

**project**

Waterpark hotel

**concerns**

A practical guide to the pre-selection procedure

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Municipality of Lelystad

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## **1 Introduction**

As part of the further development of Bataviakwartier (*Kustvisie/Coastal Vision 2030*), the Municipality of Lelystad (Municipality) is envisioning the construction of a waterpark hotel with international allure. To this end, the Municipality is seeking a 'leisure operator', with experience in the operation of waterpark hotels, to acquire the land from the municipality and develop and operate the waterpark hotel at its own risk and expense. The Municipality is organising a public selection procedure for this purpose, preceded by this pre-selection.

This document covers the pre-selection. It contains further information on Bataviakwartier and the proposed waterpark hotel (Chapter 2), the procedure (Chapter 3), the requirements and criteria for pre-selection (Chapter 4) and which further conditions apply (Chapter 5).

ZRi (construction consultants) oversees the public selection procedure.

## 2 Project information

In this chapter, we provide further information on Bataviakwartier and the proposed waterpark hotel. We also outline the municipality's ambitions and requirements.

### 2.1 Development of Bataviakwartier

Bataviakwartier will be the designated leisure area in this part of the Netherlands, with its hinterland encompassing the metropolitan region of Amsterdam, Utrecht and Zwolle, among others. Its strengths include the bundling of amenities, thereby catering to everyone's taste, in combination with its strong and appealing area quality. The presence of three major amenities (Bataviastad, Batavialand and Bataviahaven), Bataviakwartier's waterfront location, and the currently available space mean that this district has lots of growth potential.

Bataviakwartier is a vibrant coastal hub. Its spatial design takes inspiration from the layout of a nearby neighbourhood, which is situated around the harbour basin. Whereas Bataviastad is currently a stand-alone development, the master plan connects Bataviahaven, Bataviastad and Batavialand to form a contiguous area, called Bataviakwartier. The district's pattern of streets and squares is enhanced by the construction of new (mainly) leisure programmes on any undeveloped spaces in the area. The boulevard is the link between the new development and the existing programme, creating an attractive public space where the emphasis is on accommodation and entertainment. Bataviastad will be extended to the waterfront with at its heart a square that is buzzing with hospitality establishments, attractions, and live entertainment. The promenade is flanked by greenery with an adventure programme, e.g., a climbing park and a waterfront amphitheatre. The boulevard deviates slightly from the dike route, lending it a distinctive character and accentuating the Waterfront's natural context.

### 2.2 Waterpark hotel

The waterpark hotel is an integrated concept in which a waterpark and a hotel are integrated into one coherent whole and where the whole is themed and developed to a high standard in such a way that it is a tourist-recreational facility of international allure. The waterpark hotel is centrally located within Bataviakwartier, between Batavia Stad Fashion Outlet, Batavialand museum and Bataviahaven on a plot of approximately 2 hectares. The municipality aims to achieve two goals by making a water park hotel possible: adding a new high-quality leisure facility to supplement the other leisure offering and ensuring recreational-tourism overnight accommodation capacity that allows visitors to stay in the Bataviakwartier 24/7. In the combination of both, the municipality aims to add a facility to the existing offering that will attract new target groups to Bataviakwartier. By requiring that there be an international allure, the municipality gives substance to the (inter)national image of Bataviakwartier as a whole.

### 3 Public selection with pre-selection

This chapter provides more information on the procedure.

#### 3.1 The rules

This procedure is based on the 'Handreiking implementatie van het arrest Didam in het gemeentelijke land(uitgifte)beleid ten behoeve van vastgoed- en gebiedsontwikkeling' (Didam Ruling) of November 2022. In addition to the roadmap set out in this ruling, the Municipality will start by organising a pre-selection.

This is not a tender procedure. The 2012 Dutch Public Procurement Act, the Proportionality Guide, etc. do not apply in this instance.

#### 3.2 The procedure in a nutshell

The first phase of the public selection procedure is the pre-selection phase, which is the subject of this guide. In this phase, all interested parties may submit an application. You must submit your application on time and meet the requirements. These requirements, along with the pre-selection criteria and the assessment methodology, are set out in Chapter 4. The information you must submit is provided in Annex 1.

If more than two interested parties meet these requirements, the pre-selection criteria will be used to determine which interested parties shall be invited to the selection phase. See Section 3.4 for more information about this phase.

#### 3.3 Pre-selection phase

This section provides a roadmap of the selection phase.

##### 3.3.1 Pre-selection document

The pre-selection documents, on the basis of which interested parties must submit their application, comprise:

1. information notices;
2. this guide to the pre-selection procedure;
3. brochure 'Lelystad City of Opportunities'.

In the event of conflicting information in the pre-selection documents, the pre-selection document with the lowest serial number shall take precedence. In the event of a conflict between two or more information notices, the most recent notice shall take precedence.

##### 3.3.2 Further information

The Municipality is happy to explain the pre-selection documents to interested parties. To this end, any interested party may submit a request, by e-mail to [waterparkhotel@lelystad.nl](mailto:waterparkhotel@lelystad.nl). A representative of the municipality will then contact the relevant interested party to provide the required information.

Should such an information session raise issues that give rise to a change in the pre-selection documents, the Municipality shall share them publicly along with an information notice. No report or equivalent shall be drawn up of this explanatory meeting.

##### 3.3.3 Questions

In addition to the explanatory session (Section 3.3.2), interested parties may also submit questions. This can be done by e-mail to [waterparkhotel@lelystad.nl](mailto:waterparkhotel@lelystad.nl). The planning schedule for the pre-selection phase (Section 3.5) lists the cut-off date for

questions and gives an indication of when any questions submitted will be answered. Answers shall be provided by means of an anonymised information notice.

No questions will be answered or information provided by telephone or in any other way, barring during the explanatory sessions (see par. 3.3.2).

#### **3.3.4 Submitting your application**

If you want to be considered eligible for selection, you must submit an application. This must be done in a timely manner. See Section 3.5 for the planning schedule of the pre-selection phase, which also lists the deadline for receipt of your application. Applications must be sent to [waterparkhotel@lelystad.nl](mailto:waterparkhotel@lelystad.nl). Receipt will be acknowledged, so you can be sure that your application has been received in good order.

#### **3.3.5 Submitting an application with others**

You may submit an application with others. You can form a combination ('partnership') with another person and/or rely on another person (a 'third party'). We explain how this works below.

##### **Partnership**

If you form a partnership, you must inform us of this in your application. The participants in the partnership must each submit a separate *Eigen Verklaring Uitsluitingsgronden*/Self-Declaration of Grounds for Exclusion (Annex 2). The remaining information must be submitted by the partnership as a whole. The conditions for notification as a partnership can be found in Section 5.2, Article 11.

##### **Third parties**

Any third parties you rely upon for this project must also be mentioned in the notification. Third parties must also separately complete and submit the *Eigen Verklaring Uitsluitingsgronden*/Self-Declaration of Exclusion Grounds (Annex 2). If you will be relying on a third party for this contract, you must be able to demonstrate, if required, that the resources of the third party on which you will be relying are effectively available to you should the contract for development be awarded to you.

#### **3.3.6 Announcement of the outcome of the pre-selection procedure**

After assessment of the applications, the Municipality shall inform all applicants simultaneously by e-mail about the outcome of the pre-selection process. This shall include:

- the number of (valid) applications;
- the number of points obtained by the candidate for the pre-selection criteria (total and per selection criterion);
- the candidate's ranking with respect to other suitable candidates;
- the company name (or company names in the event of a notification of a partnership) of the selected candidates.

#### **3.4 The selection procedure**

If one or two (valid) applications are submitted in the pre-selection phase, these candidates shall be invited to the selection phase. In the event of three or more (valid) applications, the two interested parties with the highest scores for the selection criteria in the pre-selection phase will be invited to the selection phase. Upon invitation for selection, the candidates will receive the guide to the selection procedure, which sets out the selection criteria. These criteria follow from the criteria for the pre-selection procedure.

In addition to the guide to the selection procedure, candidates shall receive the following documents (in any event) at the start of the selection phase:

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- model agreement for the purchase and development of the site, incl. general terms and conditions of sale of the Municipality of Lelystad<sup>1</sup>;
- the 'plot passport';
- other relevant site details / requirements for the waterpark hotel.

During the selection phase, two dialogues will be organised for each candidate, the outline of which is as follows:

- dialogue 1: reception in Lelystad, further introduction, site visit, and exchange of information;
- dialogue 2: at a venue to be determined by the candidate, with an emphasis on a substantive exchange of information.

The information exchanged in the dialogues with market players should give them a better understanding of the mission at hand, giving rise to better concepts. That is why we will organise individual interviews with the candidates. We will only share information that is exchanged and obviously of interest to the other candidate with all the parties. This applies in particular to any changes/additions/further specification of information provided. That way, a level playing field is maintained without sharing the candidate's ideas.

Price (land bid) is not a criterion in the selection procedure. This will be determined in advance and announced at the start of the selection phase, ensuring that the market player with the best concept wins. The concepts shall consist of a concise, project-specific textual description, supplemented with reference images and/or atmospheric impressions, as well as a breakdown of their financial feasibility. The concepts will be assessed against criteria that follow from the criteria applied in the pre-selection procedure, such as:

- added value of the concept for the area, in terms of:
  - programme and theme;
  - appearance;
- the concept's financial feasibility.

The public selection procedure will be followed by a next phase in which the market party with the best concept elaborates this concept. Further feasibility studies will also be conducted in this phase, in anticipation of the actual sale of the land and the waterpark hotel's further development. The (model) agreement that will be provided to the candidate at the start of the selection phase will include further details about this phase, as well as who bears the costs for it, in particular if the project is cancelled for any reason. In the elaboration phase, the new electricity connection is a point for attention, especially for planning reasons, due to grid congestion.

### 3.5 Planning schedule of the pre-selection phase

|   | Activity                               | Date/term                                                            |
|---|----------------------------------------|----------------------------------------------------------------------|
| 1 | Public announcement                    | September 13, 2023                                                   |
| 2 | Explanatory sessions (optional)        | No later than October 30, 2023                                       |
| 3 | Submission of requests for information | No later than November 7, 2023                                       |
| 4 | Dispatch of an information notice      | No later than November 14, 2023                                      |
| 5 | <b>Submission of applications</b>      | No later than November 28, 2023 at 12.00 PM (Dutch / Amsterdam time) |
| 6 | Assessment of applications             | November 28 till December 20, 2023                                   |

<sup>1</sup> <https://www.lelystad.nl/4/financien/Algemene-verkoopvoorwaarden-2018-van-de-gemeente-Lelystad.html>[https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&ved=0CAIQw7AJahcKEwlvpWK26H\\_AhUAAAAAHQAAAAAQAg&url=https%3A%2F%2Fwww.lelystad.nl%2F4%2Ffinancien%2FAlgemene-verkoopvoorwaarden-2018-van-de-gemeente-Lelystad.html&psig=AOvVaw3GdKK8NHtEol1r0fCXK-yX&ust=1685696512670371](https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&ved=0CAIQw7AJahcKEwlvpWK26H_AhUAAAAAHQAAAAAQAg&url=https%3A%2F%2Fwww.lelystad.nl%2F4%2Ffinancien%2FAlgemene-verkoopvoorwaarden-2018-van-de-gemeente-Lelystad.html&psig=AOvVaw3GdKK8NHtEol1r0fCXK-yX&ust=1685696512670371)

|   |                                                            |                   |
|---|------------------------------------------------------------|-------------------|
| 7 | Announcement of the outcome of the pre-selection procedure | December 21, 2023 |
| 8 | Objection period pre-selection result                      | 20 calendar days  |

The date listed under point 5 is a cut-off date. This means that any late submission will not be processed.

The following indicative schedule applies to the selection phase:

|   | Activity                                  | Term                       |
|---|-------------------------------------------|----------------------------|
| 1 | Start of selection phase                  | Beginning of February 2024 |
| 2 | Submission of concept                     | Beginning of June 2024     |
| 3 | Review                                    | June 2024                  |
| 4 | Correspondence about the selection result | Beginning of July 2024     |
| 5 | Objection period selection result         | 20 calendar days           |

## 4 Formalities and pre-selection criteria

### 4.1 Formalities

#### *Completeness*

All applications shall be assessed for completeness. Missing information may lead to the applicant's exclusion from further proceedings. Annex 1 contains a summary of information that the application should contain as a minimum.

#### *Grounds for exclusion*

After the application is assessed for completeness, the municipality checks whether the grounds for exclusion apply. An *Eigen Verklaring Uitsluitingsgronden*/Self-Declaration of Grounds for Exclusion (see Annex 2) is used to determine whether the candidate can be admitted to the further procedure. If the application is submitted by several companies together (in combination or by relying on third parties), each of these companies must submit an individual Self-Declaration of Reasons for Exclusion, see also Section 3.3.4. . Prior to the selection phase, the Municipality may ask applicants to submit the supporting documents listed in the Self-Declaration of Grounds for Exclusion. In such case, these must be submitted within a period of ten (10) working days.

#### *Minimum requirements*

After the assessment based on grounds for exclusion, an assessment shall be done based on minimum requirements. By submitting an application, each applicant declares that it meets the minimum requirements below.

1. Applicants should be able to provide at least one reference of the development and operation of a waterpark of at least 1 hectare **or** 200,000 visitors/year.
2. Applicants should be able to provide at least one reference of the development and operation of a hotel with at least 3 stars **and** 100 rooms.

The supporting documents to be submitted for these minimum requirements are free-format. The documents must, however, prove that these minimum requirements are met. For the sake of completeness, we would like to remind candidates that these are two separate requirements. The water park (minimum requirement 1) and the hotel (minimum requirement 2) must not be combined in other words. It is, of course, allowed.

### 4.2 Pre-selection criteria

In the pre-selection phase, the Municipality will ask applicants to submit a concise and detailed motivation (maximum 500 words<sup>2</sup>, setting out their experience with similar developments/projects and demonstrating their affinity with the waterpark hotel. The contents of this motivation document are free-format. Candidates may provide images of reference projects, for example. The only requirement is the number of words.

The motivation document shall be assessed on the basis of the following criteria (with both having equal weighting).

| # | Criteria                                                                                                                                                    |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Experience<br><i>The extent to which the motivation provides information about concrete and demonstrable experience with similar developments/projects.</i> |
| 2 | Affinity<br><i>The extent to which the motivation provides information about the candidate's concrete and demonstrable affinity with a waterpark hotel.</i> |

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<sup>2</sup> Any content beyond the 500-word limit shall not be assessed.

The assessment committee, which consists of representatives of the municipality and its advisers, shall assess all motivations on the basis of the aforementioned criteria, allocating consensus-based scores (between 1 and 10, in whole numbers) for each criterion. The scores for each criterion shall be added up to arrive at the total score. The maximum score is therefore 20 points.

#### **4.3 Final score pre-selection**

The scores for the two criteria shall be tallied up to reach at the final score. The two participants with the highest final scores will be invited to the selection phase. If several candidates tie for second place, the scores for criterion 1 and criterion 2 shall act as a tiebreaker, in that order. In the utmost case, a draw will be organised to designate the second candidate.

## 5 Complaints procedure and other conditions

### 5.1 Complaints

If a candidate has a complaint, they should initially use the opportunity to ask questions (see Section 3.3.3). Any complaints that are not first raised at this opportunity (to the extent that they could have been) shall not be considered by the complaints hotline. If a candidate is not satisfied with the response to the complaint or the complaint arises after the publication of the information notice, the candidate can submit its complaint in accordance with the Municipality's complaints procedure, see the municipality's website (<https://www.lelystad.nl/klacht>). Submitting a complaint does not oblige the Municipality to suspend the procedure.

### 5.2 Other conditions

#### Article 1 – contract language

The contract language is Dutch. Dutch or English will be used in all correspondence and during consultations.

#### Article 2 – consent to the procedure

1. By submitting an application, the candidate fully agrees to the provisions, conditions and procedure of this pre-selection, as set out in the pre-selection documents.
2. If, in the candidate's opinion, the pre-selection documents contain obvious contradictions, inaccuracies, or ambiguities, the candidate must report this to the Municipality as soon as possible. In any event, the candidate must notify the Municipality of any apparent inconsistencies, inaccuracies, or ambiguities by e-mail or letter to the municipality's contact person no later than two weeks before the application deadline. After this date, the candidate may not rely on manifest contradictions, inaccuracies or ambiguities in the pre-selection documents that should reasonably have been observed by the candidate.

#### Article 3 – application

1. Applicants can apply once-only, independently or as part of a partnership (partner).
2. The Municipality shall invite no more than one (subsidiary) company or branch per group/concern to the selection phase, unless the relevant candidates can demonstrate that the aforementioned relationship has not and will not influence their conduct in this procedure. Participation of several subsidiaries/companies and/or branches per group/concern in one joint venture (see Article 11) is permitted, however.

#### Article 4 – termination of the procedure

The Municipality reserves the right to stop, suspend, or terminate all or part of the pre-selection and/or selection procedure, without stating any reason, without reimbursement of costs to candidates temporarily or permanently.

#### Article 5 – changes to the procedure

The Municipality reserves the right to make limited changes and/or additions to the procedure during the proceedings, while always exercising restraint.

#### Article 6 – Validity

1. The Municipality reserves the right to declare any application that does not comply with the provisions of the guide to the pre-selection (including its annexes) invalid.
2. The Municipality is entitled but not obliged to check the submitted information for accuracy. The Municipality may require an applicant to provide further information with respect to their application and/or provide supporting documents.
3. The Municipality reserves the right to complete an incomplete application (or have it completed).
4. The Municipality reserves the right to declare any application to which one or more conditions are attached invalid.
5. A notification not submitted on time (before the date and time specified in Section 3.5) is invalid.

**Article 7 - applicable law**

This pre-selection procedure is governed exclusively by Dutch law.

**Article 8 - assessment committee**

Candidates may not contact members of the assessment committee with respect to the present procedure, except in the context of an explanatory session (Section 3.3.2). If a candidate seeks to contact members of the assessment committee with the intention of improperly influencing the procedure and/or assessment of applications, the Municipality may decide to exclude this candidate.

**Article 9 - compensation**

1. In the pre-selection phase, candidates are not entitled to compensation.
2. In the selection phase, applicants are not entitled to compensation.

**Article 10 – objection to the outcome of the pre-selection procedure**

1. If a candidate objects to the outcome of the pre-selection procedure, said candidate must have instituted interlocutory proceedings against this decision within 20 calendar days of the date of the publication and notification in writing of the outcome of the pre-selection phase, by serving a writ of summons with the District Court of Midden-Nederland in Lelystad. The Municipality wishes to be informed by means of a copy of the summons.
2. Any requests for further clarification about the outcome of the pre-selection and any explanation provided thereafter by the Municipality shall not affect this expiry period. If, within 20 calendar days from the date of the notification, a writ of summons is served, the Municipality shall not act on its decision following the pre-selection phase before the court has given its judgement during the interlocutory proceedings, unless there is a compelling interest against it.
3. If interlocutory proceedings are not instituted within the aforementioned 20-calendar-day expiry period, any candidates who were passed over can no longer make any claim to pre-selection. Their rights in this respect shall also have expired after this period. In that case, the Municipality is free to act on the pre-selection decision that was published in writing. In that case, the rights of the remaining applicants to institute claims proceedings for damages in a suit (on the merits) shall also have expired.

**Article 11 – partnership**

1. The formation of new/other proposed partnerships by applicants is not allowed after submission of the application.
2. In case the winning bidder consists of several companies, the individual companies of the partnership shall have to accept joint and several liability for fulfilment of the partnership's obligations. The alliance must also jointly appoint one trustee who is fully and legally authorised to act on behalf of the alliance with respect to the Municipality. By submitting an application, the applicant declares its willingness to do this.

**Article 12 – waiting room option**

1. If, after the announcement of the outcome of the pre-selection, a selected candidate can no longer take part in the selection phase for any reason whatsoever, the Municipality shall be entitled, but not obliged, to admit the candidate ranked next in the pre-selection phase to the selection phase.
2. If the plot is not sold to the winner for any reason whatsoever, the Municipality is entitled, but not obliged, to sell the plot to candidate ranked next in the selection phase.

**Article 13 – reservations**

If applicable, the sale of the plot shall take place (first) subject to the irrevocability of the necessary decision in the spatial procedure that allows for development in planning terms, administrative approval, and/or a positive opinion from the National Bibob Bureau (Bibob = Dutch Public Administration (Probity Screening) Act).

## Annex 1: Overview application

*Note: Below you will find an overview of the information to be submitted when applying. An application is preferably submitted using this format as a (searchable) PDF. The application is free-format.*

- Cover page of your choice.
  - Contents.
  - Possibly an executive summary with a brief introduction.
- 1: Duly completed and validly signed Self-Declaration of Grounds for Exclusion see Annex 2 (of all the participating partners and also of any third parties).
  - 2: Supporting documents minimum requirements  
Reference of the development and operation of a waterpark of at least 1 hectare **or** 200,000 visitors/year.  
Reference pertaining to the development and operation of a hotel with at least 3 stars **and** 100 rooms.  
Supporting documents to be submitted are free-format.
  - 3: Motivation  
Concise and detailed motivation (maximum 500 words<sup>3</sup>), demonstrating experience with similar developments/projects and affinity with the waterpark hotel. The contents of this motivation document are free-format.  
Candidates may provide images of reference projects, for example. The only requirement is the number of words.

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<sup>3</sup> Any content beyond the 500-word limit shall not be assessed.

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## Annex 2: Self-declaration of Grounds for Exclusion

### General data

a. Company name:

represented hereinafter by:

b. Surname:

If applicable as a partner/third party (strike out what does not apply) as part of the following partnership:

c. Name of the partnership:

### 2 Ground for exclusion

The candidate should not be in one or more of the grounds for exclusion listed in points a to g below. If one or more of these grounds for exclusion apply to the candidate in a participation, the candidate shall be excluded from the further procedure.

The Municipality may exclude any entrepreneur from participation in the procedure:

- a. who is bankrupt or being wound up, whose operations have been suspended, who has entered into an arrangement with creditors, or who is in any analogous situation arising from a similar procedure under the laws or regulations of a Member State of the European Union<sup>4</sup> applicable to him;
- b. whose bankruptcy or liquidation has been petitioned or against whom proceedings for suspension of payments or composition or other similar proceedings are pending under the laws or regulations of a Member State of the European Union<sup>4</sup> applicable to him;
- c. against whom a court judgement which has the force of res judicata under the laws or regulations of a Member State of the European Union<sup>4</sup> applicable to him has been rendered, establishing an offence of e.g., participation in a criminal organisation, bribery, fraud, money laundering, terrorist offences/activities and/or child labour;
- d. who has committed serious misconduct in the exercise of his profession;
- e. who has not fulfilled his obligations with respect to the payment of social security contributions in accordance with the legal provisions of the country where he is established or of the Netherlands;
- f. who has not fulfilled his obligations with respect to the payment of his taxes in accordance with the legal provisions of the country where he is established or of the Netherlands;
- g. is guilty of serious misrepresentation in supplying or failing to supply the information which may be required as a result of public selection and/or tender procedures.
- h. who has been refused a licence on the basis of a negative opinion from the public administration (Bibob (Dutch Public Administration (Probity Screening) Act) or similar).

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<sup>4</sup> Or in the case of a company established outside the European Union, the laws and regulations of the country of establishment are comparable to those of a member state of the European Union.

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Are you a candidate participating in a procedure and do one or more of the aforementioned grounds for exclusion apply to you?

YES / NO

By filling out and signing this 'Self-declaration of Grounds for Exclusion', the Candidate indicates that he is willing and able to provide the supporting documents listed below within a period of ten (10) working days after a request to this effect has been sent to the candidate:

- for a and b, a declaration by the clerk of the competent court;
- for c and d, a Certificate of Good Conduct referred to in Article 28 of the Judicial and Criminal Records Act;
- for e, both for employee insurance contributions and national insurance contributions, a declaration from the collector responsible for collecting taxes from the candidate;
- for f, a declaration from the collector responsible for collecting taxes from the candidate.

Or for a company established outside the Netherlands or the European Union, the comparable supporting documents applicable to that country.

The supporting documents to be submitted may not be older than 1 year at the time of submission and must correspond with the actual situation in which the candidate finds himself at that time.

### 3 Signature

The candidate declares that all the information contained herein is truthful. Drawn up on

(date)

at

(location)

by

(name)

as the representative of

(company name)

signature: