
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 5

Remedies

CHAPTER 2

Applications to the court

Grounds for ineffectiveness

60.—(1) There are two grounds for ineffectiveness.

The first ground

(2) Subject to paragraph (3), the first ground applies where the concession contract has been awarded without prior publication of a concession notice in the Official Journal in any case in which these Regulations required the prior publication of a concession notice.

(3) The first ground does not apply if all the following apply—

- (a) the contracting authority or utility considered the award of the concession contract without prior publication of a concession notice in the Official Journal to be permitted by these Regulations;
- (b) the contracting authority or utility has had published in the Official Journal a voluntary transparency notice expressing its intention to enter into the concession contract; and
- (c) the concession contract has not been entered into before the end of a period of at least 10 days beginning with the day after the date on which the voluntary transparency notice was published in the Official Journal.

(4) In paragraph (3), “voluntary transparency notice” means a notice which is in the standard format set out in Annex XII to Commission Implementing Regulation (EU) 2015/1986⁽¹⁾ as amended from time to time and which contains the following information—

- (a) the name and contact details of the contracting authority or utility;
- (b) a description of the object of the concession contract;
- (c) a justification of the decision of the contracting authority or utility to award the concession contract without prior publication of a concession notice in the Official Journal;
- (d) the name and contact details of the economic operator to be awarded the concession contract; and
- (e) where appropriate, any other information which the contracting authority or utility considers it useful to include.

The second ground

(1) OJ No L 296, 12.11.2015, p1.

- (5) The second ground applies where all the following apply—
- (a) the concession contract has been entered into in breach of any requirement imposed by—
 - (i) regulation 48,
 - (ii) regulation 56, or
 - (iii) regulation 57(1)(b);
 - (b) there has also been a breach of the duty owed to the economic operator in accordance with regulation 50 or 51 in respect of obligations other than those imposed by regulation 48 and this Chapter;
 - (c) the breach mentioned in sub-paragraph (a) has deprived the economic operator of the possibility of starting proceedings in respect of the breach mentioned in sub-paragraph (b), or pursuing them to a proper conclusion, before the concession contract was entered into; and
 - (d) the breach mentioned in sub-paragraph (b) has affected the chances of the economic operator obtaining the concession contract.