



Public-private partnership: problems and opportunities

Republic of Macedonia





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Executive Summary

As the Public Private Partnerships (PPPs) is relatively new topic in the Republic of Macedonia, this study at first gives an overview of the legal and institutional framework for PPPs, then it looks into current challenges/weaknesses focusing on policy and legislative framework, institutional capacities or public sector bodies and external factors. At the same time, the study describes the characteristics of PPP in the country and availability and transparency of data for current PPP projects. Accordingly, analysis on good and bad PPP practices/cases is made. Also there is a part of this study that looks into PPPs at sub national (local) level and risks of corruption and possible ways for preventing these practices. At the end, certain recommendations are given for improving the understanding of the PPP framework in the country, transparency of financing PPP projects and improved legislation.

Purpose of the analysis

The objective of the study is to analyze the policies, laws, regulations regarding Public-private partnerships, the relationship between PPP and Public infrastructure, PPP and debt, recognizing good and bad cases of PPP, and advocating for change.

As the Public Private Partnerships (PPPs) is a model of financing which governments consider as one of the possibilities that could be used to provide and improve public services or infrastructure projects for the citizens, this study looks into current challenges focusing on policy and legislative framework, institutional capacities and external factors, such as PPP awareness. The study recommendations involve clear formulation of PPP policy, followed by the legislative framework and enhanced institutional capacities, monitoring of PPPs as well as recommendations for raising general level of understanding of PPPs.

Introduction

In many countries, governments have been promoting the involvement of private sector entities to enter into long-term agreements for the development and delivery of large infrastructure projects, with a focus on overcoming the limitations upon public fund of the traditional approach. The involvement of private sector through public private partnerships (PPP) brings in new capital investments, value for money and additional risks to handle. Worldwide research studies have shown that an objective, systematic, reliable and user oriented risk assessment process and an optimal allocation mechanism among different stakeholders is crucial to the successful completion.¹

The concept of Public Private Partnership is not new: It has been used for as long as private funding has enabled services for the general public, varying in forms between

¹ Public Private Partnership for Infrastructure Projects: Mapping the Key Risks, prepared by Julinda Keçi

countries. In fact, it is difficult to come out with a single definition of the PPPs due to the different level of private sector involvement or the nature of the responsibilities placed, and many times is confused with the privatization. Privatization involves a private sector organization providing a facility to the public at a price that is set by the market's ability to pay for such a service, while PPP combines the efforts of the public and private sector to provide a facility for public use.²

Public-Private Partnerships (PPPs) are now being used in many countries to develop infrastructure projects. While PPP transactions in this context typically are based on a network of complex legal agreements, there is normally a PPP Contract at the center of each such transaction, in the form of a concession agreement or similar document, between a public authority (the Contracting Authority) and a private company (the Private Partner). The complexity and sophistication of PPP transactions, and the fact that they are often heavily negotiated to reflect the characteristics of a given infrastructure project, frequently means that considerable time and expense is involved in preparing and finalizing PPP Contracts. This has led many commentators to ask if it is possible to reduce costs, and shorten the time involved in such processes, by standardizing the provisions found in concession agreements or other PPP Contracts between a government or other public entity and a private company. In a number of countries efforts have been made to develop complete standardized PPP agreements for different types of infrastructure projects such as roads, railways, ports or power generation. To date, however, there is no universally accepted language for such agreements on an international basis.³

Public-private partnerships (PPPs) in Eastern Europe region

The landscape for public-private partnerships (PPPs) in Eastern Europe and the Commonwealth of Independent States (CIS) is one of disparity. The countries themselves are a diverse group, both geographically and economically, and face different international political and domestic market constraints; as such, their PPP plans differ in ambition, implementation and sustainability. Many countries have actively incorporated private participation in infrastructure in the past, but not always in the form of PPP; some, more focused on PPPs specifically, have stepped away from such projects in recent years. This is reflected in the varied performance many countries showed across the different index categories. Moreover, not one single country appears to have the best practices, but a number of them have elements of a sound system, just awaiting one or two more key ingredients. Some countries just need more political will in favor of PPPs. Others need to update their laws and institutions to catch up with the PPPs already taking place.⁴

² *ibid*

³ Draft Report on Recommended PPP Contractual Provisions 2016 Edition, prepared by International Bank for Reconstruction and Development/The World Bank

⁴ Evaluating the environment for public private partnerships in Eastern Europe and the Commonwealth of Independent States, The 2012 EECIS Infrascope, Findings and methodology

A recurring theme, pretty on paper, but poor in practice, serves as a reminder that creating an operational and effective PPP system requires more than just passing the necessary laws and making regulatory changes. Many countries in the region have made positive steps in improving their PPP processes on paper, but will now need to focus resources on enhancing implementation capacity and project oversight. Successful PPP systems require the full range of resources implied in project lifecycle management, from durable institutions that can deploy specific expertise, to depth of experience in risk identification and management, as well as sector and project oversight.⁵

Many of the countries with the best-rated regulatory and institutional frameworks have not yet translated them into operational successes. Of the top seven countries on the regulatory framework indicator, only Slovenia and Hungary are among the top eight performers on operational maturity, and Hungary has effectively halted PPP implementation and dismantled institutional structures in recent years. Generally speaking, the most operationally experienced countries are not those that have spent time developing modern, PPP-conducive frameworks. On one hand, the disparity is a question of timing—countries where PPP frameworks are a relatively new phenomenon need time to develop a track record with them. Nevertheless, closer examination reveals some countries where new laws have been passed, but not enough work has been done to ensure they may be used, along with existing laws, to procure projects. Finally, the region also suffers from high regulatory risk. New governments do not always honor project decisions made by previous administrations, thereby endangering the sustainability and survival of existing projects, as well as deterring future investors. Corruption can also deter countries from implementing PPPs, as rent-seeking governments try to avoid the *value-for-money* approach and more competitive, transparent procurement practices associated with large-scale PPPs. All these factors have a continuous impact on political will to use PPPs in the provisioning of public services and infrastructure in the region.⁶

When considering country-income groups, it can be concluded that: over the last decade, 61% of investment in PPPs was undertaken in upper middle-income countries (UMICs), 37% in lower middle-income countries (LMICs), and just a mere 2% in low-income countries (LICs). This pattern has been confirmed in a number of studies, including from the Organization for Economic Co-operation and Development (OECD) and the IMF. As expected, PPPs tend to be more common in countries with large and developed markets to allow for a faster recovery of costs and more secure revenues. However, the meager percentage of total investment in PPPs flowing to LICs does not mean that PPPs are not relevant in these countries. During most of the decade (a context of economic growth in the developing world) investments in PPPs, in relation to the size of the local economy (GDP), were higher in low-income countries than in upper middle-income countries. They were even higher in lower

⁵ *ibid*

⁶ *ibid*

middle-income countries, with a more volatile trend in LICs. This pattern shows that LICs and LMICs are more vulnerable to the fiscal implications of PPPs.⁷

Public-private partnerships (PPPs) in the Balkan region

There is no consistent, international standard which would define Public Private Partnership – so called PPP projects and describe different types of PPP contracts. The unified definition for Public Private Partnership is not known. It is an innovated form of legal contractual relations among the private business sector entities i.e. the entrepreneurs and Public Administration authorities. The object of these contracts is public services provided as services in the public interest for example as infrastructure financing, construction or reconstruction of certain operating entities performed by the contractor instead of the public government authorities. The contractor is paid directly from the public resources (state budget, EU resources).⁸

A public-private partnership (PPP) is a cooperative arrangement between one or more public and private sectors for of a period of time. When we talk about PPP in transition economies, we can say that it have become increasingly popular since 1990. This popularity was mainly due to some of the successful cases of PPP in developed countries in which the model became popular in the 1980s. However, PPP has yet to prove that it is appropriate in transition economies because of political and economic differences.

In the Western Balkan countries PPP model is considered an attractive way to use the resources available from EU funds (IPA) and respective international financial institutions and bilateral donors. Although it is beneficial to attract private investment into public infrastructure and services traditionally procured by the government (public sector) accelerating the implementation of priority infrastructure, PPP is even now demanding governments in the Western Balkan region to improve the national institutional and legal framework for efficient PPP model implementation. Also, in terms of the new EU Investment Policy for attracting private capital into infrastructure development and to bridge shortages in the public budget, a modern and effective Public procurement, PPP and concession policy is a precondition.⁹

The leading sector where PPPs are most present in the Balkan region is transport with six projects (with the last data of 2015): Two operational contracts for the airports in Tirana (Albania) and Prishtina (Kosovo), concluded with a seven-year interval: in 2004 and 2011; - Two public transport PPP projects in Serbia (2015) and Kosovo (2012); - One

⁷ What lies beneath? A critical assessment of PPPs and their impact on sustainable development By María José Romero

⁸ The Public-Private Partnership Projects Legislation and PPP Project Experience in Slovakia, Conference paper, prepared by Darina Saxunova Comenius University in Bratislava, May 2015

⁹ Comparative Analysis of Lessons Learned from Recent Development in Implementation of Public Private Partnership Projects in the Western Balkan Region, WORKING PAPER, by Regional School of Public Administration (ReSPA), November 2015

road PPP project in Montenegro (2007); and - One parking PPP project in Macedonia (2013). The municipalities were the public partner for all public transport and parking projects regardless of the Western Balkan country. Both airports were signed at the national level. The average duration of contracts in transport sector is 13.5 years, and the average project value 57 m €. The Energy sector is represented by four concession projects, three of them in B&H and one in Albania. The contracts in the energy sector were signed during the period from 2006 to 2014. All the energy projects in B&H were signed for 30 years and one in Albania was for 35 years. The value of the project in Albania is more than five times as high as the largest project value in B&H. The sector with the lowest variation among projects is the energy sector: contract duration, PPP type, the number of months taken to prepare for tendering and the approach to tender procedures are the same for all projects assessed. The other three operational projects were signed in 2012–2013: in the environment sector (2013, waste management in Macedonia), in education (2012, student accommodation in Montenegro) and government infrastructure (2013, administrative building in Macedonia).¹⁰

Characteristics of PPPs in Macedonia

When we speak about PPP, we can analyze first the main objective of PPP. Namely, the main objective of the PPP is the inclusion of the private sector in providing public services, with the result that the role of the public sector changes from an owner towards a buyer and a guardian of public interests. This is driven by the belief that the public sector should focus on its basic functions, leaving the private sector to perform its own function efficiently and effectively. One of the key policy guidelines behind the concept of PPP is the desire to improve national infrastructure in the country and to support public services, without burdening public funds and without the need to increase the taxes.¹¹

Macedonia's overall performance in PPP implementation was ranked high in 2012. The country adopted a set of concession, PPP, sectorial and public procurement laws for PPPs at both the national and local levels, which are in alignment with EU directives on public procurement. The PPP Unit located in the Department for Legal affairs, receives policy development support from the Ministry of Economy and assistance for advisory and promotion tasks from the Council on PPPs. However, familiarity with technical and practical aspects of PPPs remains low in government agencies and experience in risk management is limited.¹²

¹⁰ IBID

¹¹ Correlation of (non) applicability of the Penal Provisions to the Law on Public Procurement in procedures for Concessions and Public Private Partnership In the Republic of Macedonia, written by N. Tupanchevski and V. Shakleva, published in *Balkan Social Science Review*, Vol. 3, June 2014, 27-47

¹² PPP knowledge lab, Macedonia, <https://pppknowledgelab.org/countries/macedonia-fyr>

Successful PPPs have been carried out in the power and transport sectors and the country has allowed private sector participation in the form of concessions, divestitures and greenfield projects in several sectors. The two international airports “Alexander the Great” in Skopje and “St. Paul the Apostle” in Ohrid are examples of PPP projects within the country.

PPP - Definition

Public Private Partnership (PPP) can be defined as cooperation between the public sector (central or local authority) and the private sector in order to provide financing, construction (reconstruction), and maintenance of public infrastructure and/or the provision of public services that are “exclusive” to the public partner.

Depending of the means of remuneration by the public partner for the provided public works and/or public services, as well as allocation of the key operational risk, the PPP projects implemented in Macedonia by central and local government are the following:

1. Public works concessions (airport, landfill for waste disposal);
 2. Public services concessions (waste management, parking system and public lightning);
 3. Public works contracts (administrative offices buildings and green markets); and
- Public works and/or services concession contracts according to the international terminology are concession contracts, such as Build – Operate – Transfer (BOT) or Design – Finance – Build – Operate – Transfer (DFBOT) projects i.e. the user pay principle projects. Public works and/or services contracts according to the international terminology are works and/or services contracts i.e. contracting authority pay projects.

The objective of the PPP shall be to enable engagement in financing contracts establishing a PPP based on the principles of equality, transparency, non-discrimination, proportionality, mutual recognition, environmental protection and efficiency of the procedure for concluding contracts establishing a PPP, as well as quality and efficient realization of the works and services from the concluded contracts establishing a PPP.

In accordance to the Law on Concessions and Public Private Partnership (PPP law)¹³, PPP shall imply a form of contractually regulated long-term cooperation between the public partner and the private partner, characterized by the following:

- a) Private partner assumes the obligation to provide public services to end users within the area of public partner competence and/or the obligation to ensure the public partner necessary preconditions for the provision of public services to end users and/or activities within its area of competence;

¹³ Law on Concessions and Public Private Partnership (PPP law) “Official Gazette of the Republic of Macedonia (No. 6/12, 144/14, 33/15 и 104/15 and 215/15).

b) for the purpose of fulfilling the obligations from item a) of this paragraph, the private partner may take over the obligation to: – finance, design, construct or/and reconstruct/renovate public infrastructure facility, operate and maintain a newly constructed or/and reconstructed/renovated public infrastructure facility, or – use, operate and maintain an existing public infrastructure facility, or – any combination of the above mentioned obligations as long as the combination of those obligations is for the purpose of fulfillment of objectives set in item a) of this paragraph;

PPP contracts may be awarded at central and local level. All PPP contracts stipulated by the PPP law shall be concluded for a period of up to 35 years, calculated as of the day of concluding the contract, i.e. as of the day of entering into force of the contract, if this date differs from the former one, unless otherwise provided by a special law. The provisions from the PP law shall be adequately applied to the award procedures for contracts establishing a PPP, unless otherwise provided by the PPP law. The procedure for awarding contracts establishing a PPP shall be implemented in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment and mutual recognition.

Legal framework of PPPs

PPP in Macedonia is governed by set of legislation such as: Law on Concessions and Public Private Partnership (PPP law), sectoral laws governing the services of public interests and Law on Public Procurement¹⁴(PP law) which applies to the awarding of public contracts (public procurement contracts and PPP contract). In addition to these legislation 6 (six) by-laws adopted by the Government for the implementation of the PPP law.

The Law clearly defines its scope of application, regulates the selection procedure (publication, pre-selection and procedure for requesting proposals, publication of concession award, possibility of review procedures) and provides for a flexible framework for the project agreement (with reference to termination/compensation, tariff setting/ service standards, etc) as well as the manner and procedure for granting of the agreements regarding other types of public private partnership, contest of the agreement of public private partnership, rights and obligations of the public and private partner and legal protection in procedure for granting of the agreements for public private partnership.

The PPP law is quite well drafted and constitutes a solid basis for the development of PPP in the country provided the financing and arbitration issue can be solved in accordance with international best practice for PPP. PPP law and PP law as well generally are aligned with the EU acquis, and are duly enforced.

¹⁴ Law on Public Procurement“Official Gazette of the Republic of Macedonia No. 27/2015 - consolidated text and amendments of the Law No. 78/15, 192/15 and 27/16).

Pros and cons of existing legislation

The use of the lowest price as a unique criterion for awarding a public-private partnership/concession contract can violate the principle of “value for money”. Using the economically most favorable bid as the criteria for awarding the public-private partnership/concession contract is allowed but is subject to the consent of the Public Procurement Council. There is no explicit provision in the PPP law prescribing the prior consent of the Public Procurement Council for using the economically most favorable bid as the criteria for awarding the PPP contract, but in practice such consent is required. This comes from the fact that PPP law prescribes that provisions from the PP law concerning the awarding procedures shall be adequately applied to the award procedures for contracts establishing a PPP, unless otherwise provided by the PPP law. Such understanding looks like unnecessarily bureaucratic approach. In addition to this, existing legislation on public procurement and public-private partnerships and concessions should be harmonized with the newest EU directives on PP and concession.

Since 2014 the PPP law obliged the public partners to use e-auctions (positive and negative auction)¹⁵ in awarding procedure i.e. in evaluation bid process. According to the PPP law “electronic auction” shall mean a positive or negative auction realized after an initial full evaluation of bids, in which the bidders have a possibility, exclusively by electronic means to revise the offered prices so that the ranking is done automatically by electronic means.

The PPP law, however, applies to “possessions of common interest”, an ambiguous phrase and much rely on specific sectorial law for implementation purpose. Also, the law does not contain clear provisions concerning government support and financial security and overall the possibility of international arbitration remains questionable except with respect to ICSID arbitration.

A general policy framework for improving the legal environment and promoting PPP has not been identified in Macedonia. Policy documents like programs and strategies related to PPP have not been adopted, yet.

Institutional framework

The quality of public institutions needed to avoid any bribery and corruption in the PPP contracts is of utmost importance. PPP needs to serve the public interests. Namely, it’s a very delicate issue for many countries, not just the very poor countries but even for more advanced emerging countries. The institutional framework in Macedonia consists of few institutions.

The Ministry of Economy (MoE) is responsible for implementing the PPP law as well as of 6 (six) by-laws adopted by the Government. The MoE is authorized to keep and maintain

¹⁵ Positive auction cannot be provided by the Electronic System for Public Procurement.

the Register for the awarded contracts establishing a PPP, as well. The PPP unit established within the MoE is meant to serve as a basis for support and training for all stakeholders.

The PPP Council which should consist of 15 members, to include central and local governments, utilities, business and independent experts, has been established but it is still not operational. The PPP Council has an advisory role to the Government in the PPP area, promotion of the PPP, proposes projects for PPP, and gives initiative proposals to amend the legislation in this area. However, in practice the PPP Council does not carry out the responsibilities prescribed by the PPP law.

Mutual institutions

The State Appeals Commission (SAC) is the independent review body for public procurement procedures. Since 2012 it had become responsible body for review of public private partnership procedures as well. It is composed of a president and four members appointed by the Assembly for a term of five years, with the possibility of re-appointment.

The State Audit Office (SAO) monitors the legality of procurement/awarding procedures, detects deviations from the PP law and PPP law and procurement principles, as well as violations of the principles of legality, efficiency, effectiveness and economy in public funds management.

It can be concluded that in the country there are a solid institutional framework.

Stakeholders in PPPs

According to the PPP law a public partners are the following:

- ◆ the Republic of Macedonia,
- ◆ the municipality, the City of Skopje and the municipalities in the City of Skopje,
- ◆ the public enterprises, public institutions, companies established by the Republic of Macedonia, the municipality, the City of Skopje and the municipalities in the City of Skopje and companies over which the state or the bodies of the municipality, the City of Skopje and the municipalities in the City of Skopje have a direct or indirect influence through the ownership thereof.

Competences between the central and local governments in awarding of contract establishing a PPP are divided. This means that the central government has no authority to interfere the local government in the implementation of the PPP project that is its competence. The private partner is not involved in deciding on PPP but can give initiative for PPP project, especially at local level. However, the interests of the end users of public services in PPP project should always be the most important. Therefore, public sector retains the right to regulate public services, but also the responsibility for the quality of service even in the case when the service is given by the private partner.

Mechanism for private sector participation in preparation of the PPP project is so-called technical dialogue. The public partner prior to publication of the contract notice organizes a technical dialogue with potential bidders. For this purpose, the public partner makes available to the public through the electronic system for public procurement technical specifications which it plans to use in the procedure and allows all interested economic operators to give their suggestions and comments on the published technical specifications.

Modalities of PPPs¹⁶

In order to achieve the fundamental obligation to provide public services to the ultimate user in the area of competence of the public partner, and/or the obligation to provide the necessary requirements for the public partner for public services to the ultimate users, and/or activities in its jurisdiction, the private partner can:

1. Finance, design, build and reconstruct an object of public infrastructure;
2. Design, build and reconstruct / renovate facility of public infrastructure;
3. Build and maintain new objects and/or reconstructed / renovated facilities of public infrastructure;
4. Use, manage and maintain an existing public facility;
5. Any of the above combinations, as long as the combination of these obligations is aiming to fulfill the basic obligation of the private partner.

PPP can be defined as collaboration between the public sector (central or local authority) and the private sector in order to provide financing, construction (reconstruction), and maintenance of public infrastructure and/or the provision of public services that are "exclusive" to the public partner.

Some of the PPP modalities types are the following:

1. Service Contract

- ◆ Certain services are out-sourced to a private company;
- ◆ Private company provides agreed services to the central or local government; and
- ◆ Government retains general control and supervision.

2. Operation and maintenance contract (O&M)

- ◆ Management and operation of a public infrastructure is out-sourced to a private company; and
- ◆ Similar to a service contract but the scope of services is wider with greater control passed to the private company.

¹⁶ Law on Concessions and Public Private Partnership (PPP law) " Official Gazette of the Republic of Macedonia No. 6/12, 144/14, 33/15 и 104/15 and 215/15).

3. Build Operate Transfer (BOT)

- ◆ Government finances the facility;
- ◆ Private company builds the facility;
- ◆ Private company operates the facility on a concession; and
- ◆ At the end of the O&M concession the facility is transferred to the government.

4. Design Finance Build Operate Transfer (DFBOT)

- ◆ Private partner design the facility;
- ◆ Private partner finance the construction of the facility;
- ◆ Private partner build the facility;
- ◆ Private partner operate the facility; and

At the end of the concession the facility is transferred to the government.

Forms and models of PPPs¹⁷

PPP can be established either as:

1. Public works concession; or
2. Public service concession; or
3. Public works contract; or
4. Public service contract.

Numerated types of PPPs have the following meaning;

1. "Public works concession" shall be a contract of the same type as a public works contract except that the remuneration for those works shall consist either solely of the right to exploit those works or in that right together with payment;
2. "Public service concession" shall be a contract of the same type as a public service contract except that the remuneration for those services shall consist either solely of the right to exploit those services or in that right together with payment; A public private partnership is established by contract.
3. According to the PP law "Public works and service contract" shall be a contract of financial interest, which includes utilities contracts, concluded in writing between one or more contracting authorities on one side and one or more economic operators on the other side, the subject of which is the execution of works, or provision of services, in accordance with the PP law.

PPP can be implemented as a contractual or institutional PPP.

Contractual PPP usually is implemented by a special purpose company/vehicle (SPC/V) which is established by the selected private partner or consortium. Institutional PPP is implemented by a joint venture company which is established by the public and private partner.

¹⁷ Law on Concessions and Public Private Partnership (PPP law), Official Gazette of the Republic of Macedonia No. 6/12, 144/14, 33/15 и 104/15 and 215/15.

Regarding the forms of PPP given in items 3 and 4, contracts for public works and services, CPPPL differs from classical contracts of works and services of The Law on Public Procurement in terms of implementation of the agreement by the operator. In the first case follows the payment by the contracting authority, and the second establishes a long-term partnership between the public and private partners that the public partner carries certain rights and obligations of the private partner in the use, maintenance and management facility or service performance, and that the private partner provides venture funding for the effective performance of work or service for a specified period of time.

PPP projects in Macedonia

Current PPP projects for which PPP contracts are awarded and are considered successful projects are the following:

Concession for the airport system in Macedonia (Ministry of Transport)¹⁸ - In 2008, the Government, through the Ministry of Transport, signed an agreement with the Turkish company Tepe Aufen Venturs (TAV) for a 20-years concession, in which period the company would manage the two existing airports in Macedonia: Alexander the Great Airport in Skopje and St. Paul's Airport Ohrid. The projected works include construction of a new terminal building in Skopje, expanding the runway, a new administrative building and a new access road with parking space, which would increase the capacity of the Skopje airport to four million passengers a year.

Concerning the Ohrid airport, the terminal building and the VIP salon have been modernized. The concession agreement also includes the construction of a third airport, a cargo airport near Stip, in Eastern Macedonia. The total amount of the investment is estimated to be 200 million EUR, of which 30 to 40 million EUR are expected to be paid to the concession grantor during the entire 20-year concession period. It is claimed that the obligations regarding the Ohrid airport are realized on time and that the planning of the airport in Shtip is underway.

The project is awarded in accordance with the Law on Concessions from 2008 and by applying the restricted procedure provided in this Law. The fact that this project was published in the international media and SVEU17 is for commendation, and this activity resulted in 20 applications for participation. Four companies pre-qualified: one from France, one from Germany, one from Austria and one from Turkey. The authorities, supported by Dutch consultants, held a conference for bidders and prepared a data room at the Skopje airport. All these activities represent the best international practice, but the quality of the outcome cannot be assessed.

The criterion for awarding the project was "the amount of the concession fee", and the tender documentation itself contained the draft contract. At the end, only the

¹⁸ The model of public-private partnership is realistic and feasible, Author: M.Sc. Liljana Nikolova, July, 2014

Turkish company submitted a proposal for the project. It can be determined that the concession fee would simply be added to the price of construction works and that the concession fee is almost never the most economical method for the realization of an infrastructure project financed by the private sector. There is no transparent methodology to determine whether this project is implemented or not in a way that would provide the greatest economic advantage for the state.

Large hydropower plants (ELEM, MoE) - The state electricity supplier ELEM is 100% owned by the state, but operates on a commercial basis. As a result, ELEM is still obliged to act in accordance with the provisions on sectorial activities in the Law on Public Procurement. The company works to make a profit, and therefore it considers it is not linked to the state budget. The investment projects in the last few years are of considerable scope and, in general, the state does not have enough funds to finance them. Therefore, the company requested a combination of own capital (ELEM), funds from donors, and in one case, a commercial loan. The company uses external, usually international consultants assigned by their partner donor (examples given for existing projects are: EBRD, World Bank, IFC and KfW) for the purpose of preparing the project. As a result, most of the factual works are actually performed by these consultants, rather than by the officers. However, this is a useful transfer of knowledge to project officers, as things seem to be of a very high standard. When it comes to bid evaluation, the price/quality ratio is encouraged from a minimum of 30:70.

Examples of active projects of such nature that are either in the preparation phase or in procurement phase are:

- Crna Reka Project: co-financed by the EBRD. Limited procedure. Value of investment = up to 700 million EUR,
- Boshkov Most: Co-financed by the EBRD. Limited procedure. Value of investment = 80 million EUR,
- The Windmill Project: co-financed by KfW. Value of investment = 75 million EUR,
- Thermal power station in Bitola. Value of investment = 65 million EUR - financed through a commercial loan and ELEM's participation in ratio 30 million EUR: 26 million EUR (this makes the project very expensive),
- Lukovo Pole: co-financed by the World Bank. Value of investment = 62 million EUR. Loan value = 52 million EUR; participation of ELEM = 10 million EUR;
- Restoration of 6 hydro power plants: Co-financed by KfW, with the participation of ELEM in the ratio 27 million EUR: 4 million EUR.¹⁹

Concession for waste disposal: City of Skopje as a grantor awarded a concession contact covering the reconstruction of the landfill "Drisla" - Skopje including construction of new installations for the disposal of waste in accordance with EU standards and within the investment dynamics given in the bid of the selected

¹⁹ The model of public-private partnership is realistic and feasible, Author: M.Sc. Liljana Nikolova, July, 2014

concessionaire. In accordance with the contract, the concessionaire has invested funds for new waste management installations. Landfill “Drisla” is the only landfill in Macedonia that meets the minimum standards for waste management and environmental protection. Taking into account that the PPP project has increased the capacity of the landfill and types of the waste management services, users of this landfill, except the City of Skopje, are also the neighboring towns and settlements. The remaining legal landfills in Macedonia, a total of 56, do not meet the waste management and environmental standards. Apart of these 56 landfills in Macedonia, there are about 1000 illegal dumpsites. Apparently PPP can be a good tool to solve the problem that municipalities and regions have in the field of waste disposal.

It should be noted that the “success” of this project is seen only from the technical aspect of respecting the legal framework and PPP agreement (procedural). But since the end of 2017, numerous controversies have arisen regarding the operation of the Drisla landfill. Namely, BIRN’s investigations reveal that the private partner in the case, the Italian company “ FCL Ambiente ” did not invest even approximately as much as they announced. They also state that the promises for electricity production have not been fulfilled and that the project with the sealing of the landfill is begun, but it is far from over.²⁰ At the same time, the Public Enterprise “Drisla” was sentenced to 8,500 Euros because the state environmental inspectors concluded that there had been overcome the harmful concentrations in the air during the burning of medical waste.

Potential PPP projects:

Since the Energy Strategy in Macedonia is the responsibility of the Ministry of Economy, this ministry is also responsible for granting concessions in this sector. Large projects, such as those outlined above, are usually implemented through ELEM; small power plants that are usually not of interest to ELEM because of their small size are awarded through a competitive procedure through concessions. Within the Ministry of Economy there is a sector that manages the process. Its work is at a rather impressive level. Most of the smaller projects for electricity generation are hydroelectric projects. A few years ago, a technical study identified nearly 400 possible hydropower projects. Out of these, 47 concessions have already been awarded for a total production capacity of 36MW, and one has already been realized. The concessions were granted for 23 years, 3 years for the construction of power plants and 20 years of operation with the plants. They are projected on the basis of the “design, build, operate and transfer” (DBOT) method.

All concessions are published in the Official Gazette of the Republic of Macedonia and in the Financial Times. The interest for participation seems to have been good with mainly three, four or five bidders, although there were sometimes no bidders enough to justify the extension of the procedure which has to be implemented in additional one or two remote locations.

²⁰ Drisla case: no radioactive waste nor a penny investment from the Italians, BIRN, available at: <http://prizma.mk/sluchaj-drisla-ni-radioaktiven-otpad-ni-denar-investitsija-od-italijantsite/>

Just over 50% of the projects were awarded to foreign companies, and slightly less than 50% to the Macedonian companies. Following this success, the Ministry of Economy published announcements for another 44 locations, with an estimated combined investment of 63 million EUR. Evaluation criteria for these projects are relatively simple: “installed production power” at a specific location and “price”.²¹

Regarding this agreements, the State Audit Office, in the report for conducted audit of the awarded concession contracts for construction of small hydropower plants, identified several irregularities and in order to overcome them, the State Audit Office gave recommendations in the direction of: establishing of PPP Council, compulsory elaboration of a feasibility study with the estimated value by the Concessor, putting into operation of the constructed small hydro power plants, should be made after adoption of the decision for placing technical equipment in use by the inspector for technical inspection, performing constant supervision in all phases of the construction, simplification of the procedures for obtaining licenses in order to accelerate the construction period. The responsibility for implementing the recommendations is even greater given the fact that the total estimated value of the concluded 70 concession agreements for using water for electricity generation from small hydropower plants amount to 108.25 million euros.²²

Provisions of the PPP law governing the concession of goods of general interest for the Republic of Macedonia

The right to build hydropower plants is acquired on the basis of a concession for exploitation of water as good of general interest for Macedonia (water, forests, mineral rows and etc.). Concession for water exploitation is given for other activities as well, such as: bottling of water for commercial purposes; lake traffic and providing of tourist, sports and other recreational services by building permanent facilities. On behalf of the Republic of Macedonia concession grantor is the Government of RM and the awarding procedure is under the Ministry of Environment. The concession is awarded through a public call organized and conducted in accordance with the PPP law (provisions of the PPP law governing the concession of goods of general interest for the Republic of Macedonia). The duration of the concession is determined by the concession agreement. Concession period depends on the power of the hydropower plant. Maximum concession period is 30 years.

The concessionaire pays concession fee which framework is determined by the Water law depending on the type of commercial activity (bottling of water for commercial purpose, lake traffic, or provision of tourist, sports and other recreational services with construction of permanent buildings). Concession fee for hydroelectric plants is consisting of two parts: one-time fee payable by granting the concession; and annual fee as a percentage of the average price of electricity produced.

In practice the PPP contracts for the construction of hydroelectric plants had been awarded by public enterprises established by central or local government. Public enterprises by law

²¹ The model of public-private partnership is realistic and feasible, Author: M.Sc. Liljana Nikolova, July, 2014

²² Final report of the authorized state auditor no. 17-149/1 from 23.01.2013

have gained concession of water to perform the activities for which they are established (drinking water supply, irrigation, etc.) In addition to this, public enterprises have the right to perform other activities related to water, such as production of electricity. Starting from this position, public enterprises can grant a PPP contract to private entities for construction and operating of hydroelectric plants. This type of contract is similar to a concession granted by the central government but it is considered as a PPP contract for works and services.

Also two PPP projects are intended to be awarded in the Municipality of Kavadarci. The first PPP project is related to the award of public service concession for parking, while the other one is related to the award of contract establishing a PPP for the construction of a small hydropower plant.

Potential PPP project is the design, finance, build, operate and transfer of a SPA center and management of sports facilities in the Municipality of Kocani.

Two large PPP projects related to design, finance, build, operate and transfer of new hydropower plants "Cebren" (indicative installed capacity of 333 MW) and "Galiste" (indicative installed capacity of 193,5 MW) as well as operation and maintenance of the existing hydropower plant "Tikves" (116 MW) is intend to be awarded..

Availability of data

The Register of awarded PPP contracts had been put in place at March 2013 and relevant data is available on the number of PPP projects that have been awarded. This Register is carry out by the Ministry of Economy.²³ The register of started, but not completed tenders is not established although the PPP law stipulates such obligation. In accordance to the data contained in the Register of PPP awarded contracts in Macedonia have been awarded 22 contracts establishing a PPP.

There is no official register for the current PPP projects. But some information for the already published notices for awarding of contracts establishing a PPP can be found on the electronic procurement system that is managed by the Public Procurement Bureau (PPB).²⁴

Data on completed procedures for awarding of contracts establishing a PPP for hydropower, as well as procedures that are in current progress can be found on the Ministry of Environment and Spatial Planning's web site.

Good and bad PPP practices in Macedonia

Example of *successful PPP project at central level*:

1. Central government granted a concession on the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul" in Ohrid. Government as a grantor awarded

²³ Public Private Partnership, Legal Framework, Ministry of economy of Republic of Macedonia, available at: <http://economy.gov.mk/page/javno-privatno-partnerstvo>

²⁴ Electronic system for public procurement, Public Procurement Bureau, available at: <http://e-nabavki.gov.mk>

a contract to operate the airport “Alexander the Great” in Skopje and the airport “St. Apostle Paul” in Ohrid. Under the contract, the airport “Alexander the Great” is planned for construction of a new terminal building, extension of the runway, construction of a suitable parking area and access road, installation of navigation systems and other equipment in accordance with international standards. The airport “St. Paul” is planned for reconstruction of the existing parking lot, renovation of the cargo center, construction of VIP facilities, reconstruction of existing administrative building and procurement of equipment. The investment is estimated at 200 million Euros. At the expense of investment, the concessionaire shall acquire the right to operate the airports and generate revenue. The period of the contract is 20 years.

Example of *successful PPP project at local level*:

2. Parking: Municipality of Bitola as grantor has awarded a public service concession for parking system. The concessionaire is obliged to acquire the spider vehicle, management software system parking zone, PD devices for zonal system of parking, foxes, vertical and horizontal signaling, “call center” and other equipment needed for the operation of parking lots, as well as to do winter and summer marking. In return for the investment, recovering the costs of operation and achieving reasonable profit, the concessionaire is entitled to charge end users of the parking services. Concessionaire pays to the municipality a concession fee each year. The investment is estimated at about 2 million Euros. The period of the contract is 6 years. The concession agreement has achieved the following goals: arranging and organizing a new, modern and automated way of controlling and controlling of street parking as well as the parking of closed type-zone parking and parking in indoor parkings; procurement of equipment for the provision of parking services by the private partner (concessionaire); increasing the quality of parking services; improving the traffic flow and increasing the safety of the streets; and increasing the utilization of every parking plac.

Examples of municipalities that have realized successful PPP projects are the following:

City of Skopje - Waste disposal; Municipality of Aerodrom- Spots hall; Municipality of Gjorce Petrov - Waste collection; Municipality of Bitola - Parking; Municipality of Kriva Palanka - Administrative offices buildings; Municipality of Ohrid - Green market; and Municipalities of Kavadarci, Cair and Makedonski Brod - Street lightening.

There is one *example of unsuccessful PPP projects*. It concerns the street lighting PPP project in the Municipality of Sveti Nikole. The PPP contract is terminated by the fault of the Municipality of Sveti Nikole (municipality did not pay its obligations to the private partner).

Additionally, there are two significant examples of started, but not completed tenders. Passenger transport: Public private partnership for the design, construction, financing, operation and transfer of lightweight rail system for passenger transport

in the City of Skopje, which is implementing as a public works concession. City of Skopje as a grantor published a call but tender procedure was canceled because there were no interested bidders.

Amusement park: Public private partnership for financing, design, construction, operation and maintenance of an amusement park in Skopje. City of Skopje as a grantor published a call, but tender procedure was canceled because there were no interested bidders.

What is needed for PPPs projects to succeed?

PPP projects have certain potential disadvantages, such as, for example, highly structured costs for developing the PPP project, increasing the price of the public services, the complexity of the implementation, higher costs for borrowing from the private partner, long duration, etc. However, PPP is a “good tool” for involving the private sector in the construction of public infrastructure and/or providing of public services that are traditionally provided by the public sector.

The success of the PPP projects depends on several factors, such as:

- The management of the risk associated with PPP projects is very important to the success of the PPP project. Therefore, the public sector should ensure that the appropriate risk is allocated to the party best suited to manage such risk.
- Another important factor for the success of PPP projects is the availability of sound economic policy by the political leaders. This factor gives direction to the development of the economy and provides an environment conducive to the implementation of PPP projects. Thus, if such an environment is available, then, the objectives of the partnership could be achieved.
- PPP projects would only be successful in a favorable investment environment. This favorable environment needs to be complimented with the commitment of the public and private sectors’ participants
- In the implementation of PPP projects, the support of political leaders and citizens, are vital to the success of the arrangement, while lack of political support could affect the commitments from the public sector to the projects and public opinion against PPP could affect the development of those projects.
- The provision of public services that could meet the expectations of end users is very important for public acceptability. If the PPP project is accepted by the public, the users would be willing to pay for the use of the facilities and the investors would be able to maximize their profits. This situation will provide a win-win result which is an important objective of PPP projects.
- Process of reviewing and getting feedback from completed PPP projects would provide adequate information for future implementation of such projects. The identified challenges could then be avoided while success factors could be noted and incorporated into future projects by the public sector participants.

What needs to be done to make the use of PPP more efficient?

When we consider the real effectiveness we must make a good Cost-Benefit Analysis through which we will test the PPP projects. The PPP projects that provide infrastructure solution must also be sensible and valuable in terms of socio-economic outcomes. This also can be done thorough Value for Money concept.

In Europe PPPs are not traditional ways to solve problems. The usual answer the European countries have is that the government can do it or the municipality can do it, whatever it is. However, governments are not as rich as they once were. And the private side has developed very deep technical capabilities. So that is part of why we can observe a boom of PPPs all around the world.²⁵

Namely, there is always a potential conflict between the public authority seeking to meet the long-term objectives of a community and the private company seeking to earn profits in the shortest period of time possible.

For PPPs, the long-term expected cost to the public sector may be lower under a PPP structure than with conventional procurement (and/or the expected benefits may be higher). This is the case even after considering the higher cost of capital (financial costs) associated with the private financing that forms part of the PPP. For user-pays PPPs, the efficiency might also result in lower charges to users.²⁶ However, PPPs can be a way to reach long-term development goals.

Usually the best model of PPP that gives the best result for both parties is the dominant contractual device is BOT: Build, Operate, Transfer. And I suppose this model should be applied in order to make PPP more efficient.

The private party provides money upfront to build the power plant, the water system, the hospital, or the school. In return they operate it for a number of years. It's common for private partners to operate highways, bridges, or water systems – less so for hospitals and schools, but it happens. Contracts are regularly 20 to 25 years and can be longer. In that time, the company earns back their initial investment and a return. After the agreed period of time, the infrastructure is transferred back to the public authority.²⁷

American model of PPP - Good international PPP practices

There is a different and potentially useful PPP approach in the U.S. organized by the non-profit National Development Council²⁸ called the “American model”. According

²⁵ Are Public-Private Partnerships the Best Way to Provide Government Services? Available at: <http://insights.som.yale.edu/insights/are-public-private-partnerships-the-best-way-to-provide-government-services>, accessed at March 15, 2017

²⁶ Efficiency and effectiveness: PPP as a potential source of higher efficiency for infrastructure projects. Available at: <https://ppp-certification.com/ppp-private-partnerships-guide/52-efficiency-and-effectiveness-ppp-potential-source-higher-efficiency>, accessed at April 15, 2017

²⁷ IBID

²⁸ NDC was Founded as a national nonprofit in 1969. NDC has worked for almost 50 years fulfilling its mission to increase the flow of capital for investment in low-income communities. NDC work with local

to the international definition of the PPP models, “American model” is similar to the EU PPP models and PPP models implemented worldwide. Compared with conventional PPP models, “American model” has a different approach to the implementation of the PPP projects. NDC’s “American model” of PPP works on behalf of a government or non-profit entity to deliver privately designed, built, financed, operated and maintained facilities. This process ensures the best possible building for the least cost and burden to the governmental or non-profit entity. The emphasis is always on the “Public” in PPPs and reduces and guarantee cost without reducing the quality of the building and without compromising the long and short term public or non-profit interest. The key is that it is driven by the interests of the public partner and eliminates many of the drawbacks of conventional PPPs.

Sectors of PPPs implementation

The most of the PPP projects are based locally. Considering the competencies of local authorities defined by the Law on Local Self-Government (public utilities, parking, street lightening, waste collection, water supply, culture, sports and etc.) the most of PPP projects are implemented by local authorities in the area of public utilities, parking, street lightening, administrative buildings and green market.

However, it can be concluded that there are no PPP projects in the water supply and sewerage. There is also only one PPP project implemented in the field of waste disposal, although it is necessary to build more municipal and/or regional landfills for waste disposal, either through public procurement or through PPP projects.

At the central government level the most significant PPP projects are airport, technical and industrial development zones (TIRZ) as well as hydropower plants.

It should be noted that domestic and foreign investors are not interested in participating in the procedure for awarding a contract establishing a PPP for the construction and operation of road infrastructure. There are no interested private partners for building a road infrastructure because there is no economic viability. This is because the traffic frequencies cannot expect return on investment during the period of the contract. Therefore, the construction of the road infrastructure is carried out through classical public procurement.

One of the most attractive sectors is the energy sector, more specifically in the area of energy efficiency. Successful projects can be implemented to improve energy efficiency in street lighting. Mostly because they are cost effective; the savings are visible immediately and are easily demonstrable and verifiable. Therefore, these projects can be an excellent use for the promotion of PPP. This is also one alternative measure to stimulate the market for energy services in Macedonia. In this way, PPP can allow municipal utilities to get access to private capital, project implementation experience, more progressive management practices, cost minimization skills, and better service and customer focus.

and state governments and community-based organizations to help them create and implement their own unique economic and community development strategies. <https://ndconline.org/about-us/>

However, many governments turn to PPPs because they recognize that more investment in infrastructure is needed, but the government cannot 'afford' to undertake additional infrastructure projects through traditional public procurement. Although this is one of the most common motivations for using PPPs, it is also among the most debated. The extent to which PPPs genuinely enable governments to increase spending on infrastructure depends on the nature of the project in question, and of a government's particular funding and financing constraints.

Several projects were realized since adopting of the PPP models in the positive legislation, in fields such as infrastructure. Illustrative public infrastructure PPPs are the following²⁹:

- a) Airport project: Government as a grantor awarded a contract to design, finance, build, operate and transfer the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul" in Ohrid
- b) Hydroelectric plants: The PPP contracts for the construction of hydroelectric plants had been awarded by central and local government
- c) Waste disposal: City of Skopje as a grantor awarded a concession agreement covering the reconstruction of the landfill "Drisla" – Skopje including construction of new installations for the disposal of waste in accordance with EU standards and within the investment dynamics given in the bid of the selected concessionaire.

Risks related to PPPs

In order to create effective and sustainable partnership, the contracting parties have to take some risks. With careful planning and consultation, the risks can be reduced to a lower level that will not affect the PPP project and can be handled within the partnership arrangement.

The various types of risk are the following: political (the level of public support for private sector; support of the independent regulation of the PPP; change of government and regulations); those relating to the implementation of the PPP project in the sense that the program for implementing well defined or whether responsibilities and activities are clearly defined; those relating to the construction (whether actual construction costs may exceed estimates); those relating to operating income -operating risks, such as increasing or decreasing the operating costs during the PPP period, the possibility of other entities to have the right to provide the services, subject to the PPP, etc; risk of income realization such as risk of achieving sufficient revenue due to non-payment, impossibility of paying the commercial price, less customers than expected, etc; financial such as modification of the exchange rate, increase or decrease of interest rates on loans borrowed by the private partner, etc; Vis major; and protection of the environment (whether PPPs affect the environment).

However, in practice the risk should be looking in poorly structured PPP project. Well prepared Feasibility study and contract should give answer and resolve the above mentioned types of risks.

²⁹ More details about these projects are contained in the chapter „Good and bad PPP practices in the country“

Procurement of PPP contracts, as opposed to public procurement contracts, is a relatively new way of funding projects in the field of public services and infrastructure. As public procurement contracts and PPP contracts can be a vulnerable area for abuse and corruption taking into account the areas covered, the amount of the contracts as well as the long period of contract duration.

Legal procedures for awarding of contract establishing a PPP prescribed by the PPP law minimizes the risk of corruption. However there is still a risk of corruption regarding the tender documentation determining the economic and technical references of the bidders, which could favor a particular bidder. Lack of competitions as well as favoring criteria for evaluating of bids are risks of corruption. In addition to this, long period of PPP contracts is a risk of corruption if there is no proper monitoring of their implementation. State Commission for Prevention of Corruption (SCPC) has stated in its annual report 2013 that there is no data for corruption in PPP contracts.³⁰ Also, the State Audit Office has no information for the appearance of corruption or conflict of interest in performing a procedure for PPP by the municipality or public enterprise locally.³¹ Meanwhile has started a procedure for criminal prosecution on suspicion of corruption concerning the award of PPP contracts in two municipalities (Sveti Nikole and Struga).

In accordance to the survey of the Center for Civil Communication transparency is considered a prerequisite for good governance and that two-way communication between the public sector and citizen's increases accountability and openness and reduce corruption risks.³² Suspicion of corruption is the fact that some of PPP contracts announced on the electronic system for public procurement which is operated by the Bureau of Public Procurement have not been transferred to the Register of awarded PPP contracts carry out by the MoE.³³ An interesting point is the absence of complaints of all PPP contracts according to the Register of awarded PPP contracts.

Transparency as a prevention of corruption in PPP

The procedure for awarding a contract for establishing a PPP starting with decision for initiating a procedure for awarding a contract establishment a PPP, based on Feasibility Study. The decision for initiating a procedure for awarding a contract establishment a PPP shall be published in the "Official Gazette of the Republic of

³⁰ State Commission for Prevention of Corruption, Annual Report of the State Commission for Prevention of Corruption in 2013 <http://www.dsk.org.mk/images/godisen%20izvestaj%20dsk%202013.pdf> insight on 16.11.2014

³¹ State Audit, Information obtained through the Law on Free Access to Information from Public Character, November 2014

³² Center for Civil Communications (2013), Monitoring public procurement at the local level. report No.2, available at: <http://balkantenderwatch.eu/btw-local/uploaded/MKD%20local/l8m.pdf>

³³ Risks of corruption in PPP, prepared by Ana Stojilkovska, available at: <http://www.akademik.mk/rizitsi-od-koruptsija-kaj-javno-privatno-partnerstvo-vo-makedonija-ana-stojilovska>

Macedonia” or in the “Official Gazette of the Municipality”.

Adequate implementation of the provisions of the PP law which are related to the procedure for awarding public contracts for public procurement provides transparency in the award of contracts for establishing a PPP.

Apart from the obligation for publishing a contract notice for awarding a contract establishing a PPP, the public partner is obliged to prepare a tender documentation with model contract, which contains all relevant data of the PPP project. Tender documents and model contracts are part of the contract notice for awarding a contract establishing a PPP.

Contract notices for awarding contracts establishing a PPP are published on the electronic system for public procurement which is operated by the Bureau of Public Procurement. Finally, there is a Register of awarded PPP contracts carry out by the MoE.

Measures for prevention of corruption in PPP

In order to prevent corruption European Commission concluded the absence of an institution designated for efficient and timely supervising over the procedure for awarding the PPP contract and implementation of the contract.

A good tool for the prevention of corruption is a publication of the contract notice on the website of public partner as well other information related to awarding procedure. It is considered a good practice involving the experts in the process of evaluating the bids. This allows a better evaluation and effort to prevent corruption, although these external experts do not have the right to vote.³⁴

“Out-of-balance” recording of the PPP projects

PPP is attractive as a tool for applying by the state because it has the “the freedom” to record these contracts outside of the state’s income statement. Namely, if at public procurement, the services of the private partner are paid in advance, the public private partnership represents a payment with monthly installments from the state budget for the infrastructure objects, and thus the state does not need to borrow directly. However, they often need to provide guarantees for the loans for the private sector, which can result in public indebtedness. The idea (often quoted by proponents) that the public private partnership mobilizes additional financial resources for projects that, otherwise, should wait several years to be implemented is completely misleading. In fact, with the public private partnership there is no surplus of available funds - it is only about borrowing from the public budget in the next thirty years. This misconception, often accepted by public officials, encourages policymakers to implement projects that may be overpriced. In addition, the new international accounting standards (IAS) have been designed to “extract” PPP from the state income statement in the countries that manage to align their national

³⁴ ibid

accounts with IAS. Thus, the main attraction to decide on a public private partnership is to become a legal obstacle and a problem.³⁵

An example of such case is the recent global civil society initiative addressed to the British representatives of the IMF and the World Bank on the inclusion of 'hidden' PPP costs in the total public debt of a state, specifically for changes in the system (framework for monitoring of the sustainability of the debt) of these two institutions for monitoring the debts of countries. The biggest success of this civil initiative is that this initiative is accepted.

Also, momentarily at the global level, a huge and ambitious global civil society campaign is being held to halt the promotion of PPP projects by pointing out that they do not bring any benefits and represent only harm to the people.

Benefits of PPP on local level

PPP is way to promote SMEs and to foster cooperation between SMEs and local government in the provision of services of public interest which represent the exclusive right of the public sector as well as to improve the overall socio-economic development.

By involving the private sector in the provision of services of public interest local government provide:

- ◆ the accelerated construction of infrastructure;
- ◆ better public services for money (achievement of principle -value for money);
- ◆ faster project implementation and reduce the cost of cost of projects!;
- ◆ feasibility and faster completion of projects;
- ◆ better management and access to specialized management; and
- ◆ creating additional income.

PPP can allow public authorities to get access to private capital, project implementation experience, more progressive management practices, cost minimization skills, and better service and customer focus. However, the main benefit of the PPP should be better public services to the end users.

Effects of contracts concluded between public and private partner at local level

Findings from the State Audit Office of the Final Performance Audit Report "Public Private Partnership at Local Level"

The general conclusion of the public-private partnership at the local level by the State Audit Office is that the existing institutional set-up of PPPs in the Republic of Macedonia and the practical implementation of PPP models partially ensure the successful implementation of the projects. For the purpose of successful implementation of PPP projects, it is necessary to strengthen the institutional capacities at central and local level. It is necessary to systematically approach all institutions involved in the process

³⁵ The model of public private partnership is realistic and feasible, Author: M.Sc. Lijana Nikolova, July, 2014

of conducting PPP procedures and their actions according to the competencies, such as: revision of the law on concessions and PPP, establishment of an institution/body that will be responsible for giving an opinion on initiation of the procedure until realization of a PPP agreement and drafting and adopting a strategic document as a basis for strategic guidance for successful PPP implementation.³⁶

- ◆ The administrative capacity of the department for normative legal affairs in the Ministry of Economy is insufficient to ensure an effective implementation of the Law on Concessions and PPP.
- ◆ The PPP Council should have an advisory role to the Government of the Republic of Macedonia in the field of PPP and should perform promotion of the PPP. It should propose PPP projects and make an initiative with proposals for amendments to the regulations in this area. Until the moment of performing the audit, the Council is not functional and the stated activities have not been realized, which results in ineffective institutional coordination and support for the realization of the PPP projects.
- ◆ There is an untimely update of the Register of awarded contracts for establishing of a PPP, defined by the Law due to the failure to submit or untimely submission of the data on the concluded PPP contracts.
- ◆ The planning and preparation of the projects that will be realized by the PPP should arise from the Municipal Development Strategy and the final effect should be the selection and implementation of projects that ensure the effective use of resources and the equitable distribution of the benefits of the project.
- ◆ Responding to the need to perceive the solvency and cost-effectiveness of the project for the construction of an administrative office building (AOB) in the municipality of Gjorce Petrov with the preparation of two studies, the audit concluded that the project ideas point to different goals and explanations for the economic feasibility of construction a different square of AOB for the municipality.
- ◆ Failure to comply with the provisions of the Law and the omissions in the manner of conducting the open procedure for awarding a PPP contract for the construction of AOB in the municipality of Kriva Palanka, affects the objectivity of the selection of a bidder (private partner) as well as the quality of the construction of AOB in the municipality.
- ◆ Changing the initial terms of the PPP contract for the construction of AOB in the Municipality of Kriva Palanka, which were not envisaged in the tender documentation, led to the failure to meet the basic goals of the law, which requires transparency and equal access, reducing the possible competition in the process of awarding PPP contracts.
- ◆ The audit concludes that the AOB and the underground parking space in Gjorce Petrov are not built and put into operation (technical reception) in the projected deadline, and this will have a direct impact on the fulfillment of the set goals of the feasibility study and the project.

³⁶ Final report of the authorized state auditor no. 12-98 / 23 from 29.09.2017

- ◆ Failure to comply with the provisions of the Law and omissions in the manner of conducting the open procedure for awarding a PPP contract for modernization of the public lighting system in the Municipality of Studenicani affects the objectivity of the selection of a bidder (private partner) and the efficiency in the process of awarding contracts for PPP and its realization.
- ◆ Inadequate and low-quality works performed and significant violations of the provisions of the PPP contract for the modernization of the public lighting system in the municipality of Sveti Nikole by the private partner led to unsuccessful establishment and management of the public lighting system, does not contribute to raising the level of the public service and does not provide the objectives of establishing a PPP.
- ◆ The audit concluded that no separate contract was signed that would regulate all rights and obligations between the public and private partner for using the FTC services in accordance with the contract for establishing a PPP for the construction of a sports complex "Football Training Center" in the Municipality of Gazi Baba.
- ◆ Exemption from payment of 60% fee for arranging of construction land in accordance with the Decisions of the Council of the City of Skopje, although these funds represent one of the basic revenues for realization of the Program for arranging construction land on the territory of the City of Skopje and are projected for payment with the contracts as obligation of the private partner.

In order to overcome the identified shortcomings in the performed audit, the SAO provides the following recommendations:

1. The Government of the Republic of Macedonia

- ◆ To analyze the existing law with the participation of PPP experts in order to examine the possibility of establishing a competent institution/body that will have rights, competencies and obligations in all phases of the implementation of the PPP projects.
- ◆ To review the Law in direction of differentiation of concessions from PPPs and define procedures depending on the value of the projects.
- ◆ To adopt a Concession and PPP Strategy
- ◆ The PPP Council to start its activities projected in the Law

2. Ministry of Economy

The Ministry of Economy undertakes measures and activities:

- ◆ To strengthen the administrative capacity of the Department of normative legal affairs in the Ministry to ensure effective implementation of the Law on Concessions and PPP
- ◆ To regularly update the Register of awarded contracts for the establishment of a PPP.
- ◆ Organize regular and occasional trainings in order to develop the capacities of the public and private sector for raising awareness, informing about the concepts, policies and procedures necessary for the realization of PPP projects.

3. Council of the City of Skopje

- ◆ Review the adopted decisions for exemption from paying the fee for arranging construction land for the private partner in PPP projects in the Municipality of Gjorce Petrov and Gazi Baba, since this fee is one of the basic revenues for the realization of the Program for arrangement of construction land of the City of Skopje and the funds should be used for the purpose.

4. Municipality of Studenichani

- ◆ The Mayor, in coordination with the Legal department of the Municipality, to reconsider the possibility of termination of the PPP contract and the payment to the private partner to be performed on the basis of complete and reliable documentation
- ◆ Responsible persons in accounting should undertake measures and activities to fully comply with the legal and internal acts and recording the business changes to be performed on the basis of complete and reliable accounting documentation

5. Municipality of Aerodrom

The Mayor of the Municipality of Aerodrom will undertake measures and activities:

- ◆ To perform continuous and regular supervision of the implementation of the contract for establishing of a PPP, the realization of the awarded contract as well as respecting the obligations by the private partner.
- ◆ To prepare an Annex to the contract for regulating the rights and obligations between the private PP – Company for sport and recreation Sports Center Jane Sandanski DOOEL Skopje and BC MZT Skopje Aerodrom AD Skopje for regulating the financial obligations for utilities costs (electricity, water, waste disposal) for use of the office space for the needs of the club administration, use of the other sports facilities of the sports hall, and the manner of gaining the income from the tickets sale, as well as all other income gained during the basketball matches of BC MZT Aerodrom.

6. Municipality of Tetovo

The Mayor of the Municipality of Tetovo to undertake activities for:

- ◆ Providing a bank guarantee under the PPP contract
- ◆ A property insurance contract that will cover all insured cases as well as business insurance contract (insurance policy).

7. Municipality of Gazi Baba

The Mayor of the Municipality of Gazi Baba to undertake measures and activities in order

- ◆ to precisely regulate all the rights and obligations of the private and public partner, which
- ◆ will enable (without charge) the use of the services offered by the sports complex for
- ◆ sports, cultural and other types of events of a similar type.

8. Municipality of Gjorce Petrov

The Mayor of the Municipality of Gjorce Petrov to undertake activities for providing

- ◆ extended bank guarantee under a PPP contract

As it can be seen from the SAO Report, the only one municipality which has no remarks about the manner of implementation of PPP is the Municipality of Chair, and it is pointed as a municipality that has positive effects by the application of the PPP model in the modernization of public lighting in the Municipality of Chair. Namely, the results are reflected in the increased revenues from communal taxes for public lighting, reduced consumption of electricity, which resulted in savings, and savings in the maintenance of public lighting.

Although there are many positive examples of realization of large infrastructure projects through the PPP model, its use cannot be considered as a solution for all projects. There are many failed projects that have been realized as PPP³⁷. These facts indicate that if a country decides to implement infrastructure projects through the application of the PPP model, it first needs to be targeted at which sectors PPP is applicable and has the best results. It is certainly not advisable to apply PPP at any cost only to develop the private sector through its participation. According to audit examples, a sector where PPP gives greater success is the utility sector (street lighting and wastewater treatment).

Also, it is crucial when considering the idea of PPP implementation, to take into account the interest of the citizens in deciding on local needs and interests and to see their will for inclusion of a private partner and the areas in which the citizens are most interested in for investing through the PPP model. From the report, it can be concluded that only 2 municipalities have conducted public opinion surveys.³⁸

³⁷ The model of public private partnership is realistic and feasible, Author: M.Sc. Liljana Nikolova, July, 201

³⁸ Final report of the authorized state auditor no. 12-98 / 23 from 29.09.2017

Conclusion

PPP in Macedonia covers different economic sectors, mostly at the local level. The most of the PPP projects are implemented by local authorities in the area of public utilities, parking, street lightening, administrative buildings and green market. However, it can be concluded that there are no PPP projects in the water supply and sewerage. There is only one PPP project implemented in the field of waste disposal, although it is necessary to build more municipal and / or regional landfills for waste disposal, either through public procurement or through PPP projects. At the central government level the most significant PPP projects are airport, technical and industrial development zones as well as hydropower plants. Given that Macedonia has a qualitative and quantitative deficiency in the provision of public services and construction of infrastructure, we can conclude that PPP is poorly implemented in Macedonia.

However, when we perceive the factual situation in Macedonia in the field of PPP, it can be concluded that the insufficient use of the existing legislation leads to phenomena that point to the fact that in our public sector there are actually no real examples of public private partnership, but only classical privatization of “lucrative” public services. Thus, in education we are witnesses of the establishment of only classical private institutions, not of mixed ones. Same is the case with health care, as well as in the field of child care, care for the elderly, etc. Efforts to privatize the activity in the public health institutions are visible, but in this case it is not about PPPs, but opportunities for private financing of the public service given by the public entity - afternoon delivery of health services by self-financing of the patients by the public health officers in the existing public institutions without the participation of private capital and investments.³⁹

Proposal for a new approach for the development of PPPs

In the continuation of this text, we highlight the proposal for development of a new concept (approach) for the PPPs implementation proposed by Dr. SCI. Sasha Maksimovski, who has many years of practical experience and expertise in project management with PPP models, who gave a much wider elaboration at the workshop held on 21.12.2017, but we highlight the key moments.

He believes that the systemic establishment of a more efficient institutional model for managing PPP projects in the Republic of Macedonia requires revision of the existing system or establishment of a new one that will be based on strategic development documents. As a basis for successful implementation of the previously stated it is necessary to produce two documents, as follows:

- ◆ Preparation of a strategic document entitled “New Approach and Concept for Development of Public-Private Partnerships for Economic Development in the Republic of Macedonia - Partnership for Increasing Investment and Economic Development”.
- ◆ Government investment program by establishing PPP contracts.

³⁹ The model of Public Private Partnership is realistic and feasible, Author: M.Sc. Liljana Nikolova, July, 2014.

These are key assumptions that can contribute to increase investments in the Republic of Macedonia by applying PPP models for which political support is needed, as well as the capacity for realization of PPP projects that require dedication and knowledge for their efficient implementation. In addition, the acceptance of the new PPP development approach implies changes to existing legal regulations and the creation of institutional and other assumptions.

Bearing in mind that replacing the management of project cycles applying the traditional concept of the so-called “financing of the project” (budget), with the management of project cycles applying an alternative concept of “project financing” (program), increases the economy, efficiency and sustainability of public services, means that Macedonia needs and must use this model taking into account the high level of public debt. At the same time, the domestic banks can enter into project financing of private partners that will establish PPP contracts, which will be in function of sustainability of public finances in the direction of support of capital investments.

Mr. Maksimovski also believes that the development of the strategic document will determine the framework and role of line ministries, public bodies and bodies at all levels in the country. In this way, a new approach will be provided primarily in increasing the quality of the management of the system for establishing, evaluating and assessment of the proposed PPP projects. In particular, it should refer to the approval of the use of the PPP model, the development of potential PPP projects, and the monitoring of the implementation of the PPP project agreement in accordance with the strategic priorities of the development of the Republic of Macedonia. An important precondition for achieving these goals is the consensus of all stakeholders in the implementation of PPP projects and building trust and synergy between individual institutions. The coordination of the institutions in the implementation of the PPP project cycles should be based on the so-called “synergy” project, where each of the institutions involved in the process is put in place for efficiency in the implementation of PPP projects. Namely, synergy is a complementary concept of coordination of involved institutions and bodies under which jurisdiction is particular procedure or phase of the project cycle. PPP projects are a classic example of horizontal projects, because for any PPP project in any area it is necessary to coordinate several institutions at central, regional and local level that contribute to the competences and performances they have in accordance with the law.

The requirement for successful implementation of PPP models implies an existence of a clear legal and institutional framework for implementation, as well as criteria for assessing and evaluating the feasibility of establishing and implementing of PPP projects. Appropriate preparation and monitoring of the implementation of PPP projects, taking into account wider economic, social and environmental goals, as well as the benefits for the public partner, is an important factor in the development of PPP projects. The current legal and institutional framework for PPP needs to be reformed in the direction of strengthening the institutional capacities at central and local level. The proposed reform consists of amending the existing law on concessions and PPP or adopting a new PPP law in which the existence of a legal entity that has rights,

competencies and obligations in all phases of the implementation of PPP projects should be regulated. Namely, the idea is that this legal entity should be established by the Government of the Republic of Macedonia as a separate institution whose purpose and existence will be to prepare, implement and monitor all PPP projects in Macedonia that will be realized at national, regional and local level. The financing of that institution will be self-sustaining, ie it will be financed with a certain percentage of funds that will be paid for obtaining a concession or by payment of PPP fee by private companies. Such an arrangement can provide greater independence of the work of this institution, sustainable financing and work in a highly professional manner. Since this form and institutional set-up of an independent PPP institution already functions in other countries and provides good results, it is necessary to consider seriously the establishment of such an institution in Macedonia as well.

Dr.Sc. Maksimovski emphasized that it is necessary to directly involve and communicate with the expert public, NGOs, citizens in each phase of realization of PPP projects, especially in the phase of identification and preparation in order to obtain stronger support, which will be very important for successful implementation of the PPP project. This necessity should be a legal obligation which the public sector will have to implement in order to reduce the risks of not accepting the PPP project, especially if it is a project with an impact on the environment, as well as an impact on the socio-economic aspects of the very project, that is, the need to build a wider consensus on accepting the project from all stakeholders.

Private financing within PPP is a form of complementing public funding that allows for increased financial opportunities for realization of investments in public infrastructure and public services and reduction of the trend of borrowing in the Republic of Macedonia. The development of PPPs should be in line with the set goals on building social partnership, as well as its economic and social goals and priorities, in order to obtain quality public services and a higher living standard for all citizens, as well as to fulfill the conditions for protection and preservation of the environment and efficient use of public infrastructure and property. The establishment of PPPs should be managed and implemented in an open and transparent manner, in accordance with best practices and relevant EU requirements and with respect for social partnerships.

He pointed out that based on the above-mentioned proposals (which are elaborated in a very shortened form), results from the implementation of sustainable models for establishing PPP for investment projects are expected, which can contribute to significant improvement of the quality of life, reduction of budget deficits of municipal budgets for capital investments, strengthening of the institutional capacities and application of new knowledge and technologies in the function of quality public services in the municipalities of the Republic of Macedonia.

At the end, he said: "These are my brief observations regarding the creation of a new more functional concept for implementing PPPs, but this does not mean that these observations are fully justified and acceptable, but I consider it a good basis for debate by the expert public and the competent institutions, in order to define a final concept that will provide institutional conditions for efficient application of PPPs in the Republic of Macedonia."

Recommendations

- ◆ There is urgent need to improve public policies and legal framework, and strengthen institutional capacities at national and local level,
- ◆ This private sector vehicle (PPP) for financing public services should be used carefully, bearing in mind that it generates implicit debt.
- ◆ There is risk of corruption taking into account the areas covered, the amount of the contracts as well as the long period of contract duration. Transparency is a prerequisite for the prevention of corruption.
- ◆ The process of PPP imposes unnecessary bureaucratic approach. The use of the lowest price as a unique criterion for awarding a public-private partnership/concession contract can violate the principle of “value for money”. Using the economically most favorable bid as the criteria for awarding the public-private partnership/concession contract is allowed but is subject to the consent of the Public Procurement Council.
- ◆ PPPs should be constructed in a way to satisfy the public interest in order to avoid bribery and corruption in PPP contracts.
- ◆ In order to use PPP more frequently it is necessary to raise the knowledge of PPP among the stakeholders.
- ◆ Effective and efficient PPP as well as a sustainable PPP means well prepared Feasibility study, tender documentation and PPP contract as well. The two-way communication between the stakeholders in creation of PPP project can increase the use of PPPs. Most of the data (contract notices and tender documentation with contract model) should be made available to all interested private partners.
- ◆ When we decide to use PPP as a financing tool for infrastructure projects we should consider the potential long-term gain in terms of efficiency and effectiveness, and also public interest. Nevertheless, when we consider the real effectiveness we must make a good Cost-Benefit Analysis through which we will test the PPP projects. The PPP projects that provide infrastructure solution must also be sensible and valuable in terms of socio-economic outcomes. This also can be done through Value for Money concept.
- ◆ Another thing that is of utmost importance is the quality of public institutions needed to avoid any bribery and corruption in the PPP contracts. PPP needs to serve the public interests. Also, a very urgent matter for the Government is to prepare and adopt policy documents like programs and strategies related to PPP.
- ◆ Also, there are challenges of the municipalities regarding public infrastructure investments: reducing administrative burdens, long term planning, and co-ordination across levels of government. When planning the infrastructure project the municipalities should also consider the maintenance costs of investment and plan for future financing. Maybe this is the area where we can suggest strengthening the municipal capacity for using PPP as a financial tool option.
- ◆ However, PPP is not a perfect financial tool. With all the negative experiences with public procurement, bribery, corruption, lack of transparency, PPP is an issue in many countries.
- ◆ Recent trend is the involvement of the nonprofit-oriented organizations in the PPP process. They don't have a profit focus and can think about longer-term issues. The NGO sector is very much aware of the importance of local partners and the public interests so they can present them in the best way. The role of the local NGO is to educate people and to be the true partner between the private partner and the local population. Now the role of the non-profit organizations in the PPP process will be to act NGO as catalyst, leader, and dominant partner.

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