

Public-Private Partnerships in Montenegro

Accountability, transparency and efficiency

Title

Public-Private Partnerships in Montenegro –
Accountability, transparency and efficiency

Publisher

Institute Alternative

Đoka Miraševića (“Kroling”) 3/3, Podgorica, Montenegro
tel/fax: (+382) 020 268 686
e-mail: info@institut-alternativa.org
web site: www.institut-alternativa.org

For publisher:

Stevo Muk, President of the Management Board

Project Associates

Stevo Muk, Jovana Marović, Jelena Džankić,
Milica Popović, Milica Dragojević, Marko Sošić

Translation

Jelena Džankić

Donor

The preparation of this study has been supported by the Foundation Open Society Institute –
Representative Office Montenegro (FOSI ROM)

Layout and printing

Studio Mouse total graphic center

Circulation

100

Foundation Open Society Institute – Representative Office Montenegro (FOSI ROM) shall not be responsible or liable for information and opinions expressed in this document. The opinions and views expressed in this document are the sole responsibility of the authors.

CONTENT

1. Research framework	7
1.1. The definition of public-private partnership	7
1.2. Subject and aims of research	7
2. Legal framework of public-private partnerships	9
2.1. Sources of EU law regulating PPP	9
2.2. International initiatives	10
2.2.1. European PPP Expertise Centre (EPEC)	10
2.2.2. Support for Improvement in Governance and Management - SIGMA ...	10
2.2.3. South East European Public Private Partnership Network	10
2.3. PPP legislation in Montenegro	11
2.3.1. Law on participation of private sector in the procurement of public services	11
2.3.2. Law on concessions	12
2.3.3. Law on foreign investment	14
3. Experiences of the neighbouring countries and EU Member States in PPP.....	15
3.1. The Czech Republic	19
3.2. The Republic of Croatia	21
4. Public-private partnership in Montenegro	22
4.1. National level	22
4.1.1. Valorisation of tourist locations	23
4.1.2. Concessions.....	24
4.1.3. Energy	26
4.1.4. Road infrastructure	29
4.2. Local level	31
4.2.1. Podgorica Municipality	31
4.2.1.1. PPP experience in the Capital City.....	31
4.2.1.2. Deficiencies in the implementation of the PPP model in Podgorica Municipality	32
4.3. Budva Municipality.....	33
5. Conclusions and recommendations:	36
6. Literature and sources	39
Documents:	40
Interviews:	41
Interlocutors:	41
Internet sources:	41
7. Appendices:	42
About us	46

Summary

Although the cooperation between the public and the private sector in developing infrastructural sites dates back to the eighteenth century, it has reached its global expansion and popularisation only in the last decade of the previous century. The intense interactive link between the technically more developed private sector and the public authorities is largely determined by the lack of funds for capital investment in state budgets.

Public-private partnerships (PPP) in Montenegro are increasingly used as a mechanism for covering the budget deficit. Moreover, the government has opted to intensify the use of this model in the privatisation process, thus 'opening' all the sectors to PPP. However, as PPP is still in its developmental stage in Montenegro, the projects that have been completed through public-private partnerships do not mirror the positive examples from other European countries. Additionally, although the legislative framework of PPP has been enhanced by the adoption of the 2009 Law on concessions, it is still not fully harmonised with the EU's directives regulating this area. The lack of harmonisation of legislative acts is most obvious in terms of the imprecise definition of concessions for public works. By the same token, the definitions of limited procedure and competitive dialogue have not been adequately transposed from the EU's directives.

Despite the relatively high number of PPPs that were realised in Montenegro, the access to information about the contracts concluded is extremely difficult. Thus, there is an obvious need for the establishment of a central register that would contain all the PPP contracts concluded so far. In tandem with the limited transparency of the entire process, there is also a lack of democratic control. The public has no access to the annual payment schemes for PPP projects, and the financial reports of concluded projects are unavailable. Delays in the work of the authority specialised in concessions – the Concessions Commission – is also manifest.

The implementation of PPP has significantly been burdened by the violation of legislative procedures and the preferential treatment of certain private companies, which contributes to the participation of different parties to the tender procedure on an unequal footing. The failure of certain tenders and the problems that have emerged with certain private partners confirm the premature selection of partners and the poor risk assessment of such contracts. Very often, the partners that were preferentially treated during the bidding impose contract conditions, which are accepted and implemented even when they manifestly violate laws. In addition, the details of certain PPP contracts assume the development of infrastructural sites on the locations that are not included in the Spatial Plans.

Montenegro hardly ever relies on the experience of other countries, while failing to participate to the South East European Public Private Partnership Network. The activities of this association should lead to common initiative, so that some common projects could be financed through the EU's special funds in the future.

At the local level, there is an obvious confusion in the distribution of competences for PPP in Montenegro. In some municipalities there are positions of 'exclusive negotiators' with foreign investors.

There is a growing interest in all Montenegrin municipalities for projects modelled after PPP. However, there are many municipalities where PPP has not been implemented so far.

1. Research framework

1.1. The definition of public-private partnership

Public-private partnership (PPP) is the cooperation between the public and the private sector with the aim to procure the financing, development, refurbishment, and management of infrastructural objects and the service sector. That is, PPP entails the financing of those projects and services that are traditionally procured by the public sector. The definition also entails a rational use of natural resources in allocating concessions.¹

The partnership between the public and the private sector is long-lasting. Within this partnership, the public sector and the private company cooperate in areas envisaged in contracts. The commonality of all PPP projects are the aims that they seek to achieve: the high quality of services, the realisation of general public interest and rational distribution of finances. The contract that regulates each PPP stipulates the details of the business arrangement and the means of financing by the private and (in part) by the public sector.² The interest in mutual in this type of cooperation: the public sector receives a quality service, while the private sector achieves financial gain. The success of PPP largely depends on the capability of the public sector to precisely define the results and the indicators of the project, while ensuring the implementation of the conditions of the contract and rationally distributing risks between the partners.

Although the term public-private partnership, and the very model that the term designates, are relatively new both in Montenegro and in the other countries in the region, this concept dates back to the eighteenth century. The PPP growth³ in the last decade has significantly been influenced by the lack of funds for capital investment in state budgets. Thus, PPP is beneficial for multiple reasons. Some benefits of PPP include: the establishment of private companies that indirectly contribute to economic development and the reduction of unemployment; the procurement of loyal competition, and thus of rational use of public funds that are directly financed through taxpayers' contributions; a better use of natural resources by conceding natural resources to private companies through concessions. Long term advantages of PPP are mirrored in the specialisation of work in the private sector.

1.2. Subject and aims of research

Like many other post-socialist countries, Montenegro is currently in a transition period during which the state structures are harmonised and adapted to the requirements stemming from potential membership to the European Union and NATO.⁴ The process of accession to the European Union is coupled by all-encompassing reforms and the transformation of the overall society that is of all the societal layers and levels.

¹ "Concession is the right to: 1. exploit a natural resource, a public good or another good in general use that is the property of the state or to conduct a business of public interest, with the payment of a concession fee by the concessionaire, or by the allocation of a financial reward, or another type of support to the concessionaire for the realisation of the corresponding public interest, 2. finance, research, project, develop or refurbish, use, maintain, revitalise and transfer objects, machines or plants, within the prescribed deadline, to be the property of the grantor, including other similar forms". Article 4 of the Law on Concessions of Montenegro, Official Gazette of Montenegro 08/09 dated 04/02/2009, p.2.

² The definition of public-private partnership and the main characteristics of this relationship are outlined in this paper in line with: Green paper on Public-Private partnerships and Community Law on Public Contracts and Concessions (presented by European Commission), Brussels, 30/04/ 2004, COM (2004) 327, p. 2

³ There are several different contractual forms of PPP: BOT - (Build, Operate; Transfer); BTO – (Build, Transfer, Operate); BOO – (Build, Own, Operate) - BBO – (Buy, Build, Operate); PFI (Private Finance Initiative) .

⁴ The accession of Montenegro to the European Union and NATO have been embedded in the key foreign policy priorities of the country

European integration reflects upon all the levels of the state. Thus, in addition to the substantive changes at the state level, local self-government and local administration will also undergo significant changes. Apart from the increase in the efficiency of the administration, and the enhancement of the capacity of the judiciary, these complex changes also entail the harmonisation of the complete legislative framework with the legislation of the European Union. Hence, the norms related to public-private partnership will also need to be harmonised.⁵

The field of PPP is in its developmental stage in Montenegro, and the projects of public-private partnership that have been completed significantly deviate from the positive examples from other European countries. This particularly relates to the “pioneer steps” in the realisation of these projects, but also to the numerous deficiencies in their implementation. The number of public-private partnerships in Montenegro is a relatively large one. However, despite the large number of partnerships that have been accomplished in the name of the overall public interest, there is no central register that would contain the details of the implementation of projects, or the names of the participants to tenders. The great media attention and different speculations that are presented to the public in relation to certain PPP projects point to a series of anomalies of this process in Montenegro. Therefore, this research will determine the level of activities in public-private partnerships at the state and the local levels. It will also point out the positive and the negative aspects of the process, while paying particular attention to transparency, accountability and monitoring of PPP in Montenegro at all stages of realisation of the projects. In addition to “successful” projects, a number of projects that were initiated and that were not completed within the set deadline will also be analysed, because the latter projects have created or risk creating negative consequences for the state and society.

The successful realisation of PPP assumes a precise legal framework for PPP. Clearly defined rules in this respect create favourable conditions for the diminishment of the margin for corruption at all stages of the realisation of the project. Consequently, one of the aims of this study is to point to the legal regulations related to public-private partnerships in the European Union and its Member States, while highlighting the absence of harmonisation of Montenegro’s legislation with the directives of the European Union. In addition, apart from examining the quantity and the quality of the legislation regulating PPP in Montenegro, this study will investigate the (dis)respect for the legislative procedures in realising projects modelled after PPP in this country.

As noted above, the financing of PPP is partly done through the state budget. Hence providing adequate, impartial and timely information to citizens about the activities financed through taxpayers’ contributions is essential. In order to create a clear picture about the direction of PPP in Montenegro, it is necessary to look at the models that were employed in other countries. Thus, one of the tasks of this study is to present projects that have been completed through PPP both in our country, and in the European Union’s Member States, and in other countries in the region. This study will highlight the examples of the Czech Republic and Croatia, because the former is an example of the gradual model of adaptation of a former socialist country to the PPP model of the EU, while the latter is interesting as it is Montenegro’s neighbouring country that possesses a specialised authority for coordinating PPP.

Finally, this study will offer recommendations for a successful, transparent and financially beneficial realisation of PPP in Montenegro.

⁵ *Acquis communautaire or Community Law*

2. Legal framework of public-private partnerships

2.1. Sources of EU law regulating PPP⁶

The European Union does not have a full or a separate legal source for public-private partnership. The general guidelines for the area of public-private partnership at the level of the EU have been arranged through the provisions enshrined in the Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community.⁷ Specific provisions have been stipulated in the Directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (No. 2004/17), and in the Directive on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (No. 2004/18). Apart from these directives, legal practice is also used as a source of law, i.e. the case law of the European Court of Justice: ECJ C-300/07; ECJ C-206/08; ECJ C-196/08; ECJ C-536/07; ECJ C-26/03; ECJ C-231/03, and the Opinion C-91/08.⁸

Within the legal system of the European Union, the so-called “Green Papers” are documents that have been created under the auspices of the European Commission, which present the stance of the EU towards a certain topic. Hence, the 2004 Green Paper on public-private partnerships and Community law on public contracts and concessions are of particular significance for this research. In addition to the definitions and elements of public-private partnerships outlined in the introduction to this study, the provision of the Directive 2004/18/EC that stipulates the introduction of a *competitive dialogue* as the next stage is also interesting. This dialogue exists when the public sector is unable to independently select the best solutions that it will enshrine in the text of the contract, and thus negotiates with at least three private partners. The competitive dialogue facilitates the definition of the elements of the project. Only upon the completion of this stage does the public sector invite private companies that were parties to negotiations to place their bids. Negotiating with multiple private partners ensures that the aims and the elements of the future contract are defined in the best possible way.⁹

In the area of concessions, the Green Paper on public-private partnerships and Community law on public contracts and concessions makes a difference in the obligations that the prospective Member States need to implement when transposing the EU norms to their national legislation. In the case of *concessions for public works* there are rules about the modes of advertising, in order to ensure fair competition to the interested parties, as well as obligations to determine the minimum timeframe for the placement of bids, i.e. applications for concessions. The minimum deadline is 52 days from the date of publication of the public call. The public sector subsequently selects its private partner.¹⁰

However, in cases of *concessions for services* there is the obligation only in relation to articles 43-49 of the Treaty on the EU, in relation to transparency, equal treatment, proportionality and mutual recognition.

6 A table showing the EU's legislation related to PPP is shown in the appendices to this study: *appendice 1*.

7 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, *Official Journal of the European Union*, 2007/C 306/01

8 The translations of the EU's directives and the judgments of the European Court of Justice are available at the Internet Website of the Croatian Agency for Public Private Partnership: <http://www.ajpp.hr/hr/okvir>

9 Green Paper on public-private partnerships and Community law on public contracts and concessions highlights that the competitive dialogue is an exception that is applied only in cases of extremely complex contracts.

10 Directive 2004/18/EC, art. 56-59

2.2. International initiatives

2.2.1. European PPP Expertise Centre (EPEC)¹¹

European PPP Expertise Centre was established through a joint initiative of the European Investment Bank and the European Commission on 16 September 2008. EPEC is an intermediary among the European Commission, European Union Member States, Candidate Countries, and the European Investment Bank. It was established EPEC in order to strengthen the organisational capacities of its public sector members to realise PPP. EPEC provides technical support, and the exchange of experiences about the best practice of PPP in the European Union Member States and in the Candidate Countries.¹²

2.2.2. Support for Improvement in Governance and Management - SIGMA¹³

SIGMA is a program of the European Union and the Organisation for Economic Cooperation and Development (OECD) initiated in 1992 to offer support to the reforms of public administration in the countries of Central and Eastern Europe. With the passing of the time, in line with the EU's policies towards the aspiring members and potential candidate countries, this initiative has been expanded to include other countries as well.¹⁴

The framework for the cooperation between Montenegro and SIGMA is enshrined in the EU's policies towards the Western Balkans, i.e. in the Stabilisation and Association Agreements. At present, SIGMA offers technical and expert support to Montenegro in the area of public administration reform and public procurement.¹⁵

2.2.3. South East European Public Private Partnership Network

South East European Public Private Partnership Network (SEE PPP Network) was founded on 25 September 2009 at the ministerial conference on PPP for the development of SEE infrastructure, held in Sarajevo under the aegis of the Regional Cooperation Council (RCC).¹⁶ The aim of this association is to assist the realisation of PPP projects in the countries of South East Europe by coordinating knowledge and expertise exchange in the region. Additionally, this network may finance some PPP through special EU funds for the Western Balkans. Projects aimed at strengthening energy efficiency, transport infrastructure and environmental protection are at the top of the priority list of SEE PPP Network.

Given that the Republic of Croatia is the only from among the countries of SEE that has an Agency for Public-Private Partnership, this entity acts as the temporary Secretariat of the SEE PPP Network. The representatives of Albania, Bosnia and Herzegovina, Greece, Croatia, Kosovo, Macedonia and Serbia have participated to the founding meeting, but not the representatives of Montenegro.

11 European Center for PPP Expertise

12 Montenegro will start cooperating with EPEC once it becomes a Candidate Country, which is the next stage in Montenegro's accession process, given that the country has concluded the Stabilisation and Association Agreement with the EU.

13 SIGMA - Support for Improvement in Governance and Management

14 In 2009 SIGMA cooperated with and offered expert assistance to three groups of countries: 1. Croatia, Macedonia and Turkey (Candidate Countries) 2. Albania, Bosnia and Herzegovina, Kosovo, Montenegro, and Serbia (potential candidate countries) 3. Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine (European neighbourhood).

15 Data available on the SIGMA Website:

http://www.sigmaweb.org/document/49/0,3343,en_33638100_33638200_44393713_1_1_1_1,00.html

16 The Regional Cooperation Council was officially initiated on 27 February 2008 as an extension to the Stability Pact for South Eastern Europe

2.3. PPP legislation in Montenegro

Public-private partnership in Montenegro is regulated by Law on participation of private sector in the procurement of public services¹⁷ and the Law on concessions.¹⁸ From 2002 to 2009, the Law on participation of private sector in the procurement of public services regulated the area of concessions as well. However, with the adoption of the 2009 Law on concessions, certain provisions of the Law on participation of private sector in the procurement of public services ceased to be applicable.¹⁹

2.3.1. Law on participation of private sector in the procurement of public services

The current provisions of this law are related to the increase in the participation of the private sector in the areas that are of general significance for the society. The law is applicable to all public institutions. The scope of application of the law also covers the exercise of public services in relation to leasing and management contracts, including build-operate-transfer (BOT) arrangements. In order to protect the public interest, the private investor has the duty to transfer the ownership over a certain site, after having completed its construction and used it for a pre-determined number of years. By doing business in line with the concluded contract, a private enterprise brings profit to the government or the municipality whose resource was exploited. The conclusion of a PPP is possible only on grounds of a public call made by a public institution.²⁰ Such a provision is in line with the principle of transparency and impartial competition.

Pursuant to the Law on participation of private sector in the procurement of public services leasing²¹ is available to the existing public infrastructure that requires repair, as well as for the existing public enterprises not requiring repair, or for infrastructure that will be of public use. The private investor bears the costs of insurance and maintenance, while the insurance agreement is integrated in the Lease Agreement. The investor or the operator is not allowed to benefit from subsidies, or to use the public funds for repair for personal gain. “With the aim of clearing any doubts, in terms of activities of the investor or the operator from the private sector, in line with this chapter of the law, activities undertaken in terms of procurement are conducted in line with the best and generally accepted private sector procurement practice”.²²

In line with this law, Management Agreements²³ are concluded with private consultants or private consulting agencies bound by the contract to offer management, legal, financial, technical, or supervision services. After the conclusion of the Management Agreement between a public institution and a private consultant/consulting agency a three-member commission for oversight is established in order to monitor the implementation of the contract. The commission needs to be approved by the government/parliament, municipality/line ministry, depending on whether a ministry, local self-government or enterprise concludes the agreement. The members of the commission are most commonly civil servants. The oversight commission approves the reports of the consultants or consulting agencies, and the copies are passed on to the Privatisation Council.

17 Official Gazette of the R. of Montenegro, No. 30/02 dated 26/06/2002

18 Official Gazette of the R. of Montenegro, No. 08/09 dated 04/02/2009

19 Provisions of chapters IV, VII, VIII, IX and articles 141, 142 and 143 Law on participation of private sector in the procurement of public services, as well as the provisions of other chapters related to concessions and BOT arrangements ceased to be applicable. Provisions of other laws regulating the allocation of concessions will not be applied if contrary to this law.

20 Art. 15 Law on participation of private sector in the procurement of public services

21 Ibid, art. 55-63

22 Ibid, art. 63-69

23 Ibid, art. 64-69

2.3.2. Law on concessions

In Montenegro, concessions are allocated in order to “realise the corresponding public interest, increase the employment, introduce new technology and secure an enhanced economic growth, and in order to secure profit for the conceding party; rational, cost effective, just and efficient exploitation of natural resources, goods in general use and other common goods; technical-technological advancement and provision of a single infrastructure system; advancement of activities that are a subject of the concession; construction, reconstruction and modernisation of objects that are significant for the provision of public services; competition in the field whereby the concession is allocated; protection and enhancement of the environment.”²⁴In order to ensure the transparency and fair competition in the process of allocating concession, the Law guarantees to the bidder to whom the concession has been allocated complete and correct information on the procedures, standards and criteria for the selection of the concessionaire, along with the information on the conditions of the offer. The process of allocating concessions is possible only on grounds of the procedure as stipulated in the Law on concessions. Similarly, the subject of concessions may be only those categories defined by law.²⁵

After the concession allocation plan is determined by the government or the municipality (depending on whether the plan is a national or a local one) on an annual level, it is published on the webpage. Before the adoption of the plan, which needs to be adopted by the end of the current year for the year ahead, the relevant authority is bound to organise a public debate.

The Law on concessions stipulates the maximum concession period of 30 years, when the concession has been allocated by the government or the parliament, and the maximum concession period of 60 years when the decision on the allocation of the concession has been adopted by the parliament.²⁶ The Law stipulates the possibility to extend a concession, for the period not exceeding half of the period stipulated in the original concession contract.

The government elects the president of the Concessions Commission and the Commission’s eight members for the period of five years with the possibility of a single re-election.²⁷ There are a certain number of functions that are incompatible with the function of the president or a member of the Concessions Commission, including: representatives, deputies, authorities in state organs, organisations and institutions, chief administrators, and heads of the organs of local administration.

Among the competences of the Concessions Commission is the deliberation and decision on the appeals of the participants to the process of allocating concessions. The Commission submits an annual report on its work to the government.

The process of allocating concessions assumes an initiative by the competent authority on grounds of a pre-determined plan. The concession is allocated on grounds of a public call, and a public competition either in an open, or a two-phase, or a shortened process.

²⁴ Law on concessions, art. 2

²⁵ Areas regulated by the Law on concessions are determined by art.6 of the law

²⁶ Law on concessions, art. 8, para.2

²⁷ The government elects the president and the members as follows: “president and one member are selected following a proposal of the ministry in charge of economic development; one member is selected following the proposal of the ministry in charge of finance; one member is selected following the proposal of the ministry in charge of agriculture, forestry and water management; one member is selected after a proposal of the Employer Association; one member is selected after the proposal of the Association of Municipalities” – art. 10, para. 3, Law on Concessions.

The open public bidding is implemented by an ad hoc tender commission. The number of members of this commission is always odd, and they are appointed by the competent authority.²⁸ Depending on the subject of the concession, there are different criteria for evaluating the bids.²⁹ The deadline for the delivery of the ranking to the competent authority is 30 days from the date when the bids were opened.³⁰ The final decision on the allocation of the concession is adopted by the conceding authority (government, parliament, or municipality), within a month from the date of the delivery of the ranking by the tender commission.

The two-phase procedure consists of two phases of “competition” and bidding for concessions. The first phase is a qualifier.

For the concessions lasting for up to three years, the so-called shortened process with no public debate is implemented. The deadline for the delivery of bids in this process is 15 days, and the deadline for the establishment of the ranking of bidders is 20 days. The provision stipulating the possibility not to have the legal obligation to have a public debate in the shortened process is a novelty in the Montenegrin legislation. The compulsory public debate existed until 2009.³¹

The Concession Contract is concluded within 15 days from the date of the decision on the allocation of the concession.

Both the Law on concessions and the Law on participation of private sector in the procurement of public services contain provisions on the prohibition of conflict of interests, in addition to guarantees of transparency and non-discrimination on any grounds. As such, they are compatible with the general public interest. Moreover, both laws prohibit the participation in public bidding to all natural and legal persons that have declared bankruptcy.

The Law on concessions stipulates that the deadline for the delivery of the qualifying documentation may not be shorter than 20 days from the date of publication of the public call.³² The Law on participation of private sector in the procurement of public services stipulated the deadline of 45 days from the date of publication of the public call.³³

Although the Law on concessions adopted in 2009 is an improvement compared to the previously existing legislation regulating this area, not all of its provisions have been harmonised with the EU’s directive on concessions. The activities of SIGMA in Montenegro, in terms of securing assistance for the reform of the public procurement sector, also entail the annual reports on the progress in this area. In the 2009 report,³⁴ it has been noted that certain articles of the Montenegrin Law on concessions do not comply with the basic conditions of the EU in this area, particular in relation to definitions and procedures.

28 *Law on concessions, art. 26*

29 *Ibid, art. 29 “(1) The criteria that are used to evaluate the bids, depending on the subject of the concession, include: 1) the duration of the concession; 2) the amount of the concession fee; 3) the price offered, i.e., the service tariff; 4) bidder’s references (technical and/or financial conditions, experience in concessions, etc.); 5) the quality of services; 6) the degree of realisation of public interest; 7) the degree of exploitation of natural resources; 8) effects on employment, infrastructure and economic development; 9) degree of environmental protection, and the advancement of energy efficiency; 10) degree and amount of expected financial aid and support by the conceding party; 11) other criteria determined by the conceding party. (2) The tender documentation determines the amount of points allocated for each criterion. The sum of all points is 100.”*

30 *This deadline can be extended upon the request from the tender commission, or after a public call.*

31 *Law on participation of private sector in the procurement of public services required that public debates are organised for all concessions regardless of their duration. This is visible from art. 74 of this Law, stipulating that each concession contract concluded on grounds of art. 73, which is concluded without the consent of the bearer of the concession, and publication in the “Official Gazette of the Montenegro” and without public debate will be considered null and void.*

32 *Law on concessions, art. 38, para. 7*

33 *Law on participation of private sector in the procurement of public services, art. 37*

34 *SIGMA - Montenegro Public Procurement System, Assessment May 2009, pp. 3-onwards*

In addition to the criticism related to the lack of derived legislation that would regulate concessions, the recommendations of the report highlighted the lack of clarity in differentiating the terms of the concession contracts and public contracts that refer to public procurement. Furthermore, SIGMA's 2009 report outlines that the new Law on concessions lacks precision in defining concessions for public works, while the definitions of limited procedure and competitive dialogue were not adequately transposed from the EU's directives.³⁵

Since the entry into force of the Law on concessions on 12 February 2009, the following derivative acts have been adopted:

1. Regulation on the guidelines for the implementation of the public tender in the open two-tiered concession allocation process No. 67/2009 dated 7 October 2009;
2. Guidelines on the content and management of the register of concession contracts No. 47/2009 dated 24 July 2009.

However, no regulation has been adopted as of yet, in relation to art. 61 (2) of the Law on concessions, regulating the minimum concession fee.

The 2010 SIGMA report outlines the same shortcomings of the Law on concessions as the 2009 report, with the exception of the adoption of the abovementioned derivative legal acts.³⁶

2.3.3. Law on foreign investment

Public-private partnerships are an opportunity for the state/public authorities to use planned action and private capital to revitalise the infrastructure of the state despite the lack of funds from the state budget. PPP is also a chance for the foreign companies to make their "debut" on the market and collect significant profit. Hence, the Law on foreign investment³⁷ is also particularly significant for PPP, as it regulates the mode in which a foreign natural or legal person may establish an enterprise or invest in one, i.e. buy a company or a part thereof by purchasing that company's shares,³⁸ under the same conditions as a domestic person. The foreign investor may invest through lease agreement, franchise, management and sale of real estate, and may also construct on grounds of BOT arrangement or a concession.³⁹

Pursuant to the Law, when the Government of Montenegro is one of the contracting parties, it will not have rights exceeding the ones of the other contracting party.⁴⁰

³⁵ Pursuant to art. 39 of the Montenegrin Law on concessions, the competitive dialogue is implemented when the competent authority does not have the best project solution, and thus opens the qualifiers for the selection of the bidders. Dialogues with a large number of bidders may take place in different stages, thus reducing the number of bidders, until the decision "corresponding to the needs stipulated in the public call" is reached (art. 39, para.5). The decision reached will become integrated in the concession act that will be forwarded to the qualified bidders along with the tender documentation, with the aim of receiving the final bids.

³⁶ SIGMA, *Montenegro assessment 2010*, p. 108

³⁷ *Official Gazette of R. of Montenegro*, No. 52/00

³⁸ *Law on foreign investment*, art. 5

³⁹ *Law on foreign investment*, art. 12 and 13

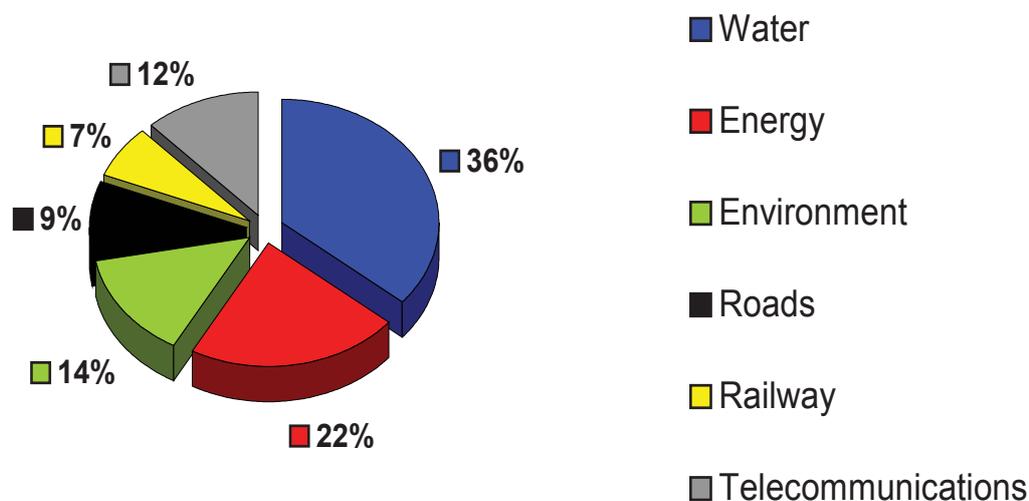
⁴⁰ *Ibid.*, art. 28

3. Experiences of the neighbouring countries and EU Member States in PPP

Public-private partnerships have been applied as a privatisation model in Europe and worldwide only in the past twenty years. 300 billion dollars have been invested into infrastructure through PPP and concessions, in the past five years only.⁴¹ These data point to significant infrastructure investment, although this model was not applied everywhere in the same fashion, particular in the Member States of the EU. Namely, there are significant differences in PPP projects completed in the territory of the “old” member states compared to the countries that entered the EU in 2004 or 2007. The main reason for such a difference is the fact that the 15 Member States⁴² have jointly been integrated in the EU long before the accession of the post-communist bloc. Hence, the old Member States have had a longer experience in using the EU’s structural funds.⁴³ Owing to the longer use of the funds from the EU’s budget, these countries nowadays require less infrastructural investment. Conversely, the public sector of the transitional countries is undergoing a deep crisis, and it is deemed that the prospective infrastructural investment in these countries exceed 500 billion euros.⁴⁴ The EU has allocated 180 billion euros for this purpose within its program from 2007 to 2013.⁴⁵

Hungary has shown a major interest In PPP, which is comprehensible given the high budget deficit of this country in recent years. Hungary implements PPP in different areas: construction of sports complexes, hostels, road and rail infrastructure, waste water management, etc.

Table 1:⁴⁶ The needs for infrastructure investment in CEE: overview by sector



41 “Javno privatna partnerstva u regionu”, Pricewaterhouse Cooper, Interexpo, November 2009, p. 3

42 France, Germany, Italy, Belgium, the Netherlands, Luxembourg, the United Kingdom, the Republic of Ireland, Denmark, Greece, Spain, Portugal, Austria, Finland and Sweden.

43 The EU has structural and cohesion funds, the former are used for social and economic development, while the latter are employed for the enhancement of the quality of the environment.

44 “Javno privatna partnerstva u regionu”, Pricewaterhouse Cooper, Interexpo, November 2009, p. 3

45 The EU provides significant financial support to the transitional countries that are in the process of EU accession. These funds are equal to 30% of the total amount of funds financing the project that is realised through PPP.

46 “Javno privatna partnerstva u regionu”, Pricewaterhouse Cooper, Interexpo, November 2009, p. 6

By looking at the way the EU countries apply the PPP model, it is possible to classify the EU's Member states into three groups.⁴⁷ The first group consists of those countries where PPP are applied in all the areas of the economy from the construction of roads and railways, to healthcare, education, and penalty policies. The second group of countries has a rather developed concept of public-private cooperation in the field of road infrastructure, while the implementation of PPP in other branches of the economy is hampered by the imprecise legal regulation and changeable "political climate" vis-à-vis this issue. In the third group of the countries PPP is still in its cradle. The reasons for the rare implementation of PPP in this group of countries include the minor need for the participation of the private sector as a result of the good management of the state's budget, and a more rigid approach of the state towards establishing the key public infrastructure. The countries that belong to the first group include the United Kingdom, France, Germany, and the Republic of Ireland. The countries of the second group are Spain and Portugal, while the third group consists of Sweden, Luxembourg and Belgium.

A number of studies and research conducted about PPP, often single out the United Kingdom as "the cradle of public-private partnership". In 1992 already, this country has introduced the Public financial initiative,⁴⁸ which annulled the limitation of the participation of private capital in the financing of the public sector. PPP in the United Kingdom is at the level of 11% of the total of public investment. The most significant investment includes healthcare, local self-governance, transportation, and defence.⁴⁹ In this country, education and healthcare PPP projects achieved major success, while IT-related projects proved to be inadequate for PPP. A further implication of PPP in the United Kingdom is that efficient monitoring⁵⁰ is substantial in realising PPP projects. In addition, "... the experience of the United Kingdom reveals the need to increase efficient oversight of and effect on the work of the private sector. At this point, sanctions, working measures, and the denial of service payment need to be implemented with care. However, the most important thing is that the termination of the contract becomes a serious threat."⁵¹

The problem of the lack of transparency and the violation of legislative procedures exists in a number of countries.⁵² The lack of transparency and the detour from the legally prescribed norms contributes to corrupt activities. Thus, the experts in this area recommend that PPP of this type is "entrusted" to specialised entities and institutions. The task of these entities is to point to the necessary legislative changes and changes in PPP management, while publishing the documentation that affects the transparency of the process. The employees in these institutions are, by rule, professionals that, in their advisory role, propose solutions for each individual PPP agreement. Financial details of PPP agreements also affect the transparency of PPP. Hence it is essential to clearly inform the public of the financial obligations and the deadlines for their completion.

47 Classification taken from: Renda Andrea and Schrefler Lorna „Public-Private Partnerships National Experiences in the European Union“, Centre for European Policy Studies, Brussels, 2006

48 Private Finance Initiative (PFI)

49 Renda Andre and Schrefler Lorna: *Public-Private Partnerships - National experiences in the European Union*, Centre for European Policy Studies, Brussels, 22/02/2006, p. 8

50 Monitoring assumes a systematic assessment of the project's progress within a defined timeframe. The progress is assessed in relation to the aims of the project, activities and investment.

51 Renda Andrea and Schrefler Lorna, *op.cit.*, p. 5

52 For instance, the southern bridge in Riga (Latvia) is an example of a major public debate about a PPP project, due to constant increase in expenses.

Table 2: PPP in the EU Member States: overview by sector (Price Water House Coopers, 2006)

EU MEMBERS	SCHOOLS	HOSPITALS	HOUSING	SPORTS	DEFENCE	PRISONS	AIRPORTS	ROADS	UTILITY	HEAVY RAILWAY	LIGHT RAILWAY
AUSTRIA	○	●				○	○	●	○	●	
BELGIUM	○		●		○		●	●	●	○	○
DENMARK	●			●		○		●		●	
FINLAND	●	●			○			●			
FRANCE	○	●			○	●	●	***	***	●	***
GERMANY	*	○			*	●	○	*	**	*	*
GREECE				*			***	*			
IRELAND	*	●	●				●	**	**		●
ITALY		*	○	●			○	**	●		*
LUXEMBOURG											
NETHERLANDS	●	○	○			○		*	*	*	
NORWAY (not EU)	●	●				○	○	*		○	
PORTUGAL	○	●	○				○	***	*	○	
SPAIN	○	●		○				***	*		●
SWEDEN		○				○				○	*
UNITED KINGDOM	***	***	***	***	***	***	***	***	***		***

NEW EU MEMBERS	SCHOOLS	HOSPITALS	HOUSING	SPORTS	DEFENCE	PRISONS	AIRPORTS	ROADS	UTILITY	HEAVY RAILWAY	LIGHT RAILWAY
CYPRUS							*	●	●		
CZECH REPUBLIC	○	○	○	○	●		○	●	*	○	○
ESTONIA	○	○						○			
HUNGARY	*	●	○	●		●		*	*		○
LATVIA			○					○			
LITHUANIA											○
MALTA		●	○								
POLAND			○				○	●	*	○	○
SLOVAKIA							○	○	○		
SLOVENIA									*		
BULGARIA							○	○	*		
ROMANIA		●	○	●				*	*		

CANDIDATE COUNTRIES	SCHOOLS	HOSPITALS	HOUSING	SPORTS	DEFENCE	PRISONS	AIRPORTS	ROADS	UTILITY	HEAVY RAIL-WAY	LIGHT RAIL-WAY
TURKEY							*	○	*	○	○
CROATIA	*	○		●		○	○	*	*		○

ONGOING NEGOTIATIONS ○

CONCESSION OF WORK IN PROGRESS ●

CONTRACTS CONCLUDED *

HIGH NUMBER OF PROJECTS CONCLUDED.... **

HIGH NUMBER OF PROJECTS IN USE..... ***

3.1. The Czech Republic

As early as in 1990s, the PPP model was assessed as a positive one in the Czech Republic. It was considered to be a model that would stimulate privatisation and revitalise the national economy. However, the legislative framework that would regulate PPP in the Czech Republic was adopted only in 2006.⁵³

In comparison to other countries that employed PPP, the Czech strategy was not much different: PPP was a model that was deemed adequate in order to bridge the budget deficit; in order to achieve the best results possible each project required a precisely defined framework, indicators and risk assessment. Having in mind these aims, the Czech Republic selected ten “pilot projects” in order to test the scope and limitations of the cooperation between the public and the private sector. The process of selection of the potential partners was preceded by a selection of consultants for each of the projects. The selection process underwent through two stages. The consultants were chosen through a public competition with many contestants. The following table illustrates the list of the selected pilot projects:⁵⁴

⁵³ PPP Centrum of the Czech Ministry of Finance, “Why Study PPP With Caution PPP Projects in The Czech Republic: Implementation and Risks”, Prague 2007.

⁵⁴ Ibid., pp. 23- 24

Table 3: Pilot PPP projects in the Czech Republic

Project	Contracting institution	Type of PPP project	Contracting period	Project costs (in millions of CZK)	Annual cost (in millions of CZK)
Court building in Usti nad Labem	Ministry of Justice	DBFO or BOT	25	1,340	80
Building of the branch of Pilsen Regional Court in Karlovy Vary	Ministry of Justice	DBFO or BOT	25	483	38
Penitentiary institution with supervision	Ministry of Justice	DBFO	25-30	1,142	125
Construction, maintenance and operation of D3 highway Tábor-Bošilec, 30 km	Ministry of Transport	BOT	36	1,0815	91, 5
Revitalisation and development of sport fields, including infrastructure, in the Ponava brownfield	Auditing Agency of the City of Brno	DBFO	25	2,000	?
Complete refurbishment and modernisation of the Regional Hospital in Pardubice	Pardubice Region	DBFO	30	2,197	?
Construction, maintenance and operation of the hotel and parking lot in the Military hospital compound Prague, Střešovice	Ministry of Defence	DBFO	20-30	440	?
Projects in which the consultants were not selected					
Na Homolce Hospital: design, construction, financing and maintenance of seven new floors and 300 parking lots	No Homolce Hospital, Prague	DBFO	15-20	625	
Revitalisation of the railway between Prague and Kladno	Ministry of Transport	BOT and OM	30-40	13,500	
Jan Evangelista Purkyne University and the University of Usti nad Labem	Jan Evangelista Purkyne University and the Ministry of Education, Youth and Sports	DBFO, Transfer of buildings to the state	25-30	2,500	

The selection of pilot projects in the Czech Republic encompassed different areas at the national and local levels. The majority of projects were of a duration exceeding 30 years. The study of Transparency International that assessed PPPs in the Czech Republic outlined an unclear risk distribution, particular in terms of fiscal risks in these projects. The contracting parties were unable to determine the impact of the proposed projects on public finance, and what the effect of that will be on the Maastricht convergence criteria.⁵⁵

Public institutions responsible for PPP projects in the Czech Republic showed an inconsistent strategy and the lack of understanding of PPP principles in terms of selecting and concluding pilot projects. In addition, the tender criteria were not postulated rationally, and subsequently enough room was created for corruption and nepotism. These problems have caused the termination of certain project tenders, such as the one of No Homolce Hospital.

The Czech Republic has also had a negative experience with the construction of the D5 motorway. The implementation of the project failed due to the poor technical preparation, and the failure to resolve property issues with the landowners. The lessons from this failed project were not learned, and that was mirrored in the realisation of a major project – D47 motorway. The latter project came to the media spotlight. The proposal to use the BOT method was justified mainly by lack of public finances and by the emphasis on a pressing economic need for the highway in the industrial North Moravian region. There were multiple problems with this project: no detailed plan for the development of the road existed; both the consultant and the private partner were selected without a public call. After the conclusion of the contract and following the reconstruction of the government, the analyses showed that the project could be detrimental for the state's finances. The contract was terminated by a pricey compensation to the private company.

The negative experiences of the Czech Republic indicate that a high degree of professionalism of the government's officials is essential in the implementation of PPPs. Such professionalism reduces the occurrence of corruption and prevents the private sector from imposing the contract terms. In addition, it can be concluded that the realisation of major infrastructural projects requires a public debate and full access of the public. This would significantly reduce the chances of the concessionaires to manipulate the PPP results.

3.2. The Republic of Croatia

Croatia is one of the first countries that have recognised the importance of PPP and initiated the realisation of projects of this type. The first PPP contract in this country has been concluded in 1995. The subject of this, first Croatian PPP was “The Istrian Ypsilon Project” that included the financing, projecting, construction and management of a road network of 141 km, and the reconstruction of the Učka tunnel. The concession was signed for 32 years, after which the motorway becomes the property of the state with no further fees. The majority of PPPs in Croatia are related to projects for motorways and to waste water purification, because investments in these areas are too high for the state to realise them on its own.

The implementation of the Law on public-private partnership in the Republic of Croatia is entrusted to the Public-private Partnership Agency. The Agency was registered as a national institution in 2008, while it started to work in 2009. In Croatia, any PPP proposal and any draft contract need to be approved by this Agency. In addition, after the approval of the project drafts, this institution publishes the list of PPP projects. All the concluded contracts are enlisted in the register. In such a way, a database of PPPs is established, while the transparency of the entire project is ensured. The PPP Agency in Croatia is also responsible for the monitoring of the concluded contracts, which is of a twofold significance: the entire process becomes more democratic, since the projects are overseen by an institution that has approved them and that is directly involved in all the details of the project. In addition, this supervision is executed by an institution specialised in PPP, and thus the most “adequate” to assess the legality and the transparency of realisation of PPPs.

55 See: “Why Study PPP With Caution PPP Projects in The Czech Republic: Implementation and Risks”, pp. 24 - onwards

The PPP Agency in Croatia also educates national experts in this area. The experts are educated by participating in international cooperation and by studying domestic and international PPP practice. In this way, the Agency also becomes the birthplace of proposals for laws and derived legislation that will regulate PPP, while providing expert interpretation of these regulations. In terms of structure, the Agency has four sectors: project approval; data implementation monitoring; international cooperation; education.

However, despite the fact that Croatia was among the first countries to recognise the significance of a specialised PPP coordinating institution, this country also faces significant challenges in PPP realisation. Namely, there are some examples of PPPs in Croatia that have not brought the desired results to the state. Such was the case with the wastewater purification device in Zagreb, which was widely polemicised in public debates, due to multiple deficiencies in the implementation phase of this project. The main characteristic of this project was poor risk distribution, while a high fee burden was transferred to citizens and to companies. The construction contract for this device contained highly unfavourable conditions, and it cost the citizens of Zagreb much more than expected. In addition, the contract was not transparent, and it assumed a problematic charging system. Apart from the total price of the project, which was much higher than the funds approved by the international financial institutions, the public compared and contrasted the different amounts of EBRD and of the Zagreb Municipal Council.

4. Public-private partnership in Montenegro

4.1. National level

Montenegro is in the process of transition to a functioning market economy. This process entails areas where the limitations in terms of procurement are exceptionally high, which is a consequence of the lack of additional investment. “Limitations in procurement are especially apparent in the following sectors: 1. energy – which is mirrored in the growing energy deficit; 2. transport – as seen in the course of the peak season, when traffic jams are on a rising slope along with the frequency of car crashes; 3. water management, including waste water; and 4. sanitary disposal of solid waste.”⁵⁶

Having in mind the success of PPP projects in the Member States of the EU, and the lack of the budget funds for infrastructure development, the Government of Montenegro decided to use the PPP model more intensively through the privatisation process.⁵⁷ In the past two years, the number of concluded PPP contracts has increased significantly. The grounds for this decision of the Montenegrin government were founded on the following rationale: when there are areas/resources in which the state may not act efficiently and whereby no significant budget funds may be allocated for the revitalisation of that certain sector, it is more convenient to “delegate” a certain area/resource to companies that are willing to use the necessary financial means to help the development of natural resources. The provisions of laws protect national interests and prevent the permanent allocation of such resources and infrastructures to private companies. This cooperation produces multiple gains for both sides. In the long term, the state retains the infrastructure, while the private company receives material compensation by using the resource. However, there are certain risks, mirrored in the potential poor profit margin of the object for the private company, or the high loss for the state, if the company receives those infrastructure segments that have monopoly positions.

⁵⁶ *Montenegro - Beyond the peak : growth policies and fiscal constraints (Vol. 2 of 2) : Public expenditure and institutional review – Report No. 46660 – ME, Poverty Reduction and Economic Management Unit Europe and Central Asia Region, World Bank, 24/11/2008, p. 68*

⁵⁷ *The details of the policies and strategies of the government of Montenegro for 2009 and 2010 are taken from the interview of the vice-president of the Privatisation Council – Mr. Vujica Lazovic – broadcast at TV Atlas in the TV show “In Focus”.*

4.1.1. Valorisation of tourist locations

The Government of Montenegro has opened all the sectors to the PPP model, including healthcare and educations, the Port, and the Railway, energy, tourism, and the valorisation of attractive locations in the coastal and northern areas in Montenegro. The 2010 Privatisation Plan envisages the valorisation of the following tourist locations through PPP: Ada Bojana, Velika plaža, Njivice, Utjeha, Buljarica and Jaz.⁵⁸

One of the projects of valorisation of tourist locations on grounds of PPP that have already been initiated is the **construction of a tourist city at the Luštica peninsula**. Namely, 6.8 million square meters of land at the Luštica peninsula is a subject of the agreement between the Government of Montenegro and the Egyptian company “Orascom Development Holding” registered in Switzerland. Along with the government, with whom it has signed a lease agreement for the land in the duration of 99 years in October 2009, ODH has established a company “Luštica Development”. A tourist city complex, containing 8 hotels and other tourist capacities such as a shopping mall, a school, a healthcare institution and golf terrains, will be developed at Luštica. The total value of the project is 1.1 billion euros. In the future tourist city, ODH will own 90% of the shares, while Montenegro will be the owner of the remaining 10%. The first development phase should start in 2011 and it should be completed by the end of 2013.

The construction contract for the development of a tourist complex in the Trašte bay is debatable and it violates the legal provisions on multiple grounds. The concession period is 99 years, although the Law on concessions stipulates the maximum period of 60 for a concession, in cases when the Parliament reaches the decision on such a concession. The report on the justification of the draft decision of the Committee for economics, finance and budget of the parliament of Montenegro highlights that “the Committee did not assess the harmonisation of the Decision with the legal system in view of the fact that the Lease Agreement was already signed, while having in mind that such an assessment is a competence of the Committee for constitutional issues and legislation”.⁵⁹ Moreover, at the time of the conclusion of this contract, the Mayor of the Tivat Municipality - Dragan Kankaraš – outlined that the provisions of the agreement with ODH stipulated that the utilities will be payable only 12 years after the start of the development of this complex.⁶⁰ In addition the contract stipulates that ODH may sell the land to its clients, while contributing mere 80 euros to the state budget for each square meter sold. Finally, the project of the tourist city at Luštica peninsula also entails the development of two marines at Trašte bay, which are not envisaged by the spatial plans of the public enterprise Morsko Dobro. This opens up the issue over whether Montenegrin laws may be violated and circumvented in order to suit the desires of the investors.

However, Luštica Development Company, which has taken over the land management in Trašte bay, highlights that the agreement between the government and Orascom Development violates no legal provisions. This company outlines⁶¹ that the project of valorisation of Luštica peninsula assumes a long term lease of land, and that the lease and the provision allowing for the sale of land, are fully in line with article 39⁶² of the Law on state property that stipulates that the land may be leased to a maximum period of 90 years. In addition, in relation to the fee for the arrangement of the city’s development site, the company has informed us that “it is a common arrangement, concluded in major projects, when it is difficult to expect that the local self-governance authority will provide exceptionally high costs needed for the infrastructural development of the site”.

In terms of tourist components of the nautical objects in the prospective complex, the company plans the development of a new docking zone, docks and gates, which is fully in line with the Law and other regulations, according to the executive director of Luštica Development.

⁵⁸ The decision on the privatisation plan for 2010 was adopted at the session of the Government of Montenegro on 17 December 2009.

⁵⁹ Report on the deliberation of the draft decision on the long term lease of land at the Luštica peninsula – Herceg Novi with the contract on the long term lease of land (marked as cadastral land plot No. 1539, 1540, 1544, 1545, 1546, 1563/2 in the Cadastral Municipality Rose, Herceg Novi), with the obligation to construct, develop and manage exclusive tourist complexes, Podgorica, 15 October 2009

⁶⁰ Cited in “Vijesti” daily newspaper on 18 May 2010.

⁶¹ The reply of Luštica Development plc. to the request of Institute Alternative, No. 144, dated 12 September 2009.

⁶² Para. 3 and 5

4.1.2. Concessions

The allocation of concessions is also an integral part of the PPP arrangements. Hence, on 1 August 2003, in order to facilitate and enhance the process of concession allocation, the government of Montenegro established the Commission for concessions and BOT arrangements.⁶³ On 3 September 2009, after the adoption of the Law on concessions the government has nominated the new Concessions Commission.⁶⁴ The newly elected commission, as already noted, does not allocate concessions. Rather, it decides upon all the complaints of the participants to the process of allocating concessions. The work of the Concessions Commission is significantly limited by the non-existence of a central register containing concession contracts. Given that the Guidelines on the content and management of the register of concession contracts were adopted in July 2009, it is unclear as to why the register has not yet formally been established.

The Law on concessions stipulates that the Concessions Commission should be independent and impartial in its work. However, the provisions of the same law do not stipulate guarantees of independence and impartiality.⁶⁵ Namely, the entity that appoints the president and the members of the commission has the authority to revoke any of them at any time.

From the adoption of the Law on concessions in January 2009 until the appointment of the Concessions Commission, the competences of this body have been performed by the Commission for concessions and BOT arrangements.

The president of the Concessions Commission - Slobodan Perović⁶⁶ - highlights that a high number of derived legal acts has already been adopted, along with the decision on the establishment of a register of concession contracts. He also noted that the establishment of the register is also ongoing, although it was uncertain when such a register will be operational, due to technical difficulties. The register will be available to the public, but the realisation plan has not yet been determined. Perović highlights that the experience of the PPP Agency of Croatia, with 18 employed professionals should be an example of how to organise the work of the institution in charge of PPP. The membership in the Concessions Commission in Montenegro is not allocated on professional grounds, and there are no indicators that this may change in the foreseeable future. The president of the Concessions Commission highlights the importance of this institution's work, because the amount of works and concession contracts in Montenegro will be significantly higher in the future. Hence, he deems that it is essential to enhance the work of the Commission and use the possibility of correcting concession contracts and agreements, as has been the case so far.

In addition to the absence of a central register of concessions, there is no national database of the data related to PPP contracts. In relation to this, the executive director of the Montenegro Business Alliance - Darko Konjević- notes that PPP is almost an unknown word in the Montenegrin legal system, and that that is the reason for the inexistence of a single register of PPP. For instance, the opposite is the case of the public procurement sector, where there is a national internet portal containing a database of public procurement.⁶⁷

⁶³ On grounds of the Decision for the establishment of the Commission for concessions and BOT arrangements, *Official Gazette of the R. of Montenegro*, No. 48/03

⁶⁴ Members of the Concessions Commission include: Slobodan Perović, MA (president, Ministry of Economy), Dr Radonja Minić (Ministry of Economy), Prof. Miodrag Bulatović (Parliament of Montenegro), Vuk Božović (Parliament of Montenegro), Tamara Gačević (Ministry of Finance), Zoran Radonjić (Ministry of Transport, Maritime Affairs and Telecommunication), Miodrag Radunović (Ministry of Agriculture, Forestry and Water Management), Velimir Perišić (Assembly of Municipalities), Zoran Vulević (Employers' Association)

⁶⁵ SIGMA, *Montenegro assessment 2010*, p.108

Art. 13 of the Law on Concessions stipulates that the 'Mandate of the President or a member of the commission ceases by: dismissal following the initiative of the appointing body.'

⁶⁶ Slobodan Perović, interview, 1 April 2010

⁶⁷ Darko Konjević, interview, 26 March 2010

Allocation of concessions in the area of water management and forestry

In the period from 2003 to 2009, the subject of the Commission for concessions and BOT arrangements was the approval of public calls and the allocation of concessions for the use of agricultural land, exploitation of construction stone, exploration and exploitation of raw minerals, and the approval of concessions and BOT arrangements for the bottling of water.⁶⁸

In context of activities that the Commission for concessions and BOT arrangements should have done in the previous period, it is important to highlight that Commission's annual reports for 2008 and 2009 are not available, although the Commission for concession and BOT arrangements was obliged to fulfil this obligation.

The activities of the new Commission in the area of water are regulated by the Plan for exploitation of river deposit and the plan of concession allocation in this area.⁶⁹ The subject of concessions in the area of waters may also be other areas that are not included in this plan, on grounds of the initiative for a concession allocation that the interested party submits to the Water Management Directorate. The periods for the allocation of concessions for bottling, packing, and distributing water for commercial purposes may not be longer than 30 years. The periods for the exploitation of river deposit (rubble and sand), may not be shorter than 5 years if the estimated mass of deposit exceeds 100 m³.

Concession fees are a significant source of finance in the area of forestry,⁷⁰ but a number of irregularities have been noted in the process of allocation of these concessions. Namely, the Montenegrin media have often outlined the cases of the untimeliness of the Forestry Directorate, and the silence of administration in relation to access to information on the allocation of concessions in Pljevlja Municipality.⁷¹ In these cases, the request for free access to concession contracts was made to the president of the local parliament.

⁶⁸ Reports on the work of the Commission for concessions and BOT arrangements are included in the table in Appendice 2 to this study.

⁶⁹ The plan was adopted in line with the decision on water consent and in line with the conclusions of the Government of Montenegro No. 03-3413, dated 19 March 2009. It includes the watercourse of the Morača River (upper watercourse), the Cijevna River, the Lim River, the Tara River, the Gračanica River, the Ibar River and the Grnčar River. The plan also envisages concessions for the bottling of water, packing and distribution for commercial purposes for the following springs: "Bradavac" in Andrijevića Municipality; "Vrelo" in Mojkovac Municipality; "Drijenjak" in Kolašin Municipality and "Jasen" in Bar Municipality.

⁷⁰ On grounds of the program for the use of resources for 2003, adopted by the Government of Montenegro, and on grounds of article 58 of the Law on forests. The amount of concession fees in forestry ranges from 3,432,783.82 euros in 2003 to 3,800,000.00 in 2009. The concession fees peaked in 2006, when they amounted to 6,055,743.46 euros.

⁷¹ "Dan" daily newspaper, 13 April a2010

4.1.3. Energy

In the past decades, there have been no significant investments in the energy infrastructure in Montenegro. In a study⁷² produced by the CEPA⁷³ consultancy under the auspices of the World Bank the significant progress in the sector of energy production in Montenegro was noted, as well as numerous deficiencies in this area. Regardless of the determination of the Government to revitalise this sector, it is still very poorly developed and has been causing a quasi-fiscal deficit for decades. CEPA consultants emphasise the need to define the way in which the international obligations related to renewable sources of energy will be met, as well as the overall energy production. In addition, the report recommends a more effective harmonisation of the aims of Montenegro and the private investors in the area of energy production. The sustainable PPP projects in the energy production sector would contribute to Montenegro's development. The previous legal framework in the area of energy consisted of the 2003 Law on energy, while the Parliament has adopted a new Law on 22 April 2010.

In terms of investment in the Electricity Company of Montenegro (EPCG), in the period from 2007 to 2011, the government has allocated the sum of 138 million euros for the investment in production, 85 million euros for the investment in transfer, 108 million for the investment in distribution, and 3.6 million euros for the investment in procurement.⁷⁴ Moreover, the government has marked the recapitalisation of EPCG as one of its key priorities for the period mentioned. Hence, this project is the most significant PPP in the area of energy. The bids that have been submitted following the public call were opened in July 2009. The Greek consortium "Gold Energy & Public Power Corporation" offered the highest price for EPCG's shares – 11.1 euros, while the Italian "A2A" offered mere 8.4 euros. According to the official sources, the Greek offer was rejected due to the unrealistic demands in the bid, and the Italian company was selected. Yet, despite the dissatisfaction that has been reported in the media, the Greek consortium did not use the opportunity to lodge a complaint before the court in relation to the irregularities in the tender process.

The total amount of financial investment of the Italian company was divided in two parts: a half of the investment – 400 million euros – will be used to purchase the shares of the minor shareholders, while the other half will be used to purchase the shares of the state.

From the announcement of the call for the recapitalisation and partial sale of EPCG there has been an impression that the Italian company A2A has been the favourite in this process. In following this process, the Montenegrin media have highlighted this fact since the visit of the Italian Prime Minister – Silvio Berlusconi – to Montenegro in March 2009. In addition to the media reports, the purchase of 15% of the shares of EPCG that were owned by the domestic investment funds by the Italian company amidst the bidding remains an unresolved issue.

Construction of small hydro-power plants (SHPP)

"In line with the common practice of planning in the world, which has been enshrined in the Water Management basis in Montenegro, the realisation of small hydro-power plants (SHPP) is allowed at all watercourses, under the following conditions: ● construction only on those locations whereby SHPP does not harm the realisation of the objects planned as part of the integral system of water usage; ● under the condition that adequate analyses of environmental impact prove that SHPPs do not harm the ecological system of these minor watercourses; ● if the guaranteed ecological course is ensured in a reliable way which can be continuously controlled during the exploitation of the SHPP; ● within disposition schemes that do not devastate the environment in the protected areas; ● with the clause that the exploitation permit will immediately be revoked if the user violates the conditions of procurement of the guaranteed course.

72 "Public-Private Partnership (PPP) Options for Future Power Generation in Montenegro, World Bank, 25 February 2010. Final Report, Submitted by: Cambridge Economic Policy Associates Ltd

73 CEPA - Cambridge Economic Policy Associates

74 Montenegro - Beyond the peak : growth policies and fiscal constraints (Vol. 2 of 2) : Public expenditure and institutional review – Report No. 46660 – ME, Poverty Reduction and Economic Management Unit Europe and Central Asia Region, World Bank, 24/11/2008, p. 70

EPCG follows and stimulates the preparation and development of the construction of SHPPs. On grounds of the studies that have been completed so far, 50 locations for SHPP have been noted.”⁷⁵

In line with the decision that was in force at the time, the Ministry of Economic development had opened a combined DBOT (design, build, operate and transfer) call for concessions for the construction of SHPPs on 19 November 2007.⁷⁶ On 26 September 2008, the contract was signed with six concessionaires for eight watercourses.⁷⁷

In the public call for the allocation of concessions under a combined DBOT arrangement for the exploration of watercourses and the construction of SHPPs, there was a possibility for the bidders to pose additional questions up to five days prior to the conclusion of the tender. Given that the purpose of posing questions affects the formulation of the bid, and that the status of the bidder is allocated by the submission of the application, this provision (enshrined in chapter XII of the decision) has no meaning. In addition, it violates article 134 of the Law on the participation of the private sector in the procurement of public services, which served as grounds for the adoption of the decision.⁷⁸

In addition to violating the aforementioned article, the public call also violated other provisions of the Law on the participation of the private sector in the procurement of public services. These are as follows:

- Stipulating combined DBOT arrangement as the mode of concession allocation, since article 2 of the Law did not envisage this model
- By enshrining in the public call the provision that the concession fee is determined on grounds of the highest bid, which was contrary to article 84, which stipulates that the concession fee needs to be determined in advance, i.e. before the publication of the public call.

On the grounds of the basic document “Concessions according to the combined DBOT arrangement for the exploration of watercourses and the construction of small hydro-power plants in Montenegro”,⁷⁹ the concessions were allocated for the period of 20 years. The same document envisages that the concessionaire manages the commercial and operational risks, including the risks of: exploration, construction, cost excess, realisation and insurance. The concessionaire is liable in the case the realisation of the project harms the environment surrounding the plant. The government is liable for the risks that could potentially be caused by material impact (e.g., changes of political circumstances), and on grounds of the levels of purchase prices and consistent implementation.

The interests of the government have been protected by the provision stipulating that in cases of the termination of the contract, the public sector is not liable to cover the costs of the concessionaire. If the contract is to be terminated, the concessionaire is bound to restore the location that was subject of the concession to its previous state. After the expiry of the concession period, the concessionaire is bound to transfer the constructed objects to the government, i.e. to the line ministry.

The monitoring of the realisation of the projects is conducted by the line ministries in charge of water management and energy. However, from 2008 until now, no works have been initiated on the construction of small hydro-power plants on the eight watercourses. Thus, it is impossible to monitor the process.

⁷⁵ Dorđević Branislav i saradnici „Male hidroelektrane ne mogu biti zamena za velika i srednja hidroenergetska postrojenja – na primeru Crne Gore“ *Vodoprivreda* 0350-0519, 39 (2007) 228, p. 5

⁷⁶ The call was opened on grounds of the then in force Law on the participation of the private sector in the procurement of public services and the Decision on the means and conditions of the allocation of concessions for the exploration of watercourses and techno-economic usage of water energy potential for the production of electricity in small hydro power plants.

⁷⁷ 1. Babinopoljska (Plav Municipality; concessionaire: “Kroling” plc., Danilovgrad); 2. Grlja (Plav Municipality; concessionaire: “Energie Zotter Bau” GMBH & Co KG-Judenburg, Austria); 3. Bistrica (Andrijevića and Berane Municipalities; concessionaire: “Hidroenergija Montenegro” plc., Berane); 4. Šekularska (Andrijevića and Berane Municipalities; concessionaire: “Hidroenergija Montenegro” plc., Berane) 5. Bistrica- right confluent of river Lim (Bijelo Polje Municipality; concessionaire: “Haider Extrem Energy”, Sarajevo); 6. Bjelojevićka (Mojkovac Municipality; concessionaire: “Haider Extrem Energy”, Sarajevo); 7. Crnja (Kolašin Municipality; concessionaire: “Dekar” plc., Podgorica) 8. Zaslavnica (Nikšić Municipality; concessionaire: “Bast” plc., Nikšić)

⁷⁸ Article 134 of this Law guarantees all individuals the right to take part in public debates.

⁷⁹ Cited in the Basic document that the Ministry of Economic Development forwarded to the Privatisation Council of the Government of Montenegro on 26 July 2007

Construction of hydro power plants at the Morača River

In line with its policy for the development of the energy sector, the Ministry of Economy had, on 26 February 2010, made a public call inviting all the interested parties to apply for the qualifier for the allocation of concessions for the construction of hydro-power plants at the Morača River on grounds of BOT arrangements. The process was finalised on 30 April 2010, and 5 bidders filed their offers.⁸⁰

During the public call for the allocation of concessions for the construction of hydro-power plants at the Morača River, the NGO “Green Home” has voiced several concerns over the violations of the Law on concessions, particular those parts of the law dealing with the formulation of the concession act.⁸¹ Namely, the initiation of the process of concession allocation is initiated by the formulation of the concession act, which is adopted by the government after a public debate. Only after the adoption of the concession act can the public call for the allocation of the concession be published.⁸²

Although it is obvious that the start of the process for the allocation of concessions for the hydro power-plants at the Morača River was not in line with the law, the Ministry of Economy claims the opposite. Namely, the assistant to the Minister of Economy in charge of energy-related affairs - Miodrag Čanović⁸³ - highlights that prior to the publication of the qualifying tender, it was important to make a study on the environmental impact. Such a study was done in this case, and the concession act with economic justifications of the project will be done in due course.

Wind-power plants nearby Ulcinj and Nikšić

The Ministry of Economy published a call in January 2010 for the construction of wind-power plants nearby Krnovo in Nikšić Municipality (27.055.441 m²). The bidders included the consortia Ivicom Consulting GmbH and Mitsubishi Heavy Industries and the company Eyra Madrid. For the location Možur in Ulcinj Municipality (10.330.628 m²) only the bid of the consortium composed of the Spanish Fersa Company and the Montenegrin Čelebić company was received. The land at these locations is leased for 20 years, and the annual lease is 5 c€/m².

The problematic provision of the public call for the construction of the wind-power plants is the one related to the fee for the measurement and exploration of the wind potential. Namely, the public call stipulates that the fee for these activities, which have been conducted prior to the announcement of the tender - conducted by the Spanish Fersa company for the location Možur in Ulcinj Municipality and the Croatian Ivicom company for the location Krnovo in Nikšić Municipality - will be borne by the company with whom the contract for the construction of the wind-power plant is concluded. Miodrag Čanović highlights that given that the government had no prior experience with the construction of wind-power plants, it had two options: to collect the necessary documentation and opt for an arrangement that includes the exploration of locations suitable for wind-power plants; or, since the companies were interested in the exploration even prior to the announcement of the public call, to reach an agreement with the companies, and allow them to select the location whereby they will conduct the necessary research and measurement, and to forward those materials to the government, while receiving the money for their research from the company with which the contract is concluded (the winning bid in the public call). The government chose the second option.

In the context of the publication of the public call for the water-power plants there is another irregularity. The call was announced in January 2010, while the methodology for determining the wind-power plant electricity was adopted only in May 2010.⁸⁴ This raises the question of how the companies could

80 1. Sihohydro Corporation Limited, China; 2. ENEL S.p.A., Italy; 3. Consortium led by A2A S.p.A, Italy; 4. Strabag International GmbH, Germany; 5. Consortium led by Allgemeine Baugesellschaft – A. Porr Aktiengesellschaft, Austria.

81 Concession act is a document that defines the conditions of the bid and contains all the technical documentation, risk assessment, and environmental protection measures.

82 Law on concessions, art. 18-21

83 Miodrag Čanović, interview, 20 July 2010

84 Official Gazette of Montenegro 27/2010

place their bids without knowing how the prices of electricity will be determined? Čanović highlights that there are feed-in tariffs for all the renewable sources, and that the prices of electricity in the neighbouring countries are also known. In this case, perhaps the tender may have been delayed, but the companies had an idea of the prospective electricity prices, according to Čanović.

4.1.4. Road infrastructure

The priority in constructing the road infrastructure in Montenegro is to ensure the integration of Montenegro's road network with the roads in the neighbouring countries. Hence, the construction of the motorway Bar-Boljare and the share of the Adriatic-Ionic motorway through Montenegro are of a strategic importance. Given that the expected expenses for the construction of these two motorways will reach at least 2.8 billion euros,⁸⁵ the government has opted to realise these projects through PPP. Hence the allocation of the concession for the construction of the Bar-Boljare motorway is the first major PPP project in Montenegro

The stance of the Ministry of traffic, maritime affairs and telecommunications⁸⁶ is that PPP is a very beneficial model for traffic infrastructure because it enhances the volume of infrastructure and its quality, while introducing new technologies. The structuring of the model for the motorway Bar-Boljare was preceded by an extensive study of the Dutch company "Ekoris", whereby the most convenient options for the participation of the private sector in the sector of motorway development in Montenegro have been outlined. Research has shown that the optimal model for the motorway Bar-Boljare is the one whereby the private partner designs, builds, finances and operates the motorway during a concession period of 30 years. After the expiry of the concession period, the concessionaire is bound to return the motorway to the state of Montenegro.

Given that all of the countries in the Western Balkans are characterised by a limited fiscal system, i.e. a limited loan capacity with budget deficits, finding an optimal solution was a necessity. The model of development of the Bar-Boljare motorway was structured in cooperation with the International Financial Cooperation, member of the World Bank Group, which was also the leading advisor to the government of Montenegro in the transaction process.

There are risks and obligations stemming from this project for both parties. Risks and obligations on the behalf of the Montenegrin state include: the obligation of expropriation, covering the costs of expropriation, procurement of construction permits. Any change in the legal regulation needs to be carefully made, in order not to hamper the further realisation of the concession.

The preparation for the allocation of the concession for the Bar-Boljare motorway underwent through three stages.⁸⁷ The first stage included the production of a feasibility study, which has shown that the project was economically justifiable. A positive feasibility study initiated the production of the study on the most feasible options, i.e., the examination of the most appropriate model for Montenegro. The completion of the study on the most feasible options was followed by the transaction phase when the model is structured, and the qualifying tender is prepared. This stage is succeeded by the complete tender process, i.e., the establishment of a database enabling all the interested parties to access the relevant documents. The qualifying process eliminated 5 out of the 11 companies that applied to the tender. In such a way, six consortia, renowned on the European and the global market, were selected to take part in the full tender. According to the government, this fact is the best indicator of the good structure of the model.

The Croatian consortium "Konstruktor" was ranked first at the tender. The contract with this consortium was signed on 9 June 2009. The total value of the project is 2.77 billion USD. The government of Montenegro should provide 1.74 billion. The deadline for the construction of the motorway is set to 8 years.

⁸⁵ 109% of the 2007 GDP of Montenegro.

⁸⁶ Details from the interview of Ms. Angelina Živković, the advisor to Mr. Andrija Lompar, the Minister of Transport, Maritime Affairs and Telecommunication, broadcast at TV Atlas in the TV show "In focus"

⁸⁷ According to the Ministry of transport, maritime affairs and telecommunication, the preparation costs ranged between 2 and 3 million euros.

The project of construction of the motorway Bar-Boljare with the Croatian consortium envisaged the engagement of the entire Montenegrin construction market, which would have generated direct profit for the construction companies and create significant job openings. In addition to reducing the unemployment rate and engaging the domestic companies in the construction, this project was also a chance for training the Montenegrin construction market for similar projects in the future.

The statements of the Minister of transport, maritime affairs and telecommunications – Andrija Lompar – presented this project as an outstanding one; as a project whose all stages of realisation had precisely been documented; as a project with a minimum risk rate. However, the contract with “Konstruktor” was terminated because this company was unable to obtain bank guarantees. On grounds of the details of the contract, the concessionaire was bound to provide 50% of the funds necessary for the realisation of the project within 3 months. The concessionaire was also bound to ensure the entire financing by the end of the preparatory stage. Since the Croatian consortium was unable to meet these conditions, the contract was terminated.

Following a visit to Brussels and meetings with the officials of the European Commission in April 2010, the Minister of transport, maritime affairs and telecommunications – Andrija Lompar – made a public statement that the EU will provide 20 million euros of technical support for the construction of this motorway.

In the process of the re-examination of the government’s model for the motorway, the European Investment Bank (EIB) proposed the simultaneous construction of all three shares of the motorway. In addition, the EIB has pointed to the unjustified action of the government to start the project with the construction of the Podgorica-Mateševo share of the motorway.⁸⁸

In this period, the government of Montenegro has started to negotiate with the Greek-Israeli consortium “Aktor-Šikun binui”. The initial conditions proposed by the Greek-Israeli consortium did not meet the requirements of the government of Montenegro. However, the agreement was reached that each kilometre of the motorway would cost 23.5 million euros. The media across the region have highlighted that the construction of this motorway, with the initial price of 28.5 million euros, proposed by Akror in March 2010, as “the most expensive one in history”. By comparison, a kilometre of the motorway through Slovenia cost 9.77 million euros.⁸⁹

Although there is an urgent need to construct motorways in Montenegro in order to connect to the important traffic networks in the neighbouring countries, it is always recommended to construct these motorways in stages. The construction of the motorway Bar-Boljare has shown that the size of the project, high risk, and the enormous financial means needed result in failure and that they do not attract a high number of interested potential investors.

⁸⁸ According to EIB, a kilometre of that route costs approximately 28.5 million euros

⁸⁹ Internet portal “Glas Srpske”, 5 March 2010

4.2. Local level

The number of PPPs at the local level in Montenegro depends on the size of the municipality and its budget. There is a growing interest in all of the Montenegrin municipalities for PPP projects. However, there is a large number of municipalities which have established no PPPs so far.⁹⁰

4.2.1. Podgorica Municipality

4.2.1.1. PPP experience in the Capital City

The PPP concept in the Capital City has been characterised as a significant management model. Initially, this type of privatisation was only applied to construction related projects, such as the tribunes of the stadium of the football club Budućnost, shopping mall “Mall of Montenegro”, etc. Such projects were the least complicated and the most profitable for the municipal authorities.⁹¹

The Municipal Assembly reaches the decisions to conclude PPP agreements.⁹² The Assembly may authorise an individual to conclude a contract on the behalf of the Municipality with a partner. The Municipal Assembly has the exclusive right to decide on the disposal of the fee for the land restructuring, i.e. utilities. The president of the Municipal Assembly of the Capital City - Đorđe Suhij – informed us that only the Mayor of Podgorica negotiates with foreign investors in this municipality.

The concept of public-private partnership was first applied in Montenegro for the project of reconstruction and expansion of the city stadium. Within the frame of this project, the partnership was established between the “Hidromol” company and the public enterprise “Gradski Stadion” (“City Stadium”). At the end of the project, the private investor was granted the use of 66.4% of the commercial space, while “Gradski Stadion” received 34.5%. The city authorities assess this project as an exceptionally beneficial one, whereby all the parties involved have gained profit. In addition, general interest has also been served, as this sports area was reconstructed and modernised.

Municipal authorities also highlight the construction of the “Mall of Montenegro” shopping centre as a successful example of a PPP. The municipality has conceded the land and utilities, while the private partner “Gintaš” has constructed the site. Yet, an example that could have benefited the city was the (failed) project of a hotel construction that was supposed to be initiated with the enterprise “Gruppo Bolicci”.

Hotel construction project – “Gruppo Bolicci”

In 2004, the Mayor of Podgorica spoke to the representatives of the French firm “Accor” and the Italian company “Gruppo Bolicci” about the construction of a hotel at a land plot behind the building of the Radio-Television of Montenegro (RTCG). On 22 June 2004, the Municipal Assembly of Podgorica adopted a decision on a joint investment with the Italian “Gruppo Bolicci” for the construction of a hotel at the urban land slot “RTV Centralne djelatnosti” (“RTV Central activities”). The obligations of the Municipality within this PPP assumed the procurement of the development site, the payment to the previous owners for land expropriation, and the payment of the fee for urban land restructuring. The design of the project entailed the demolition of 13 objects on that site, and thus the Municipality accepted the obligation to negotiate with the owners of these objects in order to reach optimum solutions. Total value of the investment was 40 million euros, and it entailed construction of a four-star hotel with 8000 square metres of productive surface. Ordinaries within this touristic complex ought to be divided in accordance to the height of investments of the Municipality of Podgorica and “Gruppo Bolicci”.

⁹⁰ The table showing the overview of the municipal PPP projects is included in Appendix 3 to this study

⁹¹ Information received from the interview with Pavle Radulović, the manager of the Capital City, broadcast at TV Atlas, during the TV show “In focus”

⁹² Information received in a conversation with the president of the Municipal Assembly of the Capital City - Đorđe Suhij, 23 March 2010

Although the cornerstone of this hotel was laid in 2006 and the construction permit for this site was issued on 24 November 2008, development of the site has not started yet.

The realisation of the contract with “Gruppo Bollici” which has not been initiated during two mandates of the local government spark an additional question: is the construction of a hotel in a city which has over a dozen of them truly a project of public interest?

Construction project “Mall of Montenegro”

On 31 March 2006, the Municipal Assembly of Podgorica has consented to the contract between the Municipality of Podgorica – public enterprise “Utility services” and the Turkish company “Gintaş İnşaat Taahut ve Tucaret Anomim Şirketi Ataturk”. In 2006, the Turkish company established its branch in Montenegro, with the aim of administering the affairs related to the construction of the shopping centre “Mall of Montenegro. The total value of this project, in three stages of development is 36 million euros. The obligation of the private partner was to secure 15 million euros, while the Municipality, along with the International Finance Corporation (IFC) was bound to secure the remaining funds. The first stage of construction was completed in April 2008, when the green market was opened.⁹³

4.2.1.2. Deficiencies in the implementation of the PPP model in Podgorica Municipality

The plan for the land restructuring in the Municipality of Podgorica from 2008 to 2010 is very ambitious and worked to the greatest detail. In that plan, it has been highlighted that there is a need to harmonise the Municipal Spatial Plan (MSP) with the general urban plan (GUP). The aim of GUP is to rationalise the use of urban land. The document highlights the need to realise the plans of local communities and to include the citizens and organisations in public debates on the process of creation of plans for land restructuring and general societal needs.

However, the very document causes some ambiguities. This fact is particularly related to the anticipated amount of funds needed for PPP. Namely, the 2008 plan envisaged considerable funds for the construction of objects through PPP. Yet, the absence of any planned action is manifest, as is the project-based fund distribution, and the means of participation of the Municipality of Podgorica to the models of PPP. Hence, in April and May 2009, Institute Alterantive filed a request with the Secretariat for Finance of the Municipality of Podgorica and the Agency for the development and construction in Podgorica for access to PPP contracts that the Municipality concluded during 2008. The reply of the Agency for the development and construction in Podgorica dated 11 May 2009 stipulated that “in 2008 [this agency] did not conclude any PPPs”. In addition, they informed us that they possessed no information on the expenditure of funds for the construction of objects via PPP in Podgorica Municipality. The response from the Secretariat for Finance of the Municipality of Podgorica was received only after an appeal by our NGO to the head administrator on grounds of the “silence of the administration”. In the reply dated 20 November 2009, the Secretariat for Finance of the Municipality of Podgorica has notified us that it did “not possess the information requested” and that it “had no competence to act in this legal matter”.

The request for access to information was sent to the Property Directorate of the Municipality of Podgorica on 22 December 2009. Its request also sought access to the copies of the contracts on PPPs that the Agency for the development and construction in Podgorica and the Municipality of Podgorica concluded during not only 2008, but also in the course of 2006, 2007, and 2009. In a telephone conversation with the Property Directorate, held on 21 January 2010, we have received the reply that the Property Directorate also had no competence to act upon our request. According to the Property Directorate of the Municipality of Podgorica, the Agency for the development and construction in Podgorica was the authority competent to deal with the request.

⁹³ In the contract between the Municipality of Podgorica and the Turkish company “Gintaş İnşaat Taahut ve Tucaret Anomim Şirketi Ataturk” the estimated value of investment of the domestic partner is 13 million euros, and that of the foreign partner is 22.86 million euros. We have received a copy of this contract pursuant to a request for free access to information to the Municipal Assembly dated 3 August 2010.

The aforementioned leads us to conclude that neither the Secretariat for Finance, nor the Agency for the development and construction in Podgorica, nor the Property Directorate of the Municipality of Podgorica have the information related to the expenditure of funds allocated for the construction of public object through PPP. None of these institutions is in the possession of the copies of PPP contracts concluded for 2006, 2007, 2008 and 2009.

The experience of IA in the process of requesting access to information and PPP contracts points to the confusion in the distribution of competences for PPP at the local level. In addition, it may also be concluded that advertently (or not) the bouncing back and forth from one institution to another is only an attempt to prevent the access to the information and the documents requested. The absence of transparency and the possibility to scrutinise the details of the contractual obligations of the parties highlights the deficiencies of the entire PPP process. This conclusion is reinforced by the statements of the municipal officials that only the Mayor contacts the potential investors. The “Municipal policy” related to PPP does not necessarily generate positive results for the capital city.

The choice of the partner for the construction of the shopping centre “Mall of Montenegro” has been highlighted as a positive example of PPP. However, it also may appear as favouritism of certain companies, i.e. in this case the Turkish firm “Gintaş İnşaat Taahut ve Tüicaret Anonim Şirketi Ataturk”. This pretentious statement is confirmed by the fact that the media had published that the partner for the construction of the mall was selected, and the tender for the selection thereof was published only after that. The failure to respect the legal procedures negatively affects the participation of the interested parties to the tender. This generates the question: is the decision about the PPP really based on economic interest, or is it rather a political decision? The imprecise strategy of the municipality is also mirrored in the large number of projects that were initiated and never completed. Some of these projects include the reconstruction of the small hall in the “Morača” sports centre; the construction of the Millennium City centre; the construction of the hotel with the company “Gruppo Bolicci”; the announced construction of pools in Podgorica;⁹⁴ etc. Such developments also give rise to the question: do the preferentially treated partners select the locations and elements of PPPs?

4.3. Budva Municipality

On 4 January 2008, Budva Municipality has established the company “Budva Holding”. This company has the competence to manage and operate the municipal property, with the intention to promote joint investment with foreign partners to valorise and adequately transform the unused exclusive locations. By establishing this company, the Municipality transferred the ownership of over 3 million square meters of land between the beaches Buljarica and Jaz to “Budva Holding”.⁹⁵ During 2010, this company has received an additional two land plots in the field of Buljarica, of the area 54,913 and 10,286 m² respectively.

Previously, Budva Municipality was keen on selling land and obtaining one-time profit. However, by establishing “Budva Holding”, the high officials of this municipality have highlighted their determination to present the most attractive locations in the municipality in the best way possible through joint PPP investment with foreign partners. This stance was emphasised by Lazar Rađenović – the executive director of “Budva Holding” and the vice president of the municipality – on the occasion of the establishment of “Budva Holding”.⁹⁶ He noted that the inclusion of the representatives of opposition in the board of directors of this company was a step in the direction of democratisation and transparency of the entire process of privatisation and valorisation of municipal land. Rađenović also added that, in the future, the citizens of Budva will have the opportunity to become shareholders in the company. Given that the Municipality is one of the founders of the company, after the completion of the PPP, all the assets remain property of the municipality.

⁹⁴ An euphoric statement of the Mayor - Miomir Mugoša – after the water polo team of Montenegro won the European championship in 2007.

⁹⁵ The market value of this property is 2221 million euros.

⁹⁶ Daily “Vijesti”, 24 december 2007

Table 4: An overview of PPP in Budva Municipality

	Project	Private investor	Project details
1.	"Aston martin" Hotel at the Galija location nearby St. Stefan	Kuwait-based company "DC Invest Limited"	"Budva Holding" participates to the project through a land allocation of 67,13 m ² . After the completion of the project, it will retain 1/5 of the profit of the tourist complex, and will exercise 33% power share in decision-making.
2.	Hotel at an exclusive 5,500 m ² location nearby the Old Town of Budva	British company "Aston Martin"	"Hilton" corporation should manage this hotel complex.
3.	Golf course at the Spas Hill	Cooperation with the honorary consul of Belgium in Montenegro Jean-Luc Dumortier	
4.	"Budva-Brajići" cable car	By adopting a decision in March 2009, the Assembly of Budva Municipality established "Cable Car Montenegro" ltd. Plc., Budva; the main activity of the company is the construction and exploitation of the Budva – Brajići cable car.	Budva Municipality entered this partnership by the allocation of real estate of the total value of 209,963.00 euros.
5.	Tourist villas on the area of 30,000 m ² at the location Miločer – St. Stefan	Greek "Restis Group" ⁹⁷	
6.	Sail-Shaped Hotel at cape Zavala		In August 2008, "Budva Holding" opened a call for the establishment of joint venture company that would construct a luxurious 7-star hotel at Cape Zavala. The company that ranked the first at the tender was "Zavala Invest" (branch of the Russian "Mirax" firm). However, in 2010, "Budva Holding" decided to withdraw from negotiations with this company and renew the call for the bids for the construction of the hotel. ⁹⁸
7.	City hotel at the Košljun hill	Egyptian corporation "Orascom hotels & Development – OHD" ⁹⁹	The Egyptian company owns 12 hectares of land at Košljun hill. This land was purchased from the inhabitants of Budva in 2008. Since the municipality owns 2.5 hectares of land at this location, it is interested in a joint project with the Egyptian company.

⁹⁷ The Greek "Restis Group" has taken over the reconstruction of the city Hotel St Stefan from the Singapore-based "Aman Resorts".

⁹⁸ At present, the construction of the tourist complex in cooperation with the Russian company Mirax is ongoing at Cape zavala. The Montenegrin media (source: Mina business) have published the details of the tender for the construction of the hotel and villas within this complex in line with environmental sustainability. The potential partner had to have annual revenue of over 30 million euros in the two years immediately preceding the tender, and at least 10 years of relevant experience in managing similar projects. The costs of participating to the tender amounted to 10,000 euros.

⁹⁹ Egyptian company also purchased the land from the Russian investor at the Skočidevojka location. The Russian investor purchased the municipal land in 2005 for 2.3 million euros, while selling it for 40 million. In October 2009, the Municipal Assembly of Budva reached the decision on the urban project – tourist settlement "Skočidevojka".

On grounds of media sources presented in the table above, the number of PPP in the Budva Municipality is a considerable one. However, the reply to the request for free access to information, dated 26 May 2010, that Institute Alternative delivered to “Budva Holding”, requesting insight to PPP contracts concluded so far, states the opposite. The reply stipulates that “Budva Holding” concluded only one contract so far – that with the company DC Invest Limited Jersu.¹⁰⁰

Budva Municipality has clearly and precisely defined the aims that it seeks to achieve by privatising its most exclusive locations. In addition, the establishment of “Budva Holding” is a significant advancement in terms of realisation of these aims. The inclusion of opposition representatives in the work of this company is also an important achievement, as is the possibility for the citizens to purchase the shares of the company thus directly affecting its business policies. Still, the statements of the officials indicate an unclear strategy as to how these aims will be achieved. The same statements also point to the absence of a timely reaction in terms of realising these objectives, thus showing that the “good will” remains merely a letter on the paper. By the same token, it was outlined, on multiple occasions, that Budva Holding beholds the property the value of which reaches 220 million euros. However, “Budva Municipality” also negotiates about territories which are not yet the competence of this company. This raises the question of who the owner of such land is, given the fact that there are a number of unresolved property issues, and a number of unsatisfied previous owners who were forced to sell their land.

It is necessary to send an “objection to doing business” and to the initial privatisation steps undertaken by the Budva Municipality. This primarily refers to the sale of land of the previous military complex “Skočiđevojka” that caused a great financial damage to the previous owners and to the municipal budget. Although this sale is nowadays justified by the need to obtain one-time profit, it points to the absence of planned privatisation both at the time when the sale was made and nowadays. A great number of investors interested in locations at the Montenegrin coastal area is certainly useful and significant and should positively affect the systematic and harmonised direction of capital in an adequate fashion. However, the planned documentation of the development of the Budva Municipality and the spatial plans adopted in 2006 have been harshly criticised at the local level. This points to the imposition of conditions of partnership by private companies and investors.

There are also issues related to the protection of the authentic appearance of the tourist destination that on a daily basis acquires a non-Mediterranean look, and the protection of the flora characteristic of this area. A comparative analysis has shown that all the PPP contracts need to fulfil the conditions related to environmental protection and “fitting” into the previous natural framework.

The conclusion of PPP contracts in Budva necessarily raises the issue of the selection of private partners for capital investment. The failure of certain tenders and the problems caused by certain private partners point to a hasty selection of partners and inadequately assessed risks of certain contracts.

Finally, Budva Municipality came to the media spotlights owing to the organisation of numerous concerts of music superstars. These concerts were partly financed from the municipal budgets. Thus, the concert of the pop-star Madonna at the Jaz beach was ironically entitled the “eastern way of doing PPP”.¹⁰¹ The realisation of such projects is partly justified by the need to advertise the Montenegrin coast and attract investors. However, the amount of investment into this venture has generated a considerable deficit in the municipal budget, and the employees in the municipality still face the consequences thereof. Moreover, these funds could have been well invested in some other projects that could have been truly beneficial to Budva Municipality and its citizens.

¹⁰⁰ Decision 01-19/2 Budva Holding, dated 1 July 2010

¹⁰¹ The Croatian portal and lifestyle magazine Index notes that the Budva Municipality and the Government of Montenegro financed this concert by an investment of 4 million euros, with the aim of advertising the tourist potential of Montenegro.

5. Conclusions and recommendations:

General conclusions and recommendations:

- Public-private partnership is a concept that should be broadly applied in Montenegro. If applied rationally, public-private partnerships yield significant benefits. **For a successful realisation of this type of projects, it is essential to harmonise legal, regulatory and political frameworks. A stable political environment, laws harmonised with EU's regulations and best practice in this area, and the successful implementation of those laws, are all grounds for attracting foreign investment.** Given that EU membership is Montenegro's strategic aim, this country needs to be prepared to meet the challenges stemming out of the EU membership. The greatest administrative challenge en route to the EU is the harmonisation of the complete corpse of Montenegro's laws with the EU Acquis. Thus, in order to adequately deal with the issue of concessions, it is essential to **fully harmonise the Law on concessions with the EU's directives regulating concessions.** Given that Montenegro's Law on concessions is a new one, changes to it should be gradual but mandatory. Moreover, it is crucial to **fully harmonise article 39 of the Law on concessions with the provisions on Competitive Dialogue stipulated in the EU's Directive 2004/18/EC.**
- Public-private partnership is a novelty for Montenegro, and as such it is relatively unknown. **In order to make PPP more comprehensible to the citizens, it is of essence to introduce this concept to the public. Therefore, the legal framework regulating PPP should be presented to the public through the procurement of adequate expert information, brochures and manuals. The participants to the PPP process, i.e. decision-makers, should also be supplied with brochures and leaflets outlining the most relevant information in the realisation of PPP projects.** This is needed because the major problem of the public sector and the government that manages it is the lack of a quality cadre that would analyse PPP strategies. As a result of higher income, and higher financial flows, the private sector is more attractive to experts. Hence, it is necessary to pay particular **attention to the training of human resources in public-private partnership, so as to educate experts that would be able to produce feasibility studies and projects necessary for economic development.** In order to understand PPP better, it is also useful to more actively research corresponding projects in other countries.
- The inexistence of expertise for the development of PPP in Montenegro is additionally conditioned by the non-participation in the initiatives and networks that have the aim to summarise and exchange experiences, while assisting the realisation of PPP projects at the regional level. Montenegro did not participate in the establishment of the South East European Public Private Partnership Network in Sarajevo in 2009. Thus, it is necessary to **include the government's institutions in the South East European Public Private Partnership Network** at the earliest convenience.
- Among other issues, the activities of the South East European Public Private Partnership Network anticipate that certain joint initiatives and projects could possibly be financed through the EU's special funds in the future. These funds are an important source of financing in many areas, and thus the EU also needs to be approached as a potential partner in the future. In such a manner, the state has a twofold benefit from selecting projects that the EU is devoted to: the funds necessary for the revitalisation of the economy are secured, while the state prepares structurally and in terms of human resources for the use of regional and structural funds of the EU – funds that the state will use once it becomes a member state in this supranational community. A recommendation for acting in this direction is to **channel a share of the projects to issues related to solid waste, water supply and environmental protection,** as these are the issues that the EU invests in the most. Cooperating with the EU actually implies the implementation of these projects on grounds of the principles of efficiency, transparency and overall benefit, because the EU controls, coordinates and oversees the projects that it funds. A high degree of co-financing of PPP by the EU can be stimulating for PPP.

- **Public-private partnerships are not an easy source for ‘covering’ the budget deficit. Equally, they are not an opportunity for instant enrichment. Consequently, the realisation of PPPs needs to be planned.** The selection of PPP projects needs to be the outcome of comprehensive and systematic analyses, and not the result of lobbying and private interests. An adequate risk analysis largely determines the final success of the project. And indeed, one of the major PPP risks is an incomplete risk analysis. In cases of an unrealistic risk analysis and the failure to consider all public and social consequences of the realisation of a certain project, the consequences for the society and the state could be extremely negative.
- **The selection of local PPP needs to be harmonised with the spatial plans of the units of local self-governance.** The completion of this recommendation is premised on the need for quality spatial plans. **It is essential to plan and coordinate activities on the plans for the development of cities and city infrastructure.** Any divergence from these plans should be an exception rather than a rule.
- The public-private partnership contracts can additionally burden the budget unless all the conditions of debt repayment towards the private sector are realistically analysed and assessed. In cases of unrealistic assessment, there are long term consequences on the budget deficit. **The public sector needs to protect its interests by avoiding excessive indebtedness of the public funds and disproportionate profit of the private sector.** The public should have access to the annual debt repayment plans for PPP projects, while the **public sector needs to make the reports of the concluded PPPs available, thus facilitating the conclusion of new contracts.** Therefore, the levels of transparency and democratic control of the process will be increased.
- The ultimate decision on the initiation of some project is almost always adopted by the government. However, such a decision needs to rely on the assessments and opinions of independent experts that are enshrined in the feasibility study. **The presence of international financial institutions in PPP guarantees the fairness of doing business to the contracting parties.** The international actor ensures that the conditions and prices will be rationally decided upon. Consequently, international financial institutions need to be involved in the project from its initial stage. In addition, loans should be asked from the international financial institutions only for those projects for which it is impossible to find alternative means of financing. In such – exceptional - cases the loan needs to be realistic.
- **The monitoring of the implementation of PPP contracts implies a systematic progress assessment, which in turn depends on whether and to what extent the aims stipulated in the contract have been realised.** Hence, it is quintessential not to exceed the deadlines or the costs that have been agreed upon at the time when the PPP contract was concluded. In order to meet this request, the organs in charge of implementing and monitoring need to compile regular reports on the phases of PPP realisation, and to point at any detour from the project or irregularity in it. While having the monitoring authorities that are laggards in terms of informing the public on the realisation of the project, Montenegro has no central institution that would coordinate PPPs. The positive experience of the EU’s Member States and the countries in the region point to the **benefits of the existence of an institution charged with regulating PPP relations.** The establishment of this institution would ensure a coordinated and controlled action in this area in Montenegro, while forming an expert nexus for PPPs.
- In terms of institutions, apart from the need for a central institution that would manage PPP, **the importance of the Concessions Commission, as the organ constituted to coordinate the process of allocating concessions, is immense. Hence, it is of utmost importance to professionalize the work of this institution.**
- By definition, the realisation of public-private partnerships needs to be transparent. The access to information is extremely difficult in Montenegro. Therefore, there is an obvious need to found a central register that will contain all the PPP contracts concluded so far. The register has to be accessible to all the interested parties, including citizens. The access of different parties to these documents will indirectly have a positive impact on their quality. **Given the fact that the decision to institute the central register of concession contracts has already been adopted, its formal establishment needs to be accelerated. In addition, it is necessarily to make all PPP contracts available and to establish a national database with concluded PPP contracts.**

6. Literature and sources

1. Bojović Viktorija „Public Private Partnership as a Least Resort for Traditional Public Procurement“, *Panoeconomicus*, 2006, 3, p. 299-311
2. Capital markets in PPP financing – Where we were and where are we going? – European PPP Expertise Centre, March 2010
3. Commission interpretative communication on the application of Community law on Public Procurement and Concessions to institutionalised PPP (IPPP), (2008/C 91/02)
4. Commission staff Working paper, Report on the Public Consultation on the Green Paper on Public-Private partnerships and Community Law on Public contracts and Concessions, Brussels, 3. 5. 2005, SEC (2005) 629
5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnership and Community Law on Public Procurement and Concessions, Brussels, 15. 11. 2005, COM (2005) 569 final
6. Crna Gora – Sa druge strane uspona: Politike rasta i fiskalna ograničenja, Pregled javne potrošnje i institucija – Izvještaj br. 46660 – ME, Jedinica za smanjenje siromaštva i ekonomski menadžment - Region Evrope i Centralne Azije, Svjetska banka, 24. novembar 2008. (Montenegro - Beyond the peak : growth policies and fiscal constraints (Vol. 2 of 2) : Public expenditure and institutional review – Report No. 46660 – ME, Poverty Reduction and Economic Management Unit Europe and Central Asia Region, World Bank, 24/11/2008)
7. Đorđević Branislav i saradnici „Male hidroelektrane ne mogu biti zamena za velika i srednja hidroenergetska postrojenja – na primeru Crne Gore“ *Vodoprivreda* 0350-0519, 39 (2007) 228 (Đorđević Branislav, et al. “Small Hydro Power Plants can not Substitute Large and Medium Hydro Energy Plants – the example of Montenegro” *Vodoprivreda* 0350-0519, 39 (2007) 228)
8. Georgievski Sašo “The new Macedonian Concessions and Public-Private Partnerships Act: A Need for Further Improvement? – *Lex Localis – Journal of Local Self-Government* Vol. 7, No. 2, pp. 159-175, April 2009
9. „Javno privatna partnerstva u regionu“, Pricewaterhouse Cooper, Interexpo, novembar 2009. (“Public-private partnerships in the region” Pricewaterhouse Cooper, Interexpo, November 2009)
10. Marenjak Saša, Kušlji Danijel „Pravni okvir javno-privatnog partnerstva“, *Građevinar* 61 (2009) 2, 137-145 (Marenjak Saša, Kušlji Danijel, “The Legal Framework of Public-private partnership” *Građevinar* 61 (2009) 2, 137-145)
11. “Public-Private Partnership (PPP) Options for Future Power Generation in Montenegro, World Bank, 25. February 2010. Final Report, Submitted by: Cambridge Economic Policy Associates Ltd
12. Renda Andrea and Schrefler Lorna „Public-Private Partnerships National Experiences in the European Union“, Centre for European Policy Studies, Brussels, 2006
13. SIGMA - Montenegro Public Procurement System, Assessment May 2009
14. Why study PPP (Public Private Partnership) with caution? PPP Projects in Czech Republic: Implementation and Risks, Prague, Transparency International, 2007

Documents:

1. Commission Regulation (EC) No 213/2008 of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV
2. Green paper on Public-Private partnerships and Community Law on Public Contracts and Concessions (presented by European Commission), Brussels, 30. 04. 2004, COM (2004) 327
3. Odluka o izmjeni i dopuni odluke o ulogu Opštine Budva u osnivanju privrednog društva, broj 0101-87/1 od 16. 03. 2009. godine (Decision on the amendment and addenda to the decision on the investment of Budva Municipality in the establishment of a commercial association, No. 0101-87/1, dated 16/13/2009)
4. Odluka o planu privatizacije za 2010. godinu usvojena na sjednici Vlade Crne Gore od 17. decembra 2009. godine (Decision on the privatisation plan for 2010 adopted at the session of the government of Montenegro on 17/12/2009)
5. Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV)
6. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Official Journal of the European Union, 2007/C 306/01
7. Uredba o vjetroelektranama, 17. septembar 2009. (Decision on Wind Power Plants, 17/09/2009)
8. Zakon o učešću privatnog sektora u vršenju javnih usluga, Službeni list RCG, br. 30/02 od 26.06.2002. (Law on participation of the private sector in public services, Official Gazette of RM 30/02, dated 26/06/2002)
9. Zakon o koncesiji za autoput Bar-Boljare, Službeni list Crne Gore, br. 64/08 od 24. 10. 2008. (Law on concession for the Bar-Boljare motorway, Official Gazette of Montenegro 64/08, dated 24/10/2008)
10. Zakon o koncesijama, Službeni list Crne Gore, br. 08/09 od 04.02.2009. (Law on concessions, Official Gazette of Montenegro 08/09, dated 04/02/2009)

Interviews:

1. Đorđe Suhih, president of the Assembly of the Capital City
2. Miodrag Čanović, assistant to the Minister of Economy for the area of energy
3. Darko Konjević, executive director of Montenegro Business Alliance
4. Slobodan Perović, president of the Concessions Commission

Interlocutors:

1. Nusret Kalač, the president of Rožaje Municipality
2. Radmila Vukićević, Secretary of the Secretariat for commerce, economy, finance, general management and social activities in Žabljak Municipality
3. Mihailo Dondić, head of the Self-governance of the local administration of Plužine Municipality
4. Nikola Đurašković, manager of the Royal Capital of Cetinje
5. Slobodan Popović, director of the Agency for the construction and development in Herceg Novi
6. Petar Vujović, advisor for economic development and international relations of the president of Tivat Municipality
7. Vido Dabanović, director of the Agency for Investment and Property of the Bar Municipality

Internet sources:

1. www.ajpp.hr – Public-private partnership agency in Croatia
2. www.pwc.rs – Pricewaterhouse Cooper
3. www.eib.org – European Investment Bank
4. www.gov.me – Government of Montenegro
5. www.minekon.gov.me – Ministry of Economy of Montenegro
6. www.podgorica.me – Podgorica Municipality
7. www.opstinabudva.com – Budva Municipality
8. http://www.bankwatch.org/documents/never_mind_the_balance_sheet.pdf
9. <http://pppue.undp.org/toolkit/MOD120.html> - Public-private partnership Manual

- Also, some materials broadcast on RTV Atlas during the TV show “In Focus” has been used in this study.

7. Appendices:

Annex 1: EU's legislation regulating public-private partnership and the assessment of harmonisation of the Law on concessions with these legislative acts¹⁰²

Publication date	Publishing institution	Title	Assessment of harmonisation
		Treaty on the European Union	The Law is harmonised with the provisions enshrined in articles: 2, 3, 10, 16, 31, 43-55, 81-89, 95 and 296
29/ 4/ 2000	European Commission	Commission interpretative communication on concessions under community law	
11/ 2/ 2004	Eurostat	News release - New decision of Eurostat on deficit and debt Treatment of public-private partnerships	
31/ 3/ 2004	European Parliament, Council	Directive 2004/17/EC of European parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors	
31/ 3/ 2004	European Parliament, Council	Directive 2004/18/EC of European parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts	Partly harmonised – the law does not stipulate the provision enshrined in the Directive that the information on the allocation of the concession needs to be delivered to the Commission, so that it can be published in the Commission's Official Gazette, at the expense of the Commission. No difference is made between concessions the value of which does not exceed 5,278,000 euros. The law does not envisage the introduction of provisions related to sub-contracting.
30/ 4/ 2004	European Commission	Green paper on Public private partnerships and community law on public contracts and concessions	
2004	European Commission	Explanatory note – Competitive dialogue – Classic directive	

¹⁰² Source: Marenjak Saša, Kušlji Danijel „Pravni okvir javno-privatnog partnerstva“, *Građevinar* 61 (2009) 2, 137-145, str. 3; for assessing the degree of harmonisation with the EU's legislation see:

03/ 5/ 2005	European Commission	Report on the public consultation on the Green paper on Public private partnerships and community law on public contracts and concessions	
15/ 11/ 2005	European Commission	Communication on PPPs and Community law on public procurement and concessions	
17/ 11/ 2005	European Commission	Frequently Asked Questions (FAQs) on public procurement: Commission proposes clarification of EU rules on public-private partnerships	
26/ 10/ 2006	European Commission	Resolution on Public private partnerships and Community law on public procurement and concessions	
03/ 12/ 2007	European Parliament, Council	Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No. 1191/69 and 1107/70	
05/ 2/ 2008	European Commission	Communication on the application of Community law on Public Procurement and Concessions to Institutionalized Public-Private Partnerships (IPPP)	
18/ 2/ 2008	European Commission	Public procurement: Commission issues guidance on setting up Institutionalized Public-Private Partnerships – Frequently Asked Questions	

Annex 2: Reports on the work of the Concessions Commission and BOT arrangements

<p>Report for 2004</p>	<p>The Commission approved the public calls for concessions for the use of agricultural terrain "Grahovsko polje" and "Akumulacije Grahovo", as well as the draft contracts on BOT arrangement concessions related to the bottling of water from the following springs: "Alipašini izvori" in Plav Municipality, "Vrela Tunjeva – Milojevička vrela" in Nikšić Municipality, "Vrelo" in Rožaje Municipality and "Đedov izvor" in Kolašin Municipality.</p>
<p>Report for 2005</p>	<p>In 2005, the Commission has considered the following issues on grounds of its competences:</p> <ul style="list-style-type: none"> - Concession contracts for the use of water for bottling in the municipalities of Kolašin and Podgorica. - the request for the transfer of the concession contract for the use and bottling of water for ROCKY & PISTOLATO Podgorica. - the approval of the annex of the contract for the use of water for bottling at the "Bukovička vrela" spring in Kolašin Municipality. - Concession contracts for the exploitation of dimension stone from the deposits in the municipalities of Rožaje, Kolašin and Ulcinj. <p>The Commission actively participated in the public debate on the draft Law on the participation of the private sector in the procurement of public services.</p>
<p>Report for 2006</p>	<p>In 2006, the Commission approved the concession contracts for the bottling of water from the following springs: "Božja voda" in Cetinje Municipality, "Gusarevica" in Šavnik Municipality, "Javor" in Kolašin Municipality, and "Pasišta" in Plužine Municipality, as well as Annex 1 of the contract for the use of the water for bottling from the "Đedov izvor" spring in Kolašin Municipality.</p>
<p>Report for 2007</p>	<p>In 2007, the activities of the Commission entailed the deliberation of the following issues:</p> <ul style="list-style-type: none"> - public calls for the international pre-qualification of investors interested in the combined DBOT arrangement concessions for the exploration of watercourses and the construction of small hydro power plants in Montenegro. - public calls for concessions for detailed geological explorations and exploitation of the mineral wealth in many locations across Montenegro. - decisions on the extension of exploitation rights for the use of mineral deposits and water for bottling in many locations across Montenegro, as well as recommendations on the allocation of concessions for detailed geological explorations and exploitation of non-metal raw materials and dimension stone from the "Đurići – greben" location in Herceg Novi Municipality. - contracts and the consent to concession contracts for the use of water for bottling in the municipalities of Kolašin, Šavnik, Nikšić and Plav, as well as the annex of the concession contract for the use of water at the "Alipašini izvori" spring in Plav. - contracts and the consent to concession contracts for the exploitation of stone and other raw material in the municipalities of Herceg Novi, Mojkovac, Berane, Kotor, Ulcinj and Bar. - The Commission participated in the registration of contracts for the construction of the road Meljne – Petijevići, which is shortly to be realised as a BOT arrangement concession. <p>In 2007, the Commission had, for the first time, considered the termination of a contract. This contract was related to the spring "Vrela Tunjeva – Milojevička vrela" in Nikšić Municipality and was related to the exploitation and bottling of water.</p>

Annex 3: The overview of PPP projects in certain municipalities of Montenegro ¹⁰³

No.	Municipality	PPP Project
1.	Andrijevica	-
2.	Bar	1. Visitor centre in Virpazar 2. Covering the road towards Bukovik village in tarmac
3.	Berane	-
4.	Budva ¹⁰⁴	-
5.	Cetinje	-
6.	Herceg Novi	1. Renovation and revitalisation of the facades in the town
7.	Mojkovac	1. Business Centre , Serdara Janka Vukotića Street
8.	Rožaje	-
9.	Tivat	1. Bus station 2. Business Centre "Turkova poljana"
10.	Žabljak	-
11.	Ulcinj	-
12.	Podgorica	1. Mall of Montenegro 2. Tribunes at the stadium of "Budućnost" FC
13.	Plav	-
14.	Pljevlja	-
15.	Gusinje	-
16.	Šavnik	-

¹⁰³ Information received from the cabinets of the presidents of the municipalities of Montenegro. Our interlocutors included: the president of Rožaje Municipality - Nusret Kalač; the secretary of the Secretariat for commerce, finance, general administration and social activities in Žabljak Municipality - Radmila Vukičević; the head of the Secretariat for local self-governance in Plužine Municipality - Mihailo Dondić; the manager of the Royal Capital of Cetinje - Prijestonice Cetinje Nikola Đurašković; the director of the Agency for the construction and development of Herceg Novi - Slobodan Popović; the advisor for economic development and international relations of the president of Tivat Municipality - Petar Vujović; the director of the agency for investment and property in Bar Municipality - Vido Dabanović.

¹⁰⁴ The overview of PPP in the Budva Municipality is presented in an in-text table.

About us

Institute Alternative is a non-governmental organization, established in September 2007 by a group of young, educated citizens, experienced in the civic society, public administration and business sectors.

The mission of Institute Alternative is the strengthening of democratic processes in Montenegro by identifying and analyzing public policy options.

The strategic aims of Institute Alternative are to: increase the quality of development of public policy, contribute to the development of democracy and the rule of law, and to contribute to the protection of human rights in Montenegro.

The values that we follow in our work are the devotion to our mission, independence, constant learning, networking, cooperation and teamwork.

The Institute has completed the project “Public administration in Montenegro – salary schemes, mechanisms of appraisal and possibilities for professional advancement in law and in practice” (January to June 2008). Under the aegis of the project, research was conducted, yielding a study with the aforementioned title, and a roundtable whereby the study was discussed.

The Institute has published a short brief with recommendations on the transparency of financial affairs of the Parliament of Montenegro (June 2008).

The Institute distributes its Weekly Brief to a large number of recipients. Institute Alternative’s Weekly Brief contains the most important information in the areas of politics, society, economy and regional cooperation. The recipients of Institute Alternative’s Weekly Brief are mostly the representatives of foreign organizations and diplomatic envoys to Montenegro. The Institute is the co-publisher of the publication “Political Criteria for the Accession to the European Union”, authored by Aleksandar Saša Zeković, MA. In June 2009, a study entitled “The Case of the First Bank – experiences for supervisors and other decision makers”. The author of the publication is Mila Kasalica. This publication has been supported by Friedrich Ebert Foundation. In December 2009, the Institute has published a study, entitled “Lipci Case 2008 – How to Prevent it from Repeating?” In January 2010, Institute Alternative has published “Parliamentary oversight of the security and defence sectors in Montenegro – What next?”, also with the support of Friedrich Ebert Foundation.

In February 2010, the Institute has published the analysis entitled “The Assessment of Legal Framework and Practice in the Implementation of Certain Control Mechanisms of the Parliament of Montenegro: consultative hearing, control hearing and parliamentary inquiry”. A representative of Institute Alternative has participated to the session of the Committee for economics, budget and finance, when the draft Law on the budget of Montenegro for 2009 was on the agenda. The representative of Institute Alternative has presented Institute Alternative’s comment on this draft law.

Institute Alternative is participating in the project entitled “EU Matrix – monitoring of the process of European integration – monitoring of the National Program for Integration of Montenegro to the EU” as a partner institution of the European Movement in Montenegro and the Monitoring Centre. The focuses of Institute in this project are public private partnerships and public procurement.

During 2010, Institute Alternative conducted research in the field of public-private partnerships in Montenegro and prepared an analysis of the legal framework and practices in connection with this concept, entitled “**Public-private partnerships in Montenegro - accountability, transparency and efficiency**”. A round table event was organized in order to present the working version of the research paper to the relevant stakeholders. Presentation of studies on public-private partnership aimed to draw attention to the legislative framework and current PPP projects implemented in Montenegro, through a comprehensive insight into the strengths and weaknesses of the legal framework and practice.

IA's policy brief "**Public procurement system in Montenegro - transparency and liability**" was presented at a round table in October. The event was attended by numerous representatives of state institutions dealing with public procurement issues, NGOs and media. The goals of IA's research were to review the whole public procurement system and identify areas affected with corruption as well to outline the importance of transparency, and accountability in public procurement in the struggle against corruption in Montenegro.

European Fund for the Balkans has supported a project of Institute Alternative dealing with **external financial control**, that is, with the examination of the legal framework and practice of the State Audit Institution. The publication of the results of this research is forthcoming in December 2010.

The process of adopting the **Law on Parliamentary Oversight of the Security and Defence Sector** has continued in 2010, with IA's persistent advocacy based on an analysis of parliamentary oversight of the security and defence sector in 2009. IA established cooperation with the Parliamentary Committee for Defence and Security in the process of preparing the law, contributing with comprehensive commentary of the draft law and having two meetings with the working group in charge of the task in order to discuss the proposed changes.

Activities of Institute Alternative have been supported by the Foundation Institute for an Open Society – Representative Office Montenegro (FOSI ROM) and Think Tank Fund, Friedrich Ebert Foundation, Commission for the distribution of funds for NGO projects of the Parliament of Montenegro, Canada Fund and the European Fund for the Balkans. Institute Alternative has established cooperation with the European Stability Initiative (ESI), with the seat in Berlin. ESI has conducted a capacity-building program for IA's associates.

Institute Alternative is a member of the self-regulatory body of NGOs, and has offered full details on its financial affairs in line with the Activity Code for NGOs, to which Institute Alternative is a party.

Institut Alternativa

Đoka Miraševića ("Kroling") 3/3, Podgorica, Crna Gora

Tel/Fax: (+382) 020 268 686

e-mail: info@institut-alternativa.org

web site: www.institut-alternativa.org

CIP - Каталогизација у публикацији
Централна народна библиотека Црне Горе,
Цетиње

ISBN 978-9940-533-08-3
COBISS.CG-ID 17534736