

OPINION

**of the European Union Affairs Committee
of the Senate of the Republic of Poland
concerning the proposal for a Directive of the European Parliament and of the Council
on the award of concession contracts
COM(2011) 897**

Pursuant to Article 7 (4) of the Act of 8 October 2010 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the Republic of Poland's membership of the European Union (Journal of Laws of 2010, No. 123, item 1395), the European Union Affairs Committee presents the following opinion on the EU legislative proposal, adopted at the sitting of 13 March 2012:

1. The European Union Affairs Committee of the Senate of the Republic of Poland (EUAC) supports the regulation of the rules for the award of works and service concessions in the EU law. This should increase legal certainty, as well as openness of tendering procedures aimed at selecting a concessionaire.

2. However, the EUAC is of the opinion, that in adopting the directive, balance should be maintained between the need to establish a common framework for the award of concessions and the need to maintain a flexible process of selecting the concessionaire_suitable for the particular concession. The way of selecting the concessionaire should be as much informal and flexible as possible while maintaining the rules applicable to the award of concessions identified in the relevant case law of the European Court of Justice. Less stringent formal requirements are justified, first of all, by the fact that, contrary to traditional public procurement, the payment made to a concessionaire does not come entirely from public funds, and the economic risk of success is taken by a private entity. Secondly, due to the nature and large variety of concession contracts, a flexible approach will allow the concessionaire selection method to be better adjusted to the needs of a specific contract.

3. The EUAC opposes the copying of public procurement provisions in a directive on concessions, and supports the application of *the light touch* approach in the further work on the proposal.