



Analysis on Public-Private Partnership Bulgaria



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CREDITS

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This document has been produced as a part of the project “CSOs as equal partners in the monitoring of public finance“ which started beginning of 2016 and is implemented by a consortium of 10 organizations from 7 countries and will last for four years.

The aim of the project is to improve the transparency and accountability of policy and decision making in the area of public finances through strengthening the role and voice of NGOs in monitoring the institutions that operate in the area of public finances. In this way, the project will strengthen CSO knowledge of public finance and IFIs and improve CSO capacities for monitoring. Additionally, it will help advocate for transparency, accountability and effectiveness from public institutions in public finance. Moreover, this project will build know-how in advocating for sustainability, transparency and accountability of public finance and IFIs. This project will also increase networking and cooperation of CSOs on monitoring of public finance at regional and EU level. Lastly, it will increase the understanding of the media and wider public of the challenges in public finance and the impacts of IFIs.

Key project activities are research and monitoring, advocacy, capacity building and transfer of knowledge/practices and networking in the field of the 4 specific topics: public debt, public-private partnerships, tax justice and public infrastructure.

More information about the project can be found on <http://wings-of-hope.ba/balkan-monitoring-public-finance/> and on the Facebook Page Balkan Monitoring Public Finances





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1. UNDERSTANDING PPPS IN BULGARIA

A centralized online PPP register is operated by the Bulgarian government (<http://www.nkr.government.bg/app>), listing out all registered PPP procedures in the country. Although providing some transparency, yet it is not very useful as a tool, not having specific options for quick review and summarization of its data, and having only a Bulgarian version, thus being useless for foreign customers.

Literally all existing PPP procedures, listed in the register, take the form of concessions, launched by the government institutions (council of ministers or selected ministries), or by municipalities, either by public concessioning coalitions (the last ones existing only as a legal opportunity, but not appearing in practice). Although having a specific national PPP act, defining PPP procedures, different from the concessioning approach (adopted in 2012), no such procedures actually took their place in the national practice so far.

Selected by their topic, three main types of PPP procedures are known and applied in Bulgaria, including the ones for construction, service, and extraction. The extraction concessions dramatically prevail in their number, being mainly municipal ones, as far as they cover all local economic activities for captages of mineral water, sand and other construction materials etc. Relatively large number of bigger concessions also exist for the commercial utilization of facilities or natural areas with public governance, such as large-scale mining domains, sea beaches for touristic purposes, mountain areas (for sports such as skiing, or for development of golf facilities), ports and airports, etc.

One more type of specific mass PPP partnerships (but not demonstrated as such), is being widely developed after the EU membership in 2007, in relation with the application of the “community-led local development” approach (or Leader-approach) within the EU policy for development of rural areas. More than 40 local action groups have been registered and somehow operating in this form, with the orders of their registration explicitly defining them as “public-private partnerships”, led by selected rural municipalities, in the meantime not referring to the other PPP-related national acts, mentioned above. Before the ending of the previous financing period in 2015, the existing LAGs have been published on an interactive map, managed by the National rural network, the “second level” of the Leader approach in Bulgaria (<http://www.nsm.bg/>).



Apart from these, small number of well known large-scale concessions already exist in the country. One of them addresses the management and maintenance of the city water supply and sewerage of the capital Sofia. The “Sofia water” municipal company is a subject of the concession since 2000. At first 77,1% of the company was taken by the British “United Utilities” and in 2010 they sold their share of the concession to the French “Veolia”. In 2000 the public company was in a really bad shape with 60% technical and economic loss of the water, this is twice as compared to 1989. The concession's promise was that loss will be diminished. According to the contract losses had to be decreased by 30% only in the first five years of the concession, but in 2015 losses were still over 50%. There had been investments in sanitation, but largely funded by public money (EU funds), administered by the municipal authorities, but profits were for the company. In the initial contract it was included that prices will not be increased, but since 2000 they went up by over 500%. The company's claim was that price hikes are to be used for investment, but if funding is raised by fees and EU funds, it is something that a public company is able to do as well. Another criticism has been related to the lack of clarity of what qualifies as an investment, as the company has accounted as “investment” marketing campaigns and even personal consumption of the management. Furthermore, the private company was accused for artificially decreasing losses by reporting lower planned than the actual water supply. Say in 2004 planned supply was 140 cubic meters, but the actual was 240 cubic meters. Furthermore, there had been serious issues with lack of transparency. The contract was made public in 2013, 13 years after it was signed, and only after a number of citizens' protests, campaigns and court trials against the municipality. When it was published it turned out that an arbitration clause was included as an annex from 2008. The arbitration clause was included without any public deliberation whatsoever. Additionally, the arbitration was used to block a citizens' campaign for the organization of a referendum on canceling the concession in 2013 on the grounds that such a referendum may damage, regardless of results or if the contract is invalidated, Veolia's image. Thus it was a textbook example of a regulatory chill. There are also concerns regarding the relative intransparency of the “value for money” aspects of the contract, and the “closed” procedure for its establishment and signature, with no specific preliminary feasibility studies or wide information and discussion activities being in place. One of the visible results nowadays is the steady, but continuous increase of the consumer fees for the Sofia citizens. Another known fact is the wide reconstruction, achieved by “Veolia” during its management, with specific replacement of most of the welded ethereal pipes (supposed to be cancerogenic material). As far as no clear information, or specific impact assessment of these contradicting signals are in place and public, the assessment of the Sofia water concession also have to remain unsolved.



Precious Metals” since 1999, for a 30-year period (one of the oldest concession procedures in Bulgaria). A list of problematic questions, petitions, and other civil campaigns, are facing these activities during the years, including among others the tiny measures in place to protect the surrounding mountain environment (its water, air, soils, and biodiversity), as well as the health and livelihood of their workers, and the nearby situated settlements and communities. The company management generally rejects these requests, stating the large amounts of their technological investments and social payments, as well as the highest level of their salaries (starting on at EUR 1500, many times higher than the average payments in Bulgaria, one of the poorest EU countries). The national ministry of environment and waters, that should be supervising these activities, usually also claims, that everything is alright, with rare negative remarks or minor sanctions to the company (concerning obvious poisoning emissions, death of river fishes or other species, especially in the case of involvement of TV or other national media). Claims are made also to the very initial contract for the concession, declaring it distributes only minor obligations to the concessioner, and do not provides specific mechanism of the conceder and the general public for protection of their rights and requests, and of related correction measures for their ex-post enforcement (mentioning among others the very initial decision for establishment of the concession, and the initially defined low volume of the concession fees).

And third Bulgarian concession, with very controversial public acceptance, is the one for development of ski area “Bansko”, launched in 2001 by the offshore company “Ulen” (another of the oldest concessions in Bulgaria). It has a number of clear documental irregularities of requirements, stated in its contract, in the national legislation, and even in international negotiations with the Bulgarian participation. One group of these is delayed pretenses by the ministry of environment and waters, firstly in 2011, for missed financial payments of the concessioner in 2006-2010 period, which the company rejects (now a two-way court case is still ongoing in relation to this argument). Another aspect covers the identified nominal use of larger territory, than the prescribed in the concession contract (mentioned firstly by the civic coalition “To prevent the nature in Bulgaria”), and full subsequent passivity of all responsible national institutions to have some sanction pay-back for it. Third aspect is related to the strong under-cover lobbying activity of the network, related to the company (with local and national tourism businesses involved), including continuous and still ongoing administrative, legal, quasi-civic, and even parliamentary efforts for further territorial expansion of the concession. These efforts are the more worrying, having in mind the specific sensitive nature of the local environment, directly neighboring to the protected territory of “Pirin” national park, and included in the World environmental heritage by UNESCO. As far as the current intentions for expansion of the concession include some 63% of the protected territory, in 2015 UNESCO adopted special declaration for it, stating, that the construction norms for the park are already exceeded a 1000 times, and such further development should



be prevented by the Bulgarian institutions at any cost, as if it happen, this will actually destroy the “Pirin” national park.

On the basis of the available information, no specific public debt may be addressed in relation of the existing PPP in Bulgaria. Meanwhile, the significance and public value added of their cumulative financial contribution (to the state budget and local municipal finances) seem also insignificant and doubtful, having minimal average contribution in the period 2008-2015, consisting of only 0.2%-0.3% of GDP, or approximately MEUR 115-125 per year (on the basis of analyses of the responsible national institutions, being themselves fragmented and incomplete).



2. LEGAL AND POLICY FRAMEWORK ON PPP

Right now Bulgaria is in a process of update of its PPP legislation, meaning the general replacement of the two existing acts so far - the ones for PPP (in general terms), and for the concessions, with a new integrated and updated PPP act, requested also by EU and IFI. The PPP act was relatively recently enforced - in the beginning of 2013, and incorporated some wider PPP concepts, uses and procedures than these already in place. But in the meantime before 2017 it actually was not in use on behalf of all parties, listed as concedents in it. According to some opinions from the guild of legislative experts, it was due to two main reasons: one of them, the too complex procedures and requirements, prescribed in it, even for various small-scale applications of the PPP approach; and two, due to relatively low administrative capacity for their application of all mentioned local parties, including also the majority of economic operators, eligible to enter in the roles of its concessioners (or other operators), as well as the self-governance level, the local communities, and the wide civil sector in the country.

The older concessions act was adopted early, in mid 2006. It obviously was more understandable for the local parties and economic operators, as was used for various local economic relationships, in the three main areas it declares: concessions for construction, services, and extraction. It seems that the national situation was actually improved with its adoption, as the majority of most problematic national concessions have been launched and signed prior to it. The main actors in this act are the conceded institutions, explicitly limited to the high government institutions (council of ministers or selected ministries); the municipalities; and, so far just hypothetically, public concessioning coalitions.

A group of other legislative regulations at lower level also exist, in relation to the specific PPP relations within the so called Leader-approach, as a EU-defined tool for the implementation of the rural development programme, under the auspices of the ministry of agriculture and foods. Every programme measure, addressing this approach, is defined by a specific ministry regulation, clearly defining the used local action groups as a “local public-private partnerships, for the achievement of specific objectives in public interest”. Currently falling within the “grey zone” far beyond the scope of the existing national PPP legislation, it is necessary that these and other possible forms and applications of PPP relations will be incorporated in the newly prepared general PPP act. Although not contradicting the existing requirements, such mechanical “summarizing” of various approaches, not defined and applied in an unified manner, is not a good testament neither to the national administrative and expert capacity, nor to the maturity and public responsibility of the Bulgarian politicians and decision-makers.



Meanwhile, it seems the PPP approach in general remains still not recognized by the government and country administrations as a specific tool for their policy-making. No specific strategy, or other policy-making document for any utilization of PPP exist at the national level, and just a small number among the biggest municipalities (less than 10) have such strategies for some of their specific infrastructure and service assets (but more in the form of general declarations, forwarding the planning and actions for their practical implementation in the future). PPP are also mentioned as possible (but not certainly identified) tool in some of the most general national plans and strategies (including the BG 2020 strategy, the strategy for development of the state administration, some specific infrastructure national strategies, the national strategy for demographic development etc). In any of these cases, no specific action plans, responsible entities, budget lines and calculations, or deadlines are incorporated in the relevant documents.

One case for such alternative PPP use (common in other EU countries, but novel and pilot in Bulgaria), is currently ongoing, issued bottom-up by the rural municipality of Gorna Malina. After a set of local community discussions, the municipality is currently requesting permission on behalf of the ministry of environment and waters, to allow establishment of a specific local PPP initiative, in order to implement the existing management plan for it surrounding NATURA 2000 territory, in full compliance with its complex measures and requirements. Additional purpose to the better protection of the local nature will be the incorporation of associated social-economic objectives, related to the local livelihood, in the form of small-scale tourism and other soft green job activities. After such permission is given, as a tool for this initiative may be used the existing local action group, already established for the purposes of the rural development programme. The strong international reference to the eligibility and public interest in such approaches is in place, as equivalent procedures are applied longer than 3 decades by DATAR, the French national institution for complex territorial development. The specific areas of such management PPP procedures in France (and other EU countries) are related exactly for the multi-purpose integrated management of coastal and other sensitive natural zones, after their step-by-step buyout (reached currently 18% of the French coastal zones, with a general target of 50%). Such policy approach integrates multi-purpose development initiatives in the national and local policy-making, providing among others also practical opportunity for decentralization and empowerment to the local communities. Meanwhile, so far no formal response to the municipal request in Gorna Malina is issued on behalf of the ministry of environment and waters.



3. PPP RISKS AND IMPACT IN LOCAL AND NATIONAL LEVEL

As far as the PPP in Bulgaria remain matter of personal choice, than a systematic policy-making approach, relatively wide room is in place for nepotism, corruption, or other bad governance practices. This situation is also facilitated by the weak public information, assessment, and irregular reporting, as well as the lack of preliminary published guidances, procedures, directions, criteria, or measurable targets, adopted by the responsible administrations, and applicable while implementing such procedures. The limited specific capacity of all involved administrations, media, civil society, courts, and economic entrepreneurs, to develop, observe and assess such procedures, is a third pillar of this vicious circle. Topics as formulation, quantification, economic assessment, or negotiation and advocacy, of public, natural, historical, cultural, or other social assets, still have very, very limited number of well-qualified experts.

Meanwhile, some supposedly irregular PPP already in place, may provide not only private, but also public incentives for their expansion and multiplication. According to the concessions act in force, half of all owed concession fees have to be paid to the municipalities, where the concessions assets are situated. Thus, the active small number of large-scale concessions provide significant financial benefits to their hosting municipalities (despite the supposed health or environmental problems their activity creates there). A bold sample for this is the area of the “Srednogorie” mining cluster, with the above-mentioned “Dundee Precious Metals” being one of its main players. According to the indexes and statistics of the ministry of finance, for a number of years the municipalities in the area (also members of the cluster), although being small ones, and not having too much other sources for employment and livelihood, fail within the list of 20 best “financial health” territorial units in the country, due only to these concession fees.

Other concession mass incentive is the better local economic opportunity such concessions usually promote - in terms of individual wages and salaries, or in terms of co-operation opportunities for smaller local economic players, in contrast to the pure local economy. These are the cases not only in Srednogorie, but also in Bansko, and other territorial concessions. For instance, exactly the same arguments were in use on behalf of the company establishment just a month ago, while discussing the initiative for new “Dundee” gold concession in the area of Trun, followed by a local referendum (reaching less than the required level of participants, but luckily yet taken into consideration by the local self-government). And in Bansko, the quasi-civic association (on a tourism branch principle) “The nature for the people and the regions” for a long time is a strong supporter of the expansion of the above-mentioned scandal “Ulen” concession.



Although such purely economic arguments are valid and eligible in the public justification of any PPP initiative in general, they should not prevail, or even replace all other existing important questions, related to the public interest. The basic legislative compliance, the health and environmental assessments, their valorization, mitigation and prevention, as well as the very initial decision for concessioning of some public assets (especially if they are non-renewables) also need to have their relevant reflection, in terms of data and assessment, transparency and information, advocacy and guarantying, on behalf of the responsible public and local authorities, as well as from bottom-up organized civic groups and networks.



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RECOMMENDATIONS





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REFERENCES

