authority of the procurement case and any parties interested in the public procurement case of the launch of the proceeding. The Public Procurement Arbitration Board shall request the contracting party of the procurement case and the parties interested in the public procurement case and indicating their intention to participate pursuant to paragraph 1a to submit their comments within five days. The Public Procurement Arbitration Board shall attach the application to the invitation or, in cases of ex officio launched proceedings, the document initiating this proceeding. If communication by electronic means with the contracting authority, defined in REATS, is not possible, the Arbitration Board shall send the notice about the launch of the procedure to the contracting authority in electronic mail or by fax. A notice sent by fax is considered delivered on the day of successful confirmation. If the notice could only be sent in electronic mail and the contracting authority did not confirm the receipt of the electronic mail to the Arbitration Board within one business day, the notice on the launch of the procedure shall be delivered to the contracting authority by postal delivery.³⁶⁷

1a. The Arbitration Board shall notify the parties interested in the public procurement case, other than the contracting authority, the applicant and the party initiating ex officio, about the launch of the procedure by electronic communication, by sending the application for review or the ex officio initiation, and, where such seems to be unsuccessful, by postal delivery, with the proviso that those parties may indicate their intention to participate in the review procedure by electronic communication stipulated in REATS within three business days of receipt of the decree on the launch of the procedure, attaching the authorization of the representative defined in Article 145(7). After the indication, under this paragraph, of the intention to participate, the Arbitration Board shall send the documents produced during the review procedure by electronic means and shall thereafter forward such only to the interested parties indicating their intention to participate. Failing to meet the above time limit shall result in the forfeiture of rights.³⁶⁸

1b. After the fulfilment of the provisions in paragraph 1 and 1a, in addition to the contracting authority, the applicant and the party initiating the procedure ex officio, from among the parties interested in the procurement case, the interested parties indicating their intention to participate in agreement with paragraph 1a and involved in the procedure, including the interested parties involved in the procedure on the basis of paragraph 1c, shall be considered as the parties concerned in the procedure of the Arbitration Board.³⁶⁹

1c. If the party interested in the procurement case pursuant to paragraph 1a does not indicate its intention to participate in the review procedure in accordance with this paragraph, nothing shall prevent the Arbitration Board from involving that party subsequently as a concerned party during the review procedure or from subsequently asking the other interested party for documents or calling it to make a statement, where necessary for the clarification of the facts of the case.³⁷⁰

2. Furthermore, at the time of the notification, the Public Procurement Arbitration Board shall call upon the contracting authority of the relevant procurement procedure or the purchaser who carried out a

³⁶⁵ This amendment entered into force on 1 April 2019.

³⁶⁶ This paragraph entered into force on 1 January 2019.

³⁶⁷ This amendment entered into force on 1 January 2018.

³⁶⁸ This paragraph entered into force on 1 January 2019.

³⁶⁹ This paragraph entered into force on 1 January 2018.

³⁷⁰ This paragraph entered into force on 1 January 2018.

purchase without the conduct of a procurement procedure to supply within five days all documents related to the public procurement or purchase in question or, where it is not necessary, the documents required by the Arbitration Board and, in case of the data available in the system stipulated in Article 40(1), to make the data accessible. When the application is submitted by the contracting authority, the available documents shall be supplied or made accessible together with the application. At the same time as the documents made available on paper, an electronic version of the documents, which was written using IT tools and may be edited, shall also be sent, if available in such format. The Public Procurement Arbitration Board shall confirm within one business day the receipt of the editable version of the documents, where those documents have been submitted by email.³⁷¹

3. Where a proceeding is launched by the Public Procurement Arbitration Board, the contracting authority may suspend the ongoing procurement procedure and it shall notify the Public Procurement Arbitration Board thereof. The suspension shall extend any time limits running by the duration of the suspension period.

Article 155

1. The Public Procurement Arbitration Board may order that certain cases being dealt with by it be consolidated if their subjects are interrelated or settling such cases collectively is justified by practical, economic or other procedural considerations.

2. The Public Procurement Arbitration Board may order that certain parts or elements of application of a given case being dealt with by it be separated if settling such cases separately is justified by practical, economic or other procedural considerations.

3. In case the applicant has more issues (elements) in the application concerning the same procurement procedure the Public Procurement Arbitration Board may make its decision at the same time. The Public Procurement Arbitration Board may make a single compound decision.

Interim measures

Article 156

1. In an ongoing review procedure, until conclusion of the contract based on the procurement procedure (or purchase) involved in the review procedure, the Public Procurement Arbitration Board may, on request or ex officio, order interim measures, having regard to all the circumstances of the case, if there is the likelihood of an infringement of the legal provisions or principles pertaining to the public procurement or the procurement procedure has been committed or there is a risk that an infringement will be committed.

2. As an interim measure, the Public Procurement Arbitration Board shall

- a) order the suspension of the procurement procedure;
- b) call upon the contracting authority involved in the procurement procedure to invite the applicant seeking a remedy to take part in the procurement procedure.

3. Suspension of the procurement procedure shall result in the extension of the ongoing periods of time prescribed in the invitation by the duration of the suspension period.

4. In order to protect a pressing, particularly vital interest or public interest (including an issue of national economy) the Public Procurement Arbitration Board may allow the conclusion of the contract in its decree, upon the request of the contracting authority, if the benefits exceed the drawbacks of the conclusion of the contract. The pressing, particularly vital interest or public interest (the issue of national economy) shall be stated in the application and the documents giving grounds for the application shall be submitted together with the application. For the purposes of this paragraph, public interest means in particular the maintenance of the uninterrupted security of conduct of the public utilities activity. The

³⁷¹ This amendment entered into force on 1 January 2018.

Arbitration Board makes a decision within five days following the receipt of the application, no review procedure shall lie from the decree.

5. The Public Procurement Arbitration Board shall ensure without delay the publication of its decree on the permission for the conclusion of the contract on the homepage of the Public Procurement Authority.

Initiating the preliminary ruling procedure of the Court of Justice of the European Union

Article 157

1. If the Public Procurement Arbitration Board initiates a preliminary decision-making procedure of the Court of Justice of the European Union in accordance with the rules laid down in the TFEU, such initiative shall be subject of an individual decree and, at the same time, the Public Procurement Arbitration Board shall suspend the proceeding in question. In its decree, the Public Procurement Arbitration Board shall identify the issue requiring a preliminary decision by the Court of Justice of the European Union and recite the facts and the relevant Hungarian legislation to the extent required for addressing the issue raised. At the same time when the decree is delivered to the Court of Justice of the European Union, the Public Procurement Arbitration Board shall also supply a copy thereof to the Minister competent in justice and the Minister competent in public procurements for their information.

Scope of investigation by the Public Procurement Arbitration Board

Article 158

1. If, during the proceeding and before a substantial decision [Article 165] is taken, the Public Procurement Arbitration Board learns of an infringement additional to those already being investigated pursuant to the application or initiation, it may proceed ex officio also in respect of such an infringement. The proceeding may only be extended where the disclosed infringement distorts competition or prejudices the public nature of the competition, the equal opportunities of tenderers or substantially influenced the decision of the contracting authority. Decision on the extension of the proceeding shall be taken by the proceeding panel.

2. In case an application is being withdrawn, the Public Procurement Arbitration Board shall continue the proceeding, if, on the basis of the available data, a serious infringement is likely to have taken place.

3. Should the Public Procurement Arbitration Board, in the course of the proceeding, detect any circumstances which might suggest non-compliance with another act of legislation, it shall report such violation to the competent authority, in particular to the one responsible for prosecution, the office of the prosecutor, the State Audit Office, an internal audit body designated by the government or the Hungarian Competition Authority.³⁷²

4. The Public Procurement Arbitration Board may suspend its procedure if the decision concerning the preliminary question falls in the competence of another entity.³⁷³

Article 159

1. Where the substantial decision on the public procurement case in respect of the infringement pursuant to Article 142(2) depends on a preliminary ruling on whether a breach of contract was committed, the Public Procurement Arbitration Board shall bring an action for the establishment of the breach of contract and, at the same time, shall suspend the procedure. The Public Procurement Arbitration Board is entitled to exemption from all court costs.

2. The Public Procurement Arbitration Board shall publish a notification about initiating the action set out in paragraph 1 on the homepage of the Public Procurement Authority. The notification shall contain

³⁷² This amendment entered into force on 1 July 2018.

³⁷³ This paragraph entered into force on 1 January 2018.

the naming of the case in question (the indication of the related procurement procedure), the date of submission of the claim and the naming of the parties to the proceedings.

Article 160

1. The Public Procurement Arbitration Board shall make arrangements to ensure that the applicant, the party initiating the procedure and the opposing party can reveal all new facts in the course of the proceeding, as well as all applications and statements filed, and enable both parties to put forward their points of view thereon.

2. The Public Procurement Arbitration Board shall send the comments of the parties according to Article 154 to the adverse party, noting that they shall be bound to make their statements thereon not later than within three days. In addition, the Public Procurement Arbitration Board may call upon, at any time, the parties and any parties interested in the public procurement case to make a statement or give their comments, allowing an appropriate period. At the request of the Public Procurement Arbitration Board, an electronic version of the statements and comments as well as other documents, which were written using IT tools and may be edited, shall also be made available to the Public Procurement Arbitration Board, if available in such format. The Public Procurement Arbitration Board shall confirm within one business day the receipt of the editable version of the documents, if those documents are submitted by email.³⁷⁴

3. If the Public Procurement Arbitration Board does not hold a hearing in the given case, it can give a date by which the parties must make all substantial statements and comments, by notifying them. If the Public Procurement Arbitration Board holds a hearing in the given case, the parties must make all substantial statements, comments before the hearing.³⁷⁵

4. After the date specified in paragraph 3 or subsequent to the hearing, the parties may only make further comments or statements, if a request is made by the Public Procurement Arbitration Board therefor. The Public Procurement Arbitration Board shall notify the adverse party about the request concurrent with the sending of the request. Any further comment or statement made after the date specified in paragraph 3 or subsequent to the hearing of the given case, without the request of the Public Procurement Arbitration Board, shall not be taken into consideration by the Public Procurement Arbitration Board for its decision.³⁷⁶

5. The Public Procurement Arbitration Board shall bypass the request following the hearing pursuant to paragraph 4 and may hold a new hearing after the hearing, if necessary for the further clarification of the facts. The Public Procurement Arbitration Board shall inform the concerned parties about the day scheduled for the new hearing on the day after the first hearing the latest. The hearing shall be scheduled in a way that it could be held within 8 days of the first hearing.³⁷⁷

Article 161

1. The Public Procurement Arbitration Board shall settle the public procurement case without a hearing, except where it is absolutely necessary to hold a hearing, in particular, for the sake of the parties' rights, the clarification of the facts, an informed decision-making in the course of which all the relevant circumstances are taken into account.³⁷⁸

2. The hearing shall be held by the Public Procurement Arbitration Board not later than fifteen days after the start of handling the case [Article 164 (7)].³⁷⁹

3.³⁸⁰

³⁷⁴ This amendment entered into force on 1 January 2018.

³⁷⁵ This amendment entered into force on 1 January 2018.

³⁷⁶ This amendment entered into force on 1 January 2018.

³⁷⁷ This paragraph entered into force on 1 January 2018.

³⁷⁸ This amendment entered into force on 1 February 2021.

³⁷⁹ This amendment entered into force on 1 February 2021.

³⁸⁰ This paragraph was repealed on 1 January 2018.

4. The hearing shall be held in public. The Public Procurement Arbitration Board shall, ex officio or at the reasoned request of the party, exclude the public from the whole hearing or a part thereof if this is justified for the protection of the qualified data, in order to keep business secret or any other secrets defined as such in an act of legislation. The Arbitration Board may, in a particularly justified case, exclude the public from the part of the hearing involving the hearing of witnesses even if the data of the witness are ordered to be handled confidentially and the hearing of the witness in a closed hearing is necessary to protect the life and bodily integrity of the witness or the relative of the witness. The Arbitration Board shall make a reasoned decree about the exclusion of the public, unless the closed hearing was held on the basis of an obligatory provision of the law.³⁸¹

5. The Public Procurement Arbitration Board shall send the minutes of the hearing to the parties within five days from the date of the hearing.³⁸²

Article 161/A³⁸³

1. The hearing can also be held by electronic communications network. The Public Procurement Arbitration Board, if the hearing is held by electronic communications network, discloses in its relevant decree the technical data necessary for accessing the electronic communications network.

2. Upon hearing held by electronic communications network, the provisions pertaining to the publicity of the hearing shall be applied with the proviso that publicity shall be ensured at the designated venue of the hearing. The Public Procurement Arbitration Board determines the identity of the persons' heard by electronic communications network based on the administrative attestation displayed electronically, suitable for certifying identity.

3. Upon hearing held by electronic communications network, the exclusion of the public from the entire or a part of the hearing, respectively the holding of a closed hearing shall be allowed by applying Article 161 (4) herein.

4. Upon hearing held by electronic communications network, the minutes of the hearing shall also include the circumstances of conducting the hearing by electronic communications network.

Article 162

1. The concerned party shall have the right within ten days from the initiation of the proceeding, within thirty days from the initiation of the proceeding, for a review procedure connected to the amendment or performance violating this Act of the contract concluded on the basis of the procurement procedure, to have access to and make copies or notes of all documents drawn up in the course of the procurement procedure and the review procedure, furthermore, any person proceeding on behalf of the Public Procurement Authority shall have the right at any time during the proceeding to do so.³⁸⁴

2. The contracting authority, the tenderer and the candidate may request, referring to the protection of business secrets, that a prohibition or restriction be imposed on access to documents or data by any persons specified in paragraph 1 in the case of documents not considered having public interest or information made public out of public interest.

3. If certain specified documents are included by the tenderer or the candidate separately, as a business secret in the tender or in the request to participate, or, if the tenderer or the candidate requests to treat any other document submitted by him in the course of the procurement procedure as a business secret, it shall be regarded as a request for the prohibition imposed on access to these documents by any persons specified in paragraph 1.

³⁸¹ This amendment entered into force on 1 January 2018.

³⁸² This amendment entered into force on 1 January 2018.

³⁸³ This article entered into force on 11 December 2020.

³⁸⁴ This amendment entered into force on 1 January 2018.

4. The Public Procurement Arbitration Board shall examine if the circumstances justifying the prohibition or the restriction imposed on access to these documents exist and, when making a decision on an application to this effect, it may at the same time require the relevant party to prepare a version of the document in question which will not include any confidential business information.

5.³⁸⁵

6. Documents containing qualified data shall not be accessed in the absence of the permission for use. Neither shall other documents containing other information protected by law be accessed where such access is prohibited by the legislation regulating the protection of the relevant information, or the entity specified in paragraph 1 and requesting access is not prevented from exercising its right for judicial remedy by not being familiar with the protected information.

7. Minutes taken of a hearing from which the public has been excluded in order to protect qualified data must not be copied or have notes made of. Even access to such documents – as specified in the Act of Protection of qualified data – is subject to the terms and conditions set by the Chairperson of the Arbitration Board.

8. Access to the documents shall be subject to the permission of the Public Procurement Arbitration Board, taking into consideration the provisions set out in paragraphs 1-7.

Article 163

1. The Public Procurement Arbitration Board may impose a procedural fine from HUF 10,000 on each occasion up to HUF 500,000 for a natural person and up to HUF 1 million for a legal entity or other entity on the applicant or any other person taking part in the review procedure if such participant³⁸⁶

- a) has supplied false data or has failed to disclose data relevant to the judgement of the case;
- b) has failed to supply the required information or has supplied it after the expiry of the time limit set therefor;
- c) has failed to submit a document or has submitted it after the expiry of the time limit set therefor or has submitted a document in a format other than an electronic form, which may be edited, in the cases provided for by this Act;
- d) has been hindering access to documents related to its business, professional or public procurement activities;
- e) has made a clearly unsubstantiated statement with respect to exclusion, or makes a repeated unsubstantiated statement against the same public procurement commissioner during the same procedure.

2. The appeal for a relief against the decree imposing a procedural fine shall have a suspensory effect on the execution of the decree.³⁸⁷

Article 164

1. When no hearing is held in the case, the Public Procurement Arbitration Board shall be required to finish the case within fifteen days as of the start of handling the case, except for cases specified in paragraph 2.³⁸⁸

2. If the Public Procurement Arbitration Board has held a hearing in the case, it shall be required to finish the case within twenty-five days as of the start of handling the case, except for cases specified in paragraph 3.³⁸⁹

³⁸⁵ This paragraph was repealed on 1 January 2018.

³⁸⁶ This amendment entered into force on 1 January 2019.

³⁸⁷ This amendment entered into force on 1 January 2018.

³⁸⁸ This amendment entered into force on 1 February 2021.

³⁸⁹ This amendment entered into force on 1 February 2021.

3. The Public Procurement Arbitration Board shall conclude the case concerning an amendment or performance violating this Act of the contract concluded on the basis of the procurement procedure, concerning the bypass of the procurement procedure, furthermore, concerning cases, where the review procedure is launched ex officio and the contract was already concluded in the public procurement procedure affected by the review within sixty days from the launching of the procedure.³⁹⁰

4. In the case of the consolidation of cases according to Article 155(1) the time limit for arrangement shall be aligned to the latest review procedure.

5. The time limit referred to in paragraphs 1 and 3 may be extended with up to 10 days on one occasion, in justified cases.

The parties who were notified of the launching of the procedure shall be notified of that extension not later than the date of expiry of the initial time limit set in accordance with paragraphs 1 to 3.

6. The parties may not have the right to apply for the deferral of the proceedings.³⁹¹

7. The time limit for arrangement pursuant to paragraph 1-3 shall start from the day when all the documents available in connection with the public procurement or the procurement have been completely received in the Public Procurement Arbitration Board, as stipulated in Article 154(2). The Public Procurement Arbitration Board shall notify the concerned parties and, if the time limit under Article 154(1a) has not yet lapsed, the parties interested in the procurement case about the complete receipt of the documents and the start of the time limit for arrangement without any delay, in the way stipulated in Article 154(1).³⁹²

Substantial decision of the Public Procurement Arbitration Board

Article 165

1. The Public Procurement Arbitration Board shall make its decision in the name of the Public Procurement Authority.

2. In its decision the Public Procurement Arbitration Board

- a) shall dismiss any unfounded applications;
- b) in procedures launched or conducted ex officio shall state the lack of infringement;
- c) shall state that an infringement has occurred;³⁹³
- d) shall state that an infringement has occurred, and shall apply the legal consequences listed in paragraph 3;³⁹⁴
- e) shall, besides stating that an infringement has occurred, impose a fine in cases set out in paragraph 6;
- f) ³⁹⁵
- g) shall state ex officio, in case of the infringement stipulated in Article 137(1), that the contract is null and void or, when the conditions stipulated in Article 137(3) are fulfilled, that the concerned contract is not null and void;³⁹⁶
- h) shall state, in case of a contract which is null and void for the infringement stipulated in Article 137(1), whether or not the original condition can be restored in the course of applying the legal consequences of invalidity.³⁹⁷

³⁹⁰ This amendment entered into force on 1 February 2021.

³⁹¹ This amendment entered into force on 1 January 2018.

³⁹² This paragraph entered into force on 1 January 2019.

³⁹³ This amendment entered into force on 1 February 2021.

³⁹⁴ This amendment entered into force on 1 February 2021.

³⁹⁵ This point was repealed on 1 February 2021.

³⁹⁶ This point entered into force on 1 January 2018.

³⁹⁷ This point entered into force on 1 January 2018.

3. If the Public Procurement Arbitration Board states in its decision that an infringement has occurred, it may

- a) before the closure of the procurement procedure, call upon the person who committed the infringement to act in conformity with the rules laid down in this Act, or shall order that the contracting authority may take its decisions only subject to certain conditions;
- b) declare void any decision made by the contracting authority either during the procurement procedure or as a decision closing that procedure, provided that no contract has been concluded yet on the basis of the decision in question;
- c) order the removal of the tenderer from the official list of approved tenderers;
- d) impose a fine on any organisation or person who or which has infringed the law or on any person or organisation that is liable for the infringement and has a legal relationship with the person or organisation liable for the infringement in question.

4. The amount of the fine specified in paragraph 3(d) shall be not more than 10% of the estimated value of the procurement procedure or, in the case of the division of the contract into lots, the lot concerned by the remedy, subject to the provisions set out in paragraph 11.

5. If a preliminary dispute settlement has been requested in relation to the infringement referred to in the application and the contracting authority has sent its position on the infringement but no further measure has been taken, the amount of the fine specified in paragraph 3(d) shall be not more than 15% of the estimated value of the procurement procedure or, in the case of the division of the contract into lots, the lot concerned by the remedy, subject to the provisions set out in paragraph 11.

6. The Public Procurement Arbitration Board, besides stating that an infringement has occurred, shall impose a fine, if

- a) the infringement has occurred with the unlawful bypass of the procurement procedure;
- b) the parties have concluded the contract with the infringement of the rules regarding the standstill period;
- c) the contract has been concluded as a result of a negotiated procedure without prior publication of a contract notice and the criteria for the application of this type of procedure were not fulfilled;
- d) the contracting authority failed to send previous notice to the Public Procurement Authority, in the case of a negotiated procedure without prior publication of a contract notice;
- e) the ex officio proceeding has been initiated by the Chairperson of the Public Procurement Authority [Article 153] and the Public Procurement Arbitration Board states that there was an infringement.

7. The amount of the fine specified in paragraph 6 shall be not more than 15% of the estimated value of the procurement procedure or, in the case of the division of the contract into lots, the lot concerned by the remedy or, in the case of the unlawful bypass of the procurement procedure, the value of the contract, subject to the provisions set out in paragraph 11.

7a. When stating that an infringement pursuant to Article 137(1) has occurred, if the Public Procurement Arbitration Board states that the contract is not null and void in regard to the fulfilment of the conditions stipulated in Article 137(3), it shall impose an additional fine, besides that in paragraph 6 and 7, the amount whereof shall be 15% of the value of the contract the most, considering all the circumstances of the case.³⁹⁸

7b. When stating that an infringement pursuant to Article 137(1) has occurred, if the Public Procurement Arbitration Board states that the original conditions cannot be restored in the course of applying the legal consequences of invalidity of the contract, it shall impose an additional fine, besides that in paragraph 6 and 7, the amount whereof shall be 15% of the value of the contract the most, considering all the circumstances of the case.³⁹⁹

³⁹⁸ This paragraph entered into force on 1 January 2018.

³⁹⁹ This paragraph entered into force on 1 January 2018.

7c. The Public Procurement Arbitration Board does not impose a fine in cases, when the contracting authority performed the act subject to review, pursuant to the request made in the procedure concerned by the body exercising process integrated control under the law.⁴⁰⁰

8.⁴⁰¹

9.⁴⁰²

10.⁴⁰³

11. In determining whether a fine is to be imposed, in fixing the amount of the fine, the Public Procurement Arbitration Board shall take into account all the circumstances relevant in the matter, in particular

- a) the gravity of the infringement;
- b) the subject-matter and value of the public procurement concerned;
- c) the effect of the infringement on the decision closing the procurement procedure;
- d) the reoccurrence of the infringement of this Act in regard to the public procurement concerned;
- e) the length of time which elapsed between the committing of the infringement and the launching of the review procedure;
- f) in the case of public procurements carried out using support, the fact that, in the procedure of another authority, a sanction concerning the repayment of the support may be attached to the infringement.

When establishing the sum of the fine, it shall also be taken into account whether the act of the infringement has been manifestly deliberate.⁴⁰⁴

12. If the Public Procurement Arbitration Board annuls the decision of the contracting authority having concluded the procedure, then the contracting authority shall make a new decision closing the procedure, within thirty days following the date when the decision becomes final. If the procedure shall not presumably be unsuccessful, the contracting authority - before making its decision - shall obtain the statement of all tenderers having submitted valid tenders to the effect that they uphold their tenders, setting a time limit. In such cases where the tenderer has not made any statement, it shall be presumed that he does not maintain his tender. If the contracting authority made subject participation in the procedure to the condition of provision of a tender guarantee, tenderers who uphold their tenders shall certify that the tender guarantee is also upheld or is made available for the new term of the validity period set by the contracting authority.⁴⁰⁵

13. If the Public Procurement Arbitration Board establishes in its decision pursuant this paragraph an infringement of the legislation applicable to public procurement or the procurement procedure, the contracting authority or the party entering into the contract as tenderer may, within thirty days from the service of the decision of the Public Procurement Arbitration Board, rescind the contract concluded pursuant to the relevant procurement procedure, provided that the infringement affected the decision concluding the procurement procedure.

Announcement and publication of the decision of the Public Procurement Arbitration Board

Article 166

1. The decree on suspension of the procedure, the decree and the decision closing the public procurement case shall be delivered to the parties, as well as to the minister responsible for public procurement. Where the decree on suspension of the procedure, the decree or the decision closing the

⁴⁰⁰ This paragraph entered into force on 1 February 2021.

⁴⁰¹ This paragraph was repealed on 1 February 2021.

⁴⁰² This paragraph was repealed on 1 February 2021.

⁴⁰³ This paragraph was repealed on 1 February 2021.

⁴⁰⁴ This amendment entered into force on 1 February 2021.

⁴⁰⁵ This amendment entered into force on 1 January 2019.

public procurement case is related to a public procurement carried out using support, the decision shall also be delivered to the organisation providing that support for the public procurement.⁴⁰⁶

2. The decree and the decision closing the public procurement case and the decree on the allowance of the conclusion of the contract [Article 156(4)] shall be published on the homepage of the Public Procurement Authority on the day of their drawing up. The substantial decision shall be published even if the Public Procurement Arbitration Board has excluded the public from the proceedings pursuant to Article 161(4).

3. The Public Procurement Arbitration Board shall publish the decision on the homepage, even if an administrative proceeding has been initiated against the decision, but it shall also include a reference to that fact.⁴⁰⁷

4. In addition to the data specified in Article 148(11) and Article 156(5) of the application initiating the proceeding of the Public Procurement Arbitration Board and the substantial decision, the decree on the rejection of the application, the decree on termination of the procedure, in the case of an administrative proceeding initiated against the substantial decision, the ruling of the court shall be published on the homepage of the Public Procurement Authority on the day of their drawing up.⁴⁰⁸

5. If an administrative proceeding was initiated against the decision of the Public Procurement Arbitration Board, the contracting authority may suspend the procedure or may postpone the conclusion of the contract until the court makes its final decision.⁴⁰⁹

Review procedures for prequalification cases

Article 167

1. The provisions pertaining to the procedure conducted by the Public Procurement Arbitration Board shall apply to review procedures for prequalification cases with the differences pursuant to paragraphs 2-4, as appropriate.

2. The applicant may lodge an appeal against the rejection of its prequalification application and its deletion from the pre-qualification list. Such appeal may be lodged within fifteen days of receiving written notification of the same by the contracting entity.

3. The appeal shall state:

- a) the name, seat (residence) of the applicant and its representative;
- b) the name and seat of the contracting entity operating the prequalification system covered by the appeal;
- c) the date of receiving the contracting entity's written notification;
- d) the legal provision violated;
- e) the motion relating to the decision of the Public Procurement Arbitration Board, and its reasons.

4. In its decision, the Public Procurement Arbitration Board shall, besides stating that an infringement has taken place, declare void or change the contracting entity's decision.

Ensuring the uniformity of the decisions taken by the Public Procurement Arbitration Board

Article 168

1. For the sake of the uniformity of the remedies procedures, a general council including the public procurement commissioners shall operate within the framework of the Public Procurement Arbitration Board. The representatives of the organisational unit responsible for the area of public procurement in the

⁴⁰⁶ This amendment entered into force on 19 December 2019.

⁴⁰⁷ This amendment entered into force on 1 January 2018.

⁴⁰⁸ This amendment entered into force on 1 January 2018.

⁴⁰⁹ This amendment entered into force on 1 January 2018.

ministry headed by the minister responsible for public procurements as well as the representatives of the body auditing EU supports may participate in a consultative capacity in the meetings of the general council.

2. The Public Procurement Arbitration Board shall operate a council for the cases and groups of cases set out in the organisational and operational regulations. The college shall examine the practice of the Public Procurement Arbitration Board, monitor developments in the court's case-law and express its opinion on the disputed legal issues in order to enhance a uniform practice of review.

3. If the proceeding panel of the Public Procurement Arbitration Board has made a decision on a matter of principle, it shall be bound to present its decision to the Chairperson of the Public Procurement Arbitration Board. The Chairperson of the Public Procurement Arbitration Board shall present the decision concerning the matter of principle to the general council.

4. The Chairperson of the Public Procurement Arbitration Board continuously monitors the decision-making process of the Public Procurement Arbitration Board. If the Chairperson has knowledge of decision-makings by the proceeding panels on the basis of conflicting grounds of principles, he shall inform the general council thereof. The general council shall express an opinion on the issue of law in question for the sake of the uniform decision-making. Before expressing its opinion, the general council gives the bodies referred to in paragraph 1 the opportunity to state their views on the given issue of law, within a reasonable time limit, those views are not binding on the general council. The opinion expressed by the general council may only be departed from according to the provisions set out in paragraph 5. In case of agreement within the general council the Public Procurement Arbitration Board shall publish information of the new opinion of the general council on the homepage of the Public Procurement Authority.

4a. One third of the members of the Council operating within the framework of the Public Procurement Authority shall be entitled in common to contact the Chairperson of the Public Procurement Arbitration Board and make a proposal to evaluate the need to publish the opinion of the general council. The parties making the proposal shall, in their request addressed to the Chairperson of the Public Procurement Arbitration Board, specify the decisions of the acting councils that, in their opinion, are based on conflicting grounds of principles and in regard to which there may be a need to express the opinion of the general council, in order to ensure the uniformity of the review practice, and shall also indicate the manifestation, in their opinion, of the conflicting grounds of principles among these decisions.⁴¹⁰

4b. The Chairperson of the Public Procurement Arbitration Board shall send an answer to the request under paragraph 4a to the parties making the proposal within 30 days and shall inform them therein about the measures taken in accordance with paragraph 4c.⁴¹¹

4c. The Chairperson of the Public Procurement Arbitration Board shall, based on the request under paragraph 4a

- a) inform the members of the Council making the proposal, in its answer under paragraph 4b, that there is no need, and shall specify the reason for no need to publish the opinion of the general council; or
- b) inform the general council in accordance with paragraph 4.⁴¹²

5. If the proceeding panel of the Public Procurement Arbitration Board intends to depart from the contents of the opinion in relation to an issue of law, it shall notify the Chairperson of the Public Procurement Arbitration Board thereof. The Chairperson of the Public Procurement Arbitration Board shall present the envisaged decision to the council competent to deal with the given group of matters or the general council and shall ask for the opinion of the council or the general council. For the purposes of the decision-making, the proceeding panel shall be bound to wait for the opinion of the college or the general college, however, it is not bound by that opinion and it shall have the right to make a decision departing from the opinion. In case of mutual agreement between the proceeding panel and the council or general

⁴¹⁰ This paragraph entered into force on 1 February 2020.

⁴¹¹ This paragraph entered into force on 1 February 2020.

⁴¹² This paragraph entered into force on 1 February 2020.

council the Public Procurement Arbitration Board shall publish information of the new opinion of the general council or the modification of the opinion on the homepage of the Public Procurement Authority.

6. The public procurement commissioners shall pursue their enforcement activities in line with the opinions issued by the general council.

7. Rules pertaining to the operation of the councils and the general council are laid down by the organisational and operational regulations of the Public Procurement Arbitration Board.

Review of decisions taken by the Public Procurement Arbitration Board

Article 169

1. If, based on GPAP, an individual review shall be available against the decree, the petition shall be submitted to the Public Procurement Arbitration Board within eight days of delivery of the decree. The Public Procurement Arbitration Board shall forward the application, including the documents of the case, to the court without any delay upon receipt.⁴¹³

2. No judicial review shall lie from the court ruling adopted in the administrative proceeding initiated against the individually appealable decree of the Public Procurement Arbitration Board.

Article 170

1. The entity or individual defined in Article 152 has the right to initiate an administrative proceeding against the substantial decision of the Public Procurement Arbitration Board. The reason for initiating the administrative proceeding shall not only be the infringement of the Public Procurement Arbitration Board, but that circumstance as well if according to the claimant the Public Procurement Arbitration has not evaluated, qualified accordingly the previous procedure, decision of the requested with regard to the provisions of this Act.⁴¹⁴

2. The claim may only be submitted to the Public Procurement Arbitration Board within fifteen days from the receipt of the decision.⁴¹⁵

3. The Public Procurement Arbitration Board shall forward the application to the court within ten days of receipt. The Public Procurement Arbitration Board may also forward the documents of the case to the court in their electronic copy form produced from the system stipulated in Article 40(1).⁴¹⁶

4.⁴¹⁷

Article 171

1. The court shall send the bill of indictment to the claimant within eight days the most. The court may call upon the contracting authority of the procurement case to make the data accessible in regard to the data available in the system stipulated in Article 40(1), and the contracting authority shall fulfil this without any delay.⁴¹⁸

2. If the application contains a request for the order of the suspensory effect of submission of the application, the court shall make a decision about the application within five days following the receipt of the application at the court.

⁴¹³ This amendment entered into force on 1 January 2018.

⁴¹⁴ This amendment entered into force on 1 January 2018.

⁴¹⁵ This amendment entered into force on 1 January 2018.

⁴¹⁶ This amendment entered into force on 1 January 2018.

⁴¹⁷ This paragraph was repealed on 1 January 2018.

⁴¹⁸ This amendment entered into force on 1 January 2018.

3. An eight-day time limit the most may be provided in the proceeding to supply the missing information and, in a justified case, it may be extended on one occasion by eight days the most.

Article 172

1. If the court amends the decision of the Public Procurement Arbitration Board, including the amount of the fine, it may apply the legal consequences stipulated in Article 165 (3) and (6).⁴¹⁹

2. If the court states the committal of the infringement under Article 137(1), in the scope of amendment of the decision of the Public Procurement Arbitration Board, it shall assess the applicability of Article 137(3) ex officio and shall state, in its decision, that the contract is null and void in regard to the infringement or that the contract is not null and void in regard to the fulfilment of the conditions under Article 137(3).

3. If the court states, in accordance with paragraph 2, that the contract is not null and void in regard to the fulfilment of the conditions under Article 137(3), it shall impose a fine amounting to 15% of the value of the contract the most, having regard to all the circumstances of the case.

4. If, in the case of stating infringement stipulated in Article 137(1), the court states the invalidity of the contract, it shall assess at the same time whether or not the condition prevailing before contracting could be restored in its nature, in regard to the character of the services provided. If the court states that the original condition cannot be restored in the course of applying the legal consequences of invalidity of the contract, it shall impose a fine amounting to 15% of the value of the contract the most, having regard to all the circumstances of the case.

5. If there is no need to conduct a procedure of evidence or in the case of a procedure without a hearing, the court shall decide within a sixty-day time limit,

6. No appeal shall lie from the ruling of the court except where the decision of the Public Procurement Arbitration Board is reversed by the court.

7. The court shall put down its ruling in writing within fifteen days of the adoption thereof and shall send it to the parties.

Article 173-174⁴²⁰

Civil action for stating the invalidity of a contract modification

Article 175

1. If, on the basis of the outcome of the official control according to Article 187(2)(j), the Public Procurement Arbitration Board establishes that the contents of the contract are likely to violate Article 142(3), it shall bring an action with a view to declaring the modification of the contract invalid and applying the legal consequences of invalidity. The Public Procurement Authority is entitled to exemption from all court costs.

2. The Public Procurement Authority shall initiate the action set out in paragraph 1 within thirty days counted from the completion of the control, i.e. from the delivery of the minutes concerning the control. In the case of failing to meet the time limit, a certification may be presented in accordance with the provisions set out in the Act on Civil Procedure.⁴²¹

3. The Public Procurement Authority shall publish a notification about initiating the action set out in paragraph 1 on its homepage. The notification shall contain the naming of the case in question (if

⁴¹⁹ This amendment entered into force on 1 February 2021.

⁴²⁰ This article was repealed on 1 January 2018.

⁴²¹ This amendment entered into force on 1 January 2019.

appropriate, the indication of the related procurement procedure), the date of submission of the claim and the naming of the parties to the proceedings.

4. If the court states the invalidity of the contract modification on the grounds specified in Article 142(3) in the legal action pursuant to paragraph (1), it shall enforce the legal consequences of ineffectiveness in compliance with the provisions laid down in the Civil Code, furthermore, it shall impose a fine the amount of which shall be – taking into consideration all the circumstances relevant to the case – not more than fifteen percent of the value of the contract.

Article 176⁴²²

Other civil actions related to public procurements

Article 177

1. With the exception of the case covered by Article 175(1) and the cases under paragraph 3, any claim in civil law related to the legal consequences of becoming null and void due to the infringement under Article 137(1) and any other claim in civil law grounded on an infringement of legislation applicable to public procurement or to the procurement procedure shall be admissible on condition that the null and void character of the contract and, for any other claim in civil law, the infringement has been finally stated in a legally enforceable decision by the Public Procurement Arbitration Board, or in the course of the administrative proceeding earlier conducted against the decision of the Public Procurement Arbitration Board, by the court, lacking which the court shall reject the application in its ruling.⁴²³

2. If tenderers only claim the reimbursement of their costs (damages) incurred in the preparation of a tender and in relation to their participation in a procurement procedure from the contracting authority, it is sufficient to prove for the enforcement of such a claim that

- a) the contracting entity has violated a legislative provision applicable to public procurement or the procurement procedure,
- b) they have had a real chance of winning the contract and
- c) the infringement has adversely affected their chance of winning the contract.

3. The provisions laid down in paragraph 1 shall not apply, if the enforcement of a claim in civil law – or a reference made to the invalidity of the contract – is grounded on the infringement of the provisions stipulated in Articles 133-135, 138-140 and Article 142(3) or any other provision set out in this Act or in the related decrees concerning the content elements of the contract.⁴²⁴

4. An action for establishing the invalidity of contracts due to infringement of regulations applicable to public procurement or for the application of the legal consequences of invalidity may be brought by tenderers not winning the contract and participating in the procurement procedure concerned, only if the tenderer proves that he has a direct legal interest in relation to the invalidity of the contract. The mere fact that the tenderer has submitted a valid tender in the procurement procedure shall not itself serve as the basis for the direct legal interest. In the absence of an obligation to conclude the contract under the PPA, the court shall not impose, merely based on the decision closing the procurement procedure, an obligation on the contracting authority to conclude the contract.⁴²⁵

5. In the case of the infringement under Article 137(1), in addition to stating the prerequisites stipulated in Article 165(2g), (7a)-(7b), any other claim in civil law related to the legal consequences of invalidity of the contract may be open for enforcement in civil action. The decision of the Public Procurement Arbitration Board or the court acting in the administrative proceeding against the decision of the Public Procurement

⁴²² This article was repealed on 1 January 2018.

⁴²³ This amendment entered into force on 1 January 2018.

⁴²⁴ This amendment entered into force on 1 January 2019.

⁴²⁵ This amendment entered into force on 1 January 2018.