



Analysis on Public-Private Partnership Serbia



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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 SERBIA

“The public-private partnership (PPP) is a long-term cooperation between a public and a private partner for the purposes of providing financing, construction, reconstruction, management or maintenance of infrastructure and other facilities of public interest and provision of services, of public interest, which may be contractual or institutional.”

(Article 7, Paragraph 1, Law on public-private partnership and concessions, Official gazette of RS 88/11, 15/16 and 104/16)

In Serbian system PPP is practically equalised with the concessions that is considered as one of the forms of PPP. Concession as such is contractual or institutional PPP in which commercial utilisation of natural resources, public ownership or other objects that are in public property, or economically activities of public interest could be given to the private partner. ¹ In that sense PPP could be given not only to the public utility services but moreover to practically whole pallet of different activities: 1) research and exploration of minerals, 2) activities within the protected areas or utilisation of the protected resources, 3) in energy sector, 4) for ports, 5) public roads, 6) public transportation, 7) for air ports, 8) for sport and education sectors, 9) cultural heritage or other goods, 10) communal activities, 11) railways, 12) commercial utilisation of cable cars, 13) in health care, 14) in sector of tourism, 15) and other sectors.²

In that sense we see that government opens up the door for potential complete privatisation in all the sectors, commercialisation of activities and sectors that are enormously vulnerable and important for the existence of society.

¹ Article 10 point 1 of Law on public-private partnership and concessions, Official gazette of RS 88/11, 15/16 and 104/16

² Article 11 same law



For over 20 years international economic organizations, international banks and financial institutions (IFI), as well as governments of the most developed states are promoting PPP as a solution for chronic lack of finance for public infrastructure, which includes public utilities. This financial shortage is caused by harsh fiscal discipline imposed directly by the same subjects. In Serbia concept of PPP was introduced in 2003 by adoption of Law on concessions. Because of its inefficiency, new, more flexible Law of PPP and concessions was adopted in 2011. Based on this law, in 2012 Commission for PPP as intersectoral body on national level has been established, with authorization to give official opinions necessary for initiating procedure for any new PPP. Commission in its practice shows openness for initiatives of public authorities concerning establishing PPP. However, number of established PPPs in Serbia is still small. Serbian law on PPP in its article 19 envisions SELF INITIATED proposals from private sector for different activities in any form of PPP (including concession) thus enabling establishment of economically activities for private benefit that would be designed by private player while all the risks (if such activity is accepted from side of public authority) will actually be on public side and stream of guaranteed profit will end up benefiting only private side. Such self-invented PPPs are actually bearing enormous risks for manipulation and different forms of politically corruption.

Of 15 public utility services prescribed by Law on public utility services (PUS), local authorities, that have exclusive competences over PUS, are most interested at PPPs in five areas:

- Urban and suburban public transport
- Waste management
- Public lighting
- Waste water management
- District heating

Until the end of 2016 the largest number of PPP in PUS was established in urban and suburban public transport (in most of big cities, as well as in many municipalities for transport of pupils), then in waste management (in 22 cities and municipalities), and finally in public lighting (in three municipalities). For



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the last two areas of above list there are no established PPPs. In general, it could be said that PPPs in PUS are rather exceptions than rules in Serbia, having in mind the total number of cities and municipalities (145) and the total numbers of existing public utility companies (around 300).





2. MAIN LIMITATIONS IN IMPLEMENTATION OF PPP IN PUS IN SERBIA

Hitherto experiences of local authorities in Serbia regarding PPP in PUS indicate that this model of obtaining funding has serious limitations, of which here the two basic stints will be mentioned.

First limitation is the way of selection of PUS for PPP, for the selection is based exclusively on profitability. PPPs in Serbia are established only in PUS with a high level of technological development and strong financial support of big market subjects, or in short, in areas where a developed market exists. Public transport was first PUS in Serbia where PPPs appeared due to large development of European market of buses and liberalization of import of buses. In municipalities with PPP in waste management, the basis for those were regional landfills constructed from funds of EU or credits from IFI. And cases of PPPs in public lighting are product of developed European market of bulbs and lighting techniques, while price of electricity is not so relevant.

Second limitation is the consequence of first, for public interest is practically excluded from PUS where PPP is established. In mentioned PUS with various types of PPPs, market conditions enable profitability, and because of restricted local finances this is crucial argument for establishment of PPP. But, the question of sustainable long-term profitability, which was the primary reason for establishing PPP, is not discussed, not brought to attention even. The fact that some business is currently profitable is not linked in any way with profitability of the same business in long term. On the other hand, public interest is a permanent category, and as such should not be excluded based on momentary circumstances, but defined through measures of systematic organization of society, which would provide arguments and criteria for scope and basis for proper functioning of public interest. In the absence of measures of systematic organization of society, establishing of PPPs results in undesirable, but unavoidable effect of political and social resistance in the name of protection of public interest. This social resistance becomes potential source of conflict because of long term redirection of finance from public sources to private partner, and instead of stabilization of democratic order, PPPs in fact are destabilizing it.



3. MAIN RISKS OF IMPLEMENTATION OF PPP IN PUS AND CONCESSION PPPS IN SERBIA

The previously explained limitations for implementation of PPP are at the same time the main source of risk.

First risk is development of PUS in spite of social needs. The level of market development of any business in case of Serbia is not related to the country's internal potentials or needs, but to European and global markets. For example, though local authorities are often interested in establishing PPP in district heating, for this business special forms of financing of private sector do not exist, and hence the risk of financing is passed onto local authorities, which are not capable to provide funds for this. Therefore, PUS a priori cannot be developed according to local needs, but are conditioned by external factors that are not necessarily in accordance with local needs. In fact, these external factors rather "produce" artificial needs.

Second risk comes from exclusion of public interest from PUS where PPPs are established, so that the equality of the contracting parties is seriously undermined in favour of private partner – due to stable system of financing, the private partner gets manoeuvring space to dictate terms and conditions to the public partner. Besides, public partner, despite being almost without interest, has the unpleasant duty to provide the collection of reimbursement from users, for the benefit of private partner. Finally, though public partner bears responsibility for regular performing of PUS, he loses resources for fulfilling of this duty, because all public resources for PUS are redirected to private partner. Public interest that could be a weight in balancing the equality of contracting parties practically is eliminated by the presumption of profitability. The final consequence of such relation is that potentially the public partner's only choice is between politically unacceptable permanent conflict with users of PUS regarding prices, and equally politically unacceptable endangering of performing of PUS, which would be in fact neglecting of fulfilment of its own responsibility.

Risk from undermined equality of contractual parties already appeared at least in one municipality in Serbia where private partner stopped performing PUS in waste management because of unprofitability. Though such situation can be treated as a problem of imprecise contract, in fact it is problem of infirmity of municipality to request additional collaterals, since this would significantly increase the cost of business. Municipality in this case has no means of protection of public interest, which at the very least



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leads to endangering of public health and other consequences because of which PUS are defined as special compared to other businesses.





4. MAIN RISKS FROM CONCESSION PPPS

Lack of definition what is the public interest is notorious problem of Serbia public life and economically development. In law on PPPs in article 6 legislator defining principles of PPPs foresees that public interest should be protected (point1) and that interest of private partner can't be *opposite to the legally defined public interest*. Looking at the different legislations in sectors of energy, transport, spatial planning etc we see that such instance (such law) where it is defined in which kind of process is public interest defined is actually missing.

Only law that actually counts what are the public goods and public ownerships³ and is listing them actually gives some hint how the Serbian legislator actually understands what are the public interest. Weakness or actually lack of such public interest defining process, strategy or law actually leads to situation that detrimental technologically solutions (projects) due to interest of domestic and international businesses and politically elites benefiting directly or indirectly from those are being proclaimed projects of public interest in completely not transparent manner.

Law on PPPs adds one enormously dangerous and actually anti-constitutional and anti-democratic solution and that is that public authority is obliged to keep secret of technically, economically, financial and other data from a bidder. If we have in mind that practically all the sensitive and highly polluting projects, sectors and programs actually can be the object of PPP with or without concession it is clear that such solution given in article 24⁴ of law is actually attempt to completely bypass right of public to know, to be informed about the projects and programs that are having effect on environment and even more such solution provided is actually completely undermining democratically process in deciding of is the project or program of public interest or is that project or program actually detrimental for the real public interest.

³ [http://www.pks.rs/SADRZAJ/Files/Zakon%20o%20javnoj%20svojini\(1\).pdf](http://www.pks.rs/SADRZAJ/Files/Zakon%20o%20javnoj%20svojini(1).pdf), law on Public property

⁴ Article 24, point 1, Law on public-private partnership and concessions, Official gazette of RS 88/11, 15/16 and 104/16



CONCLUSIONS AND RECOMMENDATIONS

Though PPP is presented as technical solution for the problem of limited public finances, it is clearly an essentially ideological concept with serious impediments for general acceptance because of lack of ideological arguments. Mentioned main limitations and risks are not unknown, and usually proposed solution for them is capacity building of local authorities – but that does not solve the real problem in the least: capacity building of local authorities concerns only technical aspects of PPP (project cycles management, defining and monitoring of implementation of the contract, and similar), while local authorities are still left without arguments that would legitimize practical exclusion of public interest in any PUS where PPP is established.

Concession and normal PPPs are actually running the danger of completely bypassing democratically and transparent process undermining right of public to participate in long term decisions about the form of life and status of environment thus undermining constitutionally guaranteed right to live in clean environment.

An additional problem regarding PPPs is that they potentially endanger local democracy. Famous lack of transparency of financing of political parties in Serbia in combination with by its nature blurry business conduct by private companies can create ambience in which already weak system of local democracy is additionally weakened by merging of public and private interests in lawful way. Replacement of public utility company as operator of PUS with private company that operates PUS based on PPP, when the public utility company is already deformed in direction of merging with political structures, would not change the situation, but would void inherited moral arguments and traditional methods of public influence that still hold this deformation under some control. In this way natural monopoly of PUS would be united with monopoly in political sphere.

Lack of transparency in deciding which technologically solution can be proclaimed public interest is actually leading to the locked development and providing guaranteed profit streams for the technologically dangerous solutions. Politically and business elites using not transparent way of deciding about the projects and programs given in form of concession or PPP will actually undermine sustainability (all tree pillars of it) of Serbia.

Finally, experience in Serbia opened the question whether expenses of PPP are lower compared to expenses of performing PUS before PPP. Though general opinion is that performing of PUS by traditional public companies is inefficient and that those companies have significant surplus of



employees, total costs of PPP in practice are no lower than they were before establishing of PPP. However, this is very hard to prove, since total costs of performing PUS which municipality pays as a rule are not clear before establishment of PPP, so this problem is more a critical topic of accounting data of local finance. Yet, known example of ticketing system in public urban transport in Belgrade, Bus Plus, gives basis for reasonable doubt regarding lower costs of PPP, and especially urgent need to determine real costs of municipality in PUS that is subject of PPP before establishing PPP for purpose of evaluation of effect of PPP and protection of weakened position of public partner.



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