

EN

E-001215/2025

Answer given by Executive Vice-President Séjourné
on behalf of the European Commission
(23.5.2025)

Under Article 43(1)(a) of Directive 2014/23/EU¹, concessions may be modified during their term without a new procurement procedure where the modifications, irrespective of their monetary value, have been provided for in the initial concession documents in clear, precise and unequivocal review clauses, which may include value revision clauses, or options. Such clauses shall state the scope and nature of possible modifications as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession.

In line with Article 291(1) of the Treaty on the Functioning of the European Union, the implementation of legally binding Union acts is in the first place the responsibility of the Member States. Pursuant to Article 19(1), second subparagraph, Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law. It is therefore for national courts and review bodies referred to in the Directives on remedies in public procurement² to assess the facts and determine whether the contracting authority respected its obligations under EU law.

Based on the information provided, it is not possible to assess whether State aid rules are complied with in the present situation. It however belongs to the Member State to assess whether the extension of a concession for a tolled motorway entails new aid and therefore requires a notification to the Commission.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0023>.

² Directive 89/665/EEC - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:01989L0665-20140417>; and Directive 92/13/EEC - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31992L0013>; as amended by Directive 2007/66/EC - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32007L0066> and Directive 2014/23/EU.