

Public-private partnerships and concessions in Southeast Europe

Can infrastructure be improved without increasing public debt?



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CSOs as equal partners in monitoring of public finance

“CSOs as equal partners in monitoring of public finance” started in the 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 the transfer of knowledge/practices and networking in the field of the 4 specific topics: public debt, public-private partnerships, tax justice and public infrastructure.

Additional to this analysis, 3 more analysis will be prepared in line with the other 3 topics of the project: public debt, tax justice and public-private partnerships.

This study is accompanied with a policy brief which will be also available in local languages and will provide a short overview of the key policy recommendations and trends.

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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I. Introduction

Public-private partnerships (PPPs) are models of financing which governments consider to be one of the possibilities for providing public services and infrastructure projects in south-east Europe. They have been heavily pushed by international institutions such as the multilateral development banks for more than two decades now. Yet so far there has been far more talk than actual implementation, and where projects have taken place, they have often not lived up to expectations. The objective of this study, therefore, is to analyze the different approaches used by the respective countries in the region and to learn from positive and problematic experiences in terms of legal framework, project selection, institutional capacity and results, in order to better advocate for change in this field.

One of the key motivations behind the PPP concept is to improve public infrastructure and to support public services, with a decreased burden on public funds and without the need to increase taxes. The objective is to include the private sector in providing public services, with the result that the role of the public sector changes from the operator of the service to a buyer and a guardian of the public interest. This is driven by a perceived lack of public funds available for public service, together with a belief that the private sector is able to perform many tasks more efficiently than the public sector.

Both of these assumptions deserve to be closely scrutinised: Why is there a lack of public funds available in the first place? And is the private sector really able to provide public services more efficiently than the public sector? If so, in which cases? However, these questions deserve extensive analyses of their own, and while we touch upon the latter questions in this report, in general they are beyond its scope.

1.1. **What are public-private partnerships and why are they used?**

It is notoriously difficult to come up with a single definition of PPPs. What we can say is that they involve long-term commercial contracts between public authorities and private businesses in the design, construction, financing and operation of public infrastructure and services that have traditionally been delivered by the public sector.

They involve either a partnership between a public entity and a private entity based solely on a contract, or the establishment of a project company involving both the public and private sector within a distinct entity.

PPPs are characterised by the following:

- The relatively long duration of the contract, on different aspects of a planned project, often around 25-30 years, and sometimes even longer.
- Financing comes in part from the private sector, but requires payments from the public sector and/or users over the lifetime of the project.
- The private partner participates during the design, completion, implementation, and funding of the project while the public partner concentrates primarily on defining the objectives and monitoring compliance with these objectives.
- An attempt to distribute risks between the public partner and the private partner according to the respective ability of the parties to assess, control and cope with them.

As we can see above, there are two kinds of PPPs - user-pays and availability-based - and sometimes they are combined within the same project.

The user-pays model is basically a concession and these are not new. They have been used for as long as private funding has enabled services for the general public, varying in forms between countries. These are used for services which are expected to be profitable, so there is (at least in theory) no need for public money to maintain the service provision.

Examples are toll roads that have a high enough traffic volume to make a profit for the concessionaire. They are also used for purely commercial activities like mining or shopping centres, which bring with them different sets of issues from concessions in public infrastructure. They are therefore not the focus of this analysis but are mentioned in some sections where they raise issues that could also apply to PPPs.

Electricity generation and distribution also lies somewhere between a purely commercial activity and public infrastructure. However, in this region it often relies on support from the state in the form of loan guarantees, incentives for renewable energy and other subsidies. State intervention in the electricity sector is still very present and electricity is crucial for the smooth functioning of everyday life, therefore we include it in this report as public infrastructure.

Availability-based PPPs are a more recent innovation, which started being widely used in the United Kingdom (UK) in the 1990s. They involve a private partner designing, building or reconstructing and operating a public infrastructure facility according to specifications provided by a public authority and receiving payment for this once the facility is up and running. They have been used to varying degrees in Europe for schools, hospitals, prisons and some road projects where relying on traffic demand forecasts for calculating income has appeared too risky. Some countries like the UK have made extensive use of them, with others preferring to stick mainly to the traditional model of publicly-owned and operated public infrastructure.

However, it is important to underline that the use of PPPs is completely optional and that the amount of effort put into promoting them has far exceeded their actual importance in many countries. The EU PPP market is mostly concentrated in the United Kingdom, which from 1990-2016 implemented almost 1000 PPP projects worth almost EUR 160 billion, fol-

lowed by France with 175 PPPs worth almost EUR 40 billion. Yet 13 EU Member States implemented fewer than five PPP projects during this period. Even in the UK, more than 90% of the government's capital investment is publicly financed.

The attraction of availability-payment-based PPPs is that they represent a “build now, buy later” model which appears to very well suit the needs of decision-makers to be seen to be improving infrastructure without increasing public debt. However, as we will see later, this effectively represents buying infrastructure with a credit card, with all the pitfalls this can bring.

PPPs differ from full privatisation in that the PPP contract is limited to a specific timespan and combines the efforts of the public and private sector to provide a facility for public use. Privatisation on the other hand 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.

Also, not all services are necessarily run by the private sector in a PPP facility. For example, in a PPP hospital, the construction of the building, its maintenance, catering services and cleaning services will usually be part of the PPP, whereas the actual medical services tend not to be (at least in the UK). In a fully private hospital on the other hand, all services, including the medical care, are run by the private company that owns the facility.

1.2. Structure of the analysis

The first section provides an overview of PPPs and concessions in the Western Balkan countries, Bulgaria and Slovenia. It identifies their characteristics in each country and which sector they have been used for so far. It also examines the availability of data for PPP projects in these countries.

The second part analyses the national legislation on PPPs and concessions and related policy documents (where they exist). It identifies key pros and cons of the current legal framework. It also looks at who is responsible for PPPs in the country.

The third section covers what is happening in practice and what risks PPPs bring with them in reality. These include hidden debts, poor value for money and corruption. Confidence in the institutions responsible for tackling corruption in the region is low, so the active involvement of civil society in monitoring the spending of public money and continuous research of the area is crucial, in order to contribute to the strengthening good governance in the countries.

Longer case studies are provided for specific projects where more information is available. Two of these are in electricity generation, which the EU treats as a commercial sector rather than a non-profit service. However, as we will see, in practice some of the projects in the region look more like PPPs.

The last part of the study presents conclusions and recommendations for decision-makers, both in the region and in international institutions.

II. Overview of PPPs in the Balkans - which sectors they are used in and availability of data

In the last two decades there have been a large number of concessions in the region, especially in the small hydropower sector. There have also been some predominantly commercial projects such as tourist resorts, shopping centres and sports facilities, but very few availability-payment-based PPPs.

The main motivation for those attempts which have been made to use PPPs has been the high level of public debt in most of the countries and the fact that PPPs can be classified as private not public debt. The EU makes this easier via Eurostat rules which specify that, as long as the private sector bears construction risk and availability or demand risk, then the finance generally does not count as government debt. This test is not difficult to meet, so PPPs appear attractive to governments as a way of hiding borrowing.

Nevertheless, large-scale PPPs have not developed to a great extent, for several reasons:

- The countries' economies are not large enough to support a high number of projects;
- Attempts so far have been plagued by controversies and accusations of poor value for money;
- Experience from other countries shows that they are difficult to get right and can generate hidden public debt (*see section on Risks*); and
- In several of the Western Balkan countries, there is relatively low support for private sector involvement in public services.

Below we examine the situation country by country and find that those PPPs which are taking place are mainly on the local level. However, there are also a few larger projects such as airport reconstruction and management and waste management going on, usually supported by the international financial institutions.

One of the features common to all of the countries is a lack of transparency about planned, ongoing and completed PPPs. In some countries, such as Bulgaria, Macedonia, and Montenegro, there is at least a PPP or concessions register, but these provide only very basic information about the subject of the contract, the company involved, and the date of signing. They contain no information on the conditions of the contract, or on how implementation is going in reality.

2.1. Bosnia and Herzegovina

Bosnia and Herzegovina has made use of concessions but as far as we know not availability-payment PPPs. Republika Srpska has a public register of concessions but the Federation of Bosnia and Herzegovina (FBiH) does not even have that, and the situation is complicated by some concessions having been issued on the Cantonal level, not the Federal level.

In 2011 the FBiH Office for Auditing Institutions complained that there was no precise record on the number of applications nor registers of awarded concessions. Since then, the FBiH Concessions Commission has started to publish annual reports which give an idea what is going on at the Federal level, but not at the Cantonal level.

Its report for 2016 shows that the majority of FBiH-level concessions are for the use of water for drinking and leisure facilities, as well as some for hydropower. It also shows that the FBiH government is considering offering concessions for some sections of the Corridor Vc motorway - an idea which has been on the table for many years now. The International Finance Corporation has helped prepare a concession for the Karuše-Poprikuše section and in 2015 the EBRD showed interest in financing it, but it has not gone forward yet.

In the small hydropower sector, we know that at least 67 concessions were issued in the Central Bosnia Canton up to 2016, but this is one of the few cases of any lists of concessions having been disclosed.

In 2017 Member of the Federal Parliament Aner Žuljević highlighted the Federation's failure to sign concession contracts for numerous instances of ongoing resource use, which, he claimed, had cost the Entity no less than EUR one billion over ten years.

In Republika Srpska the largest concession projects are self-initiated private sector coal power generation projects. The 300 MW Stanari plant has already been built and started operating in September 2016, while the 600 MW Ugljevik III power plant is very delayed, reportedly due to low expected profitability. More than 100 concessions have been issued for hydropower plants of all sizes since 2006 as well.

Republika Srpska reports having implemented PPPs in the health sector, building and equipping nine haemodialysis centres and a radiotherapy centre. It is not exactly clear which PPP model is being used. Little can be said about the quality of the PPP contracts signed because they are not available to the general public and there is hardly any information available about them.

2.2. Bulgaria

Bulgaria has carried out a few large concession projects but has generally not adopted PPPs with any degree of enthusiasm. So far, all the PPPs take the form of concessions, launched by the central government institutions, or by municipalities. Neither of the two largest projects, the Trakia Highway and the Sofia Water Concession, have been a great success, and the Trakia Highway PPP was cancelled before it could be implemented.

Although a specific national PPP act was introduced in 2013, and defines PPP procedures, different from the concession approach, no such projects have been implemented on the national level so far. PPPs are also mentioned as possible tools in some of the most general national plans and strategies (including the Bulgaria 2020 strategy, the strategy for development of the state administration, some specific infrastructure national strategies, the national strategy for demographic development etc), but are not prioritised.

A centralized online PPP register is operated by the Bulgarian government, listing all the registered PPPs in the country.

Concessions have also been issued for activities outside of the public infrastructure sphere, eg. the Srednogorie metals mining cluster and the 2001 concession to Ulen for the Bansko ski resort, which are very attractive to local authorities because of the Concessions Act provision that half of all owed concession fees have to be paid to the municipalities, where the concessions assets are situated.

This significantly improves the financial health of the municipality budgets and acts as a strong motivator, often trumping serious environmental and health concerns and shutting down discussions about other aspects of the public interest, such as whether and at what rate these resources should be used, what the wider economic pros and cons are and issues of basic legal compliance.

2.3. Kosovo

In 2008, with Kosovo's independence declaration, the government announced its support for PPPs as a way to stimulate investment in public infrastructure and ensuring public services. A dedicated law followed suit in 2009 and was replaced in 2011. Kosovo has a dedicated website on PPPs with a list of contract notices and awarded contracts. It is not entirely clear if it is kept updated but it does include awarded projects from 2017 and 2018.

The largest project carried out so far was for Prishtina International Airport, for which a contract was signed in 2010. Other projects include public transport services in Peja, urban waste processing in Suhareka, and the construction of a new cemetery in Landovica, Prizren.

At the end of 2017 a concession contract was signed with ContourGlobal for the 500 MW Kosova e Re lignite power plant near Prishtina. Power plants are usually considered in the EU to be a commercial activity subject to market rules and pricing, and thus not really a PPP. However, the Kosova e Re concession, however, is much more of a PPP than a commercial project, because ContourGlobal will face barely any commercial risks once the plant is built (*see case study in section 6*).

2.4. Macedonia

Macedonia has adopted a set of concession, PPP, sectoral and public procurement laws for PPPs at both the national and local levels, which are generally 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 the technical and practical aspects of PPPs remains low in government agencies and experience in risk management is limited.

Concessions have been issued in the power and transport sectors. The two international airports, in Skopje and Ohrid, are major examples of PPP projects within the country. Hydropower plants are also frequently built under concession arrangements, especially small ones. In 2015 and 2016, 24 and 25 concessions were awarded for hydropower respectively. Larger plants are usually handled by state-owned company ELEM but unsuccessful attempts have been made to find private concessionaires for the Cebren and Galiste plants with capacities of 333 MW and 193 MW respectively.

Most of the PPPs so far have been initiated by local authorities and have included public utilities, parking, street lighting, administrative buildings and markets. One of the most attractive sectors is energy efficiency, for example in street lighting. Such projects have proven to be quite cost effective and the savings are visible quickly. No PPP projects have been identified in water supply and sewerage, and there is also only one waste management project - for the reconstruction of the Drisla landfill in Skopje in line with EU standards (*see case study in section 6*).

A register of awarded PPP contracts was set up in March 2013 by the Ministry of Economy. At the time of writing 28 contracts had been awarded, according to the register. A register of tenders that were started but not completed is also obligatory under the law but has not been established.

There is no systematic register of upcoming PPP projects, but some information on notices for awarding of PPP contracts can be found in the electronic procurement system that is managed by the Public Procurement Bureau (PPB).

2.5. Montenegro

In Montenegro the legislative and institutional frameworks for PPPs are still not complete, despite the Government's plans to regulate this area. Instead, they are regulated by various sectoral acts and the Law on Concessions. There have been several PPP-type projects, mainly concessions, implemented in recent years, mostly accompanied by controversies and suspicions, while some cases are being investigated by the state prosecutor. The projects are generally of a commercial nature rather than public services, with several ongoing tourist developments, and concessions awarded for more than 50 small hydropower projects.

Previous PPP projects at the national level included in the IT sector, construction of a students' dormitory in Podgorica in 2012, construction and operation of the Positron Emission Tomography – Computed Tomography facility and construction and operation of a medical waste facility.

At the local level, there have been also several PPPs, such as construction of two shopping malls in Podgorica, one shopping mall in Budva, a small street lighting project under contract for the commercial and tourist development of the Lipska Cave in Cetinje and road projects in Herceg Novi.

While basic data on concessions is proactively published, the vast majority of information on other PPPs is kept far from public eyes. The data is provided mainly in official reports by the bodies in charge of implementation, especially the Concession Commission. The Commission's website contains general information about the Commission, its composition, legislative framework and annual reports, but there is no regularly updated information about its activities. The Commission also publishes a registry of Concession Contracts, which contains data on several PPP projects, including names of concessionaires and grantors, subjects of concession, dates of contract signature and duration of contract, but does not contain some key information, such as the value of each project. Additionally, the distinction between PPPs and other types of concessions in Montenegro is not always clear.

The Privatization and Capital Investment Council is involved not only in straight privatisation but also in offering specific sites for development as tourist complexes. The majority of data on its activities is not available to the public. The Council publishes an annual plan of companies and tourist locations to be developed through PPPs, but it still hides information about certain projects. Therefore, the transparency of this body is evaluated by observers such as MANS to be very low.

2.6. Serbia

In Serbia the concept of PPP was introduced in 2003 by adoption of the Law on Concessions. After this there was an attempt to utilize the concession model for the Horgoš-Požega motorway, for which the contract was eventually cancelled due to the likely harm to the public budget.

In 2011 the law was replaced by a more flexible Law on PPPs and Concessions. In 2012 a national level inspectorial Commission for PPP was established, to issue official opinions necessary for initiating procedures for new PPPs. By the end of 2017 it had examined 86 PPP projects with or without concession elements and had issued positive opinions on 54 of them.

Most concessions - 15 approved by the Commission by the end of 2017 - have been issued for urban and suburban public transport, and these cover most larger cities. 19 cities and districts had issued concessions for public lighting, five for waste management and five for heating systems, usually involving a fuel switch from coal to biomass.

In recent years, the largest PPP project has been the extension of the Nikola Tesla Airport in Belgrade, for which a contract was signed with France's Vinci in March 2018. This decision has been criticised by Milan Kovačević, consultant on foreign investment, who says this model should not be utilized for a profitable company, and by Transparency Serbia, who point out that no feasibility study is available that would justify the decision. As the details of the contract are not yet public it is not clear what the conditions are and whether the concession can be considered successful or not.

Article 74 of the law on PPPs requires a Register of Public Contracts to be maintained by the Finance Ministry, and that the Register be public. For years this was not the case, but there is now a register online. It gives only the most basic information about the contracts, however, and Transparency Serbia has recommended that it should be expanded to include the contracts as well as reports on their implementation. Not only are concession contracts not published, but requests by organisations such as Transparency Serbia for concession contracts such as the one for Belgrade airport have been denied.

Serbia does not have a list of PPP projects that have been implemented or are coming up, only a list of those approved by the PPP Commission. It is not clear from this list which projects have been implemented to what extent and, if they have not been implemented, why.

2.7. Slovenia

PPPs were introduced into the Slovene legal system with the adoption of the Public-Private Partnership Act (PPP Act) in 2006. The state has carried out only one PPP infrastructure project – the construction of a nursing home in Idrija. Expansion of the port of Koper and the upgrade of the Koper-Divača rail section were considered as potential PPPs but a 2015 OECD analysis considered this a relatively risky approach because of the threat of future demand growth not being realised. It now looks like the Koper-Divača rail upgrade will be undertaken as a standard public procurement project.

PPPs have been used mainly at the local level and the first one was a water cleaning plant in Maribor, signed in 1998, even before the PPPs Act was adopted. Several PPPs have been carried out in Ljubljana, for example the Stožice sports stadium and the Trnovo and Murgle centres for the elderly, but there is little information available about projects undertaken since 2012. In 2017 the City of Ljubljana and the consortium of companies Petrol and GGE signed a contract on energy renovation of public buildings including schools, kindergartens, cultural centres and health centres via a so-called ESCO (Energy Service Company) model, in which initial financing will come from the Petrol/GGE consortium, European Cohesion Fund and City of Ljubljana and then the user pays off the investments with the money that would have been spent on the energy had it not been saved. Comprehensive energy renovation is foreseen in 26 buildings, and partial renovation in other 23 more.

The Ministry of Finance started collecting information about PPP projects in 2008 as required by law, but the last report mapping PPP projects was issued in 2009. There is no registry of PPPs. Thus, there is a serious lack of transparency in this field, which makes it hard to analyse successes and failures.

III. Legal, policy and institutional framework of PPPs - pros and cons of existing legislation and institutional set-up

In this section we briefly examine the legal and institutional set-up for PPPs in the individual countries and examine their strengths and weaknesses.

In most cases it is very difficult to do this in a thorough manner due to the limited number of real PPP projects and the general lack of transparency around how projects are being implemented in reality. It would need much more time and resources to carry out extensive research on each project and each piece of legislation and to identify whether the flaws are due to legislation or other factors.

In some cases, we are able to draw on our own experience or analyses carried out by groups such as Transparency Serbia and the Regional School of Public Administration (ReSPA). In other cases, no-one appears to have been monitoring the performance of concessions and PPPs in depth, including - worryingly - the competent institutions within the countries.

Nevertheless, we can make several observations based on our findings:

- All the countries have legislation on concessions, but not all have on PPPs.
- All the countries suffer from a lack of capacity to properly prepare and manage implementation of PPP projects.
- There are deficiencies in decision-making on whether to implement a project as a PPP/concession or not in all the countries. Even where there are public consultation requirements as in Montenegro, in practice this does not have as much impact as it should.
- Most of the countries have a central body to oversee PPP implementation, but Serbia does not. Few bodies publish evidence that they consistently check the quality of implementation.
- The involvement of state auditors so far has been patchy, and regular audits are not legally required in most countries. Thus, there is not a consistent body of evidence on the value for money of the projects carried out so far, only some individual reports e.g. for Macedonia.
- Serbia, Montenegro and Bosnia-Herzegovina allow unsolicited offers for concessions and have inadequate legal frameworks to make sure they serve the public interest.
- The capacity issue and lack of thorough process for deciding whether to carry out a PPP or traditional public procurement are also widespread in other countries. This was confirmed by a 2018 European Court of Auditors report on a selection of road and Information and Communications Technology PPP projects in the EU.

Yet according to IMF Public Investment Management Assessment studies for the Western Balkans, the scores for management of PPPs were among the worst, both compared to other regions (the EU, Baltics and EU-Southeast Europe), and compared to other indicators, suggesting that the capacity issue is even more acute here.

The IMF has also observed that PPPs are often chosen “not for efficiency reasons, but to circumvent budgetary oversight and postpone the recording of the fiscal costs of providing infrastructure services”, and that “Successful PPP programs require strong institutions that can effectively negotiate contracts and manage and monitor their long-term fiscal impact. Yet ministries of finance often lack the expertise and tools needed to safeguard public finances against fiscal risks arising from PPPs.”

Below are the findings for each country regarding legislation. The risks arising from the weaknesses described are covered in Section 5.

3.1. Bosnia-Herzegovina

Due to Bosnia-Herzegovina’s complicated institutional set-up, there are 12 laws on PPP and 14 laws on concessions. Republika Srpska adopted a Law on PPP in 2009, and the other entity, the Federation of Bosnia-Herzegovina, started drafting a law at the same time, but it is still waiting to be adopted. PPP projects cannot be carried out on state level because it is not regulated by the constitutional framework, and there would be political resistance to any attempts to trying it.

In line with the several layers of BiH public administration, the laws that govern PPPs in Bosnia and Herzegovina are as follows:

- 2002 state-level Law on Concessions (Official Gazette of BiH, no. 32/02);
- 2002 FBiH Law on Concessions (Official Gazette of FBiH, no. 40/02);
- 2002 Republika Srpska Law on Concessions of RS (Official Gazette of RS, no. 25/02);
- 2004 state-level Law on Public Procurement (Official Gazette of BiH, no. 49/04);
- 2006 Brčko District Law on Concessions (Official Gazette of BD, no. 41/06);
- 2007 Brčko District Law on PPPs (Official Gazette of BD, no. 7/10);
- 2009 Republika Srpska Law on PPPs (Official Gazette of RS, no. 59/09), amended in 2011 (Official Gazette of RS. no. 63/11);
- 2009 Decree on the procedure for realising PPP projects in Republika Srpska (Official Gazette of RS, no. 104/09);
- The 10 cantons in the Federation of Bosnia-Herzegovina have already adopted PPP laws.

According to Uzunović and Karkin, the weakest links in the Republika Srpska Law on PPPs are the monitoring and risk-sharing provisions. However, the project selection provisions are also quite vague: a feasibility study is required but the law does not stipulate how to decide whether a project is suitable for PPP or not, or require any comparison of whether it would be better to carry out public procurement. In the concession laws on the state and entity levels, the provisions on unsolicited bids are inadequate to protect the public interest (*see section on corruption, below*).

Oversight of PPP projects is supposed to be carried out by the relevant Concession Commissions: the Concession Commission of BiH, the Concession Commission of RS and the Concession Commission of FBiH. On the cantonal level the situation varies: For example, in Tuzla Canton, oversight over implementation of the contract should be carried out by public contracting partner and overall monitoring of the implementation of the law is carried out by the cantonal Ministry of Economy. The existence of several similar, yet separate legal regimes for concessions/PPPs in the country, as well as their inevitable overlap, discourages cross-entity and inter-entity concessions/PPPs.

There is no PPP strategy on any level in BiH and there is no dedicated PPP agency to promote and develop projects. Institutional responsibilities are not sufficiently defined in FBiH, while in RS, within the Ministry of Finance, the Public Investment Department oversees PPP projects.

The draft FBiH Law on PPPs stipulates that responsibility for PPPs should be taken on by the Concession Commissions on the Federal/Cantonal level. However, as explained above, there is very little information available on what concessions have been issued, and how they have turned out in reality. One of the few analyses to have been carried out in relation to PPPs in Bosnia and Herzegovina so far - by Nadja-Azra Uzunović and Zana Karkin - points to lack of monitoring and evaluation as a real problem. Thus, adding PPPs to the existing concessions set-up would not bode well.

Uzunović and Karkin recommend the creation of PPP units within the Ministries of Finance in order to ensure that fiscal constraints regarding PPPs are properly considered. However, this only makes sense if Bosnia and Herzegovina intends to make more use of PPPs in the future, and it is far from certain that this is the case and whether this would be desirable.

In general, for availability-based PPPs in FBiH the situation is quite chicken-and-egg. There is a weak legal and institutional framework but there is also little usage of PPPs, and one reinforces the other. But the situation with concessions shows that numerous improvements need to be made, especially with oversight, monitoring, and cancelling underperforming concessions, both in RS and FBiH. In FBiH especially, transparency about the concessions issued and their performance needs to be drastically improved, especially those on the cantonal level. These issues are in line with wider governance problems in the country and require broader improvements in administrative capacity, procurement and other integrity issues, and enforcement of existing legislation.

3.2. Bulgaria

In 2017 Bulgaria updated its PPP legislation, replacing the two previous acts - the 2013 PPP Act and the 2006 Concessions act - with a new integrated Concessions Act which came into force at the beginning of 2018. At the time of writing in September 2018, the implementing legislation is still being adopted, thus it is too early to conclude how it is working in practice, especially as there was also little experience with the PPP Act.

As mentioned above, so far concessions have prevailed in Bulgaria rather than availability-based PPPs, according to the PPP register. They have been launched by the government institutions (the Council of Ministers or selected ministries), or by municipalities. The Concessions Act did seem to somewhat improve the situation compared to previous years, as there were fewer controversial concessions signed afterwards, but it is not completely clear whether this was due to the Act or to Bulgaria's 2007 EU accession which meant all procurement procedures were under greater scrutiny than before.

The American Chamber of Commerce in Bulgaria in 2014 provided some observations on the PPP situation from an investors' point of view and suggested some reasons for this, including:

- More consistent political and public support for PPPs would be needed - too many projects and project planning processes had been delayed or cancelled. In 2014 the secondary legislation still had not been adopted. A long-term clear and specific action plan which would provide the necessary transparency and predictability for the private parties should be developed.
- PPP tenders are expensive to enter and reputable investors require more predictable, effective and transparent rules and procurement processes than had recently been the case in Bulgaria.
- The decentralised approach had so far not shown good results: Administrative capacities to initiate, prepare, negotiate and procure PPP projects needed improvement.
- The PPP Act limited public authority participation in institutionalised joint ventures to those stipulated by the Act, limited PPP projects to those listed by the government and capped private sector incomes from PPP projects.

The latter issues may represent a point of contention, given the need to protect the public interest and limit the costs of PPPs. However, the first three points reflect a wider governance problem - including planning, corruption and monitoring and enforcement - that would need to be addressed with or without PPPs. Public or political resistance to projects resulting in them needing to be scrapped does not appear out of nowhere, but is the logical consequence of failure to build consensus around political priorities.

The law stipulates that from December 2018 onwards national and municipal plans for concessions will be developed. Concessions will be granted only if included in, and based on, such plans. This in theory should help to address the predictability issue mentioned above. It also contains in the main law most of the rules on awarding concessions, with fewer issues left to be defined in implementing legislation.

However, it is too early to see how much it will contribute to improving the situation, especially as the extraction of underground resources, one of the main problem areas according to groups like Za Zemiata, is not included in the Concessions Act and will continue to be regulated by the Underground Resources Act. Even if the Concession Law does bring some improvements in principle, it will only be as good as its implementation and enforcement.

3.3. Kosovo

Law No.03/L-090 on Public-Private-Partnerships and Concessions in Infrastructure and the Procedures for their Award, enacted in 2009, was the first stand-alone legislation which tackled PPPs. Already in 2011, revisions of the PPP law were prompted as a result of the Government's efforts to harmonize the country's legislative framework with EU Directives on public procurement. In December 2011, therefore, the Law on Public Private Partnership (No. 04/L-045) was passed.

Under the new law, the previous institutional set-up was changed into today's PPP Committee - an Inter-ministerial standing body, chaired by the Minister of Finance, with authority over PPP transactions and PPP policy in Kosovo - and the Central PPP Department, within the Ministry of Finance. The PPP Committee is responsible for the approval of PPP projects, while the PPP Department advises and assists with practical aspects.

Kosovo's PPP system has received significant support from international sources including USAID. One result of this is that from 2014-2016, Kosovo - unlike most other countries in the region - had a PPP Strategy.

It is difficult to properly evaluate Kosovo's legal and institutional PPP set-up because of the small number of projects so far and the lack of transparency around most of them. Given the extent of external assistance with drawing up legislation and the existence of dedicated PPP bodies, it is to be hoped that the legal framework is generally in line with EU legislation and international best practice. The EIB's EPEC in 2014 reported that most problems in closing PPP projects in Kosovo had been encountered in final contract negotiations and reaching financial close.

From a financial sustainability point of view, the legal framework is missing a ceiling to limit public sector exposure to PPP costs. It also does not include provisions for the accounting of PPP related assets and liabilities according to international standards, nor provisions to report data on PPPs in the budget - issues which have also been highlighted by the IMF.

Kosovo's 2014-2016 PPP strategy also pointed to several weaknesses, including:

- Relatively high transaction costs to develop and implement PPPs;
- Low capacity at contracting authority level to develop PPP transactions without strategic advisory assistance provided by donors, the PPP Department or contracted advisory services;
- Lack of adequate expenditure planning for transaction advisory services;
- Low awareness/understanding of PPP within Public Authorities and private sector;
- Oversight process for contract management can be further developed to handle anticipated increase in number of PPP transactions.

These appear to be something of an understatement. Research by the Regional School of Public Administration (ReSPA) in 2015 showed that the Prishtina International Airport concession was completely lacking a devoted project management team, and the PPP Department itself was providing contract management for the project. However, under the Law on PPPs, the Department does not have the authority to do so - it should monitor and comment on the level of compliance of the contracting authority and the private partner with the PPP agreement terms. Therefore, it is in a conflict of interest if it is both managing and accessing the management of the contract.

According to the public authorities, however, they had failed to find a substitute for the PPP department although there have been tenders launched for consultancy services. The capacity to manage contracts is fundamental to ensuring that PPPs deliver as well as possible, so it is of great concern that this was not put into place before the contract was signed. The use of consultants also raises the question of how much capacity will be built within the public authorities themselves in the medium term.

Given Kosovo's difficulties in implementing legislation in other fields e.g. under the Energy Community Treaty, including its hitherto failure to ensure a functioning state aid office, it seems fair to assume that there are other difficulties not mentioned here. In fact, the case explored in more detail below, on the Kosova e Re power plant, shows that the state has not been able to properly assess and negotiate contracts that are in line with its international obligations and that would offer it good value for money.

3.4. Macedonia

PPPs and concessions in Macedonia are governed by legislation including the Law on Concessions and Public Private Partnership (PPP law), sectoral laws governing services of public interest and the Law on Public Procurement (PP law) which applies to the awarding of public contracts including PPPs. In addition to these, six pieces of implementing legislation for the PPP law have been adopted. According to a 2017 analysis by the Regional School of Public Administration (ReSPA), the PPP law and PP law are generally compatible with the EU acquis but not fully aligned. No programmes or strategies related to PPP have been adopted yet.

The Ministry of Economy (MoE) is responsible for implementing the PPP law and implementing legislation, including by maintaining the PPP register. A dedicated PPP unit established within the MoE is meant to serve as a basis for support and training for all stakeholders.

A PPP Council which should consist of 15 members, including central and local governments, utilities, business and independent experts, has been established but at the time of writing in May 2017 is still not operational. It should have an advisory role to the Government in promotion of PPPs, proposing projects for PPP structures and initiating proposals to amend the legislation in this area.

According to the PPP law, the following public entities can act as public partners in PPPs:

- the Republic of Macedonia;
- municipal authorities, the City of Skopje and the municipal authorities in the City of Skopje;
- public enterprises, public institutions, companies established by the Republic of Macedonia, municipal authorities, the City of Skopje and the municipal authorities in the City of Skopje or companies over which the state, municipal authorities, the City of Skopje and the municipalities in the City of Skopje have direct or indirect influence through ownership;
- “other legal entities that pursuant to the law perform public authorizations in the part of performance of public authorizations”.

In local-level PPPs the central government has no authority to interfere in implementation.

Private entities can initiate PPP projects, especially at the local level. Also, a technical dialogue mechanism has been set up, in which the public partner, prior to publication of the contract notice, organizes a dialogue with potential bidders. The public partner publishes the technical specifications it plans to use in the procurement procedure and allows all interested economic operators to give their suggestions and comments on the published technical specifications.

This has the advantage that potential problems can be identified before a formal tender is launched, but it also carries with it the threat that companies will lobby for projects to be enlarged to make them more attractive to the private sector. There is no evidence of this happening in Macedonia yet but it has been noted as an issue in the UK, e.g. in the case of the Walsgrave hospital PPP.

The State Appeals Commission (SAC) is an independent review body for public procurement procedures and since 2012 also deals with PPP procurement. 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 procedures and detects violations of the principles of legality, efficiency, effectiveness and economy in public funds management. In 2017 it published a report on local level PPPs in Macedonia and put forward a number of recommendations.

These institutions together make up a quite solid institutional framework, but as the State Audit Office pointed out, capacity is often too low to implement PPPs effectively.

One of the legislative weaknesses identified by ReSPA is the use of the lowest price as the only criterion for awarding a PPP/concession contract, whereas PPPs need to provide good value for money and quality services over their lifetime. It is possible to use another criterion - choosing the economically most favourable bid - but this is subject to the consent of the Public Procurement Council because of provisions in the Public Procurement Law. This adds another layer of bureaucracy and encourages public authorities to use an unsuitable selection criterion just to avoid asking for the Council's approval.

3.5. Montenegro

Montenegro does not yet have a specific law on PPPs, although one is under public consultation at the time of writing in May 2018. At the moment, public-private partnerships are regulated by several sectoral acts. The main one is the Law on Concessions. The EU has requested further harmonization of regulation on concessions, including on procurement. There are no strategic documents for PPPs specifically - they are covered by sectoral ones such as for healthcare, regional development or the information society.

The relevant authorities at the state level are the Government, the Parliament, Ministries, the Privatization and Capital Investment Council, the Concession Commission and the State Audit Institution, responsible for auditing the use of the public budget.

The Government is responsible for the adoption of the annual plan on concessions to be awarded by the State in the following year and authorizing the award of concessions at the central level. The Parliament adopts decisions on awarding concessions that are longer than 30 years, and these cannot be longer than 60 years.

Contracting authorities must report on the use of public funds for infrastructure projects to the Ministry of Finance. Also, prior to entering into PPP contracts which might have financial implications for the State budget, contracting authorities are required to obtain approval or an opinion from this Ministry.

The Ministry of the Economy is responsible for the energy sector and for the geological exploration and exploitation of mineral resources. This Ministry has signed numerous contracts on construction of small hydropower plants.

The Ministry of Transport and Maritime Affairs is in charge of rail, road, sea, and air transportation. It has announced that there is interest for a PPP-type arrangement for the state-owned company Airports of Montenegro.

The Concession Commission acts upon appeals, keeps a registry of concession contracts and approves extensions or expansions of concessions. However, it is not in charge of awarding concessions, which is jurisdiction of the Government or the Parliament.

The Privatization and Capital Investment Council adopts annual plans which define tourist locations or companies to be developed through PPP-type contracts.

At the local level, the main stakeholders are municipalities, which are autonomous from the central government in the areas of local public transport, waste, water, urban development, tourism and the development of health and educational services at the local level.

One of the specifics of Montenegrin legislation in regard to concessions is that it requires a study on whether a concession is the best way of securing a certain service, and it requires a public consultation on the concession act before it is approved. It also requires a public consultation on annual plans for issuing concessions. These are in principle positive steps, but their usefulness is limited by the timeline of 15-30 days for commenting on the concession act, which is in many cases insufficient due to the complexity of such documentation. There is also no obligation to consider the results of the consultation or to explain why public inputs were not considered.

The main weaknesses with the current legal framework for PPPs and concessions, according to watchdog NGO MANS, are the lack of transparency with regard to concession contracts signed. As with other types of contracts, the public procurement legislation also causes problems with its loopholes and ambiguities. The European Commission has recently commented on this as follows: "Several of the amendments to the Law on public procurement, adopted in June 2017, have reduced the level of compliance with EU rules. Prepared by an ad-hoc task force, and without public consultation, the amended law no longer applies to low-value procurement and procurements in the area of defence and security. The changes also introduced several new exemptions that are not in the EU acquis."

Montenegro needs to ensure that any international bilateral agreement, including for large infrastructure projects, does not unduly restrict competition and that they comply with the EU acquis and related TFEU provisions on public procurement, as well as with commitments under the World Trade Organisation Government Procurement Agreement."

Although the latter issue has mainly applied to non-concession projects like the Bar-Boljare highway and Pljevlja II power plant so far, it could also apply to concessions and PPPs.

3.6. Serbia

The PPP concept was introduced in 2003 in the Law on Concessions, but a more flexible Law on PPP and Concessions was adopted in 2011 and amended in 2016. Under this law, the government approves national-level PPPs, while an intersectoral Commission for PPP established in 2012 issues official opinions necessary for initiating any new PPP procedures on the national or local level.

Article 19 of the law allows unsolicited proposals from the private sector for PPPs. The justification is presumably to leave space for innovative proposals but it does entail the risk that projects may be carried out which are not necessarily the highest priority in terms of public interest but are attractive to the private sector (*see section on corruption, below*).

On the positive side, it does require a value for money assessment to be submitted with the PPP proposal, along with an analysis of the project's impacts on public finances. However, unless this information is made public there is no guarantee of either its quality or its impact on decision-making. For example, Transparency Serbia in March 2018 initiated a court case against the Government for failure to disclose the feasibility study for the Belgrade airport PPP.

In 2017 Transparency Serbia published an analysis of corruption risks in PPPs in Serbia. Many of its findings and recommendations were related to broader problems such as lack of inclusion of the public in decision-making, lack of transparency and access to information, and lack of capacity and accountability to ensure proper contract implementation and improvement of public services.

Some of the issues also relate to the Law on Public Procurement, which also applies to PPPs, as it is not sufficiently precise and does not cover advisors or consultants even though they often have a significant influence on decision-making. It also does not ensure that joint public-private firms carry out procurement in the same way that fully state-owned companies have to. And there has been at least one example of Serbia avoiding public procurement procedures in concessions by signing an interstate agreement with the host country of the concessionaire - the controversial Belgrade on the Water real estate development.

Other findings also relate to specific issues in the Law on PPP and Concessions, for example:

- National level PPPs are approved by the government and not the parliament, thus limiting the level of discussion and transparency in decision-making.
- It is not clearly defined who should monitor the implementation of contracts. Each public partner has responsibility for their own contract but it is not clear that any central body, for example the Commission for PPP, has to oversee how it is going.
- The State Auditor may carry out audits of PPPs but there is no obligation, and in practice audits of most aspects of public finances are carried out rather rarely.
- The law does not prescribe penalties for failure to carry out its provisions. Some provisions are already in the Law on Public Procurement but they do not fully consider aspects relevant to PPPs and would need to be adjusted. In addition, there is an additional need for penalties not related to the Law on Public Procurement, for example failure to implement the prescribed procedures for project selection and development before signing a PPP contract.

These weaknesses are significant and enable the choice of PPPs for the wrong reasons. They also make it highly unlikely that once chosen, a PPP will be properly implemented.

3.7. Slovenia

Slovenia's 2006 PPP Act regulates private investment in public projects and/or public co-financing of private projects that are in the public interest. Also relevant for PPPs is the Public Procurement Act, which entered into force on 1 April 2016. According to the PPP Act, the process of forming a public-private partnership can begin through the initiative of either the public or private sector. This brings with it the same issues as mentioned above - the need to ensure that those projects really are in the public interest.

According to the PPP Act, the Department for Public Private Partnership is an organizational unit within the Ministry of Finance, which is tasked with developing, monitoring and helping implement PPPs in Slovenia. It publishes manuals for operating PPPs, formulates expert proposals for amendments to regulations and the adoption of other measures that might improve practices and eliminate problems, and performs other tasks provided for by the PPP Act.

It is difficult to comment on the functioning of the PPP legislation in Slovenia due to the low number of projects carried out, especially centrally, and the lack of information available about the local-level projects.

However, this in itself points to some deficiencies: The Ministry of Finance started collecting information about PPP projects in 2008 as required by law, but the last report mapping PPP projects was issued in 2009. It appears that the contracting partners do not send data to the Ministry of Finance, despite legal obligations, and the law does not foresee any penalty provisions.

There does not appear to have been any general analysis carried out on the success or otherwise of PPPs, and there is no registry of PPPs. This means it is extremely hard to discern what projects are currently ongoing and what lessons have been learned from previous ones.

IV. PPP risks and impacts on the local and national level

This section examines the risks of PPPs for the public sector. Each risk has to be somehow mitigated, either in the preparation phase or in the contract provisions, and the private sector partner will try to make sure any risks it takes on are covered in the fees it receives. There are numerous risks, but below we look more in-depth at the risks of debt, failure to obtain value for money, corruption, impacts on public services, and who pays if it all goes wrong. These issues underline a central contradiction expressed by anonymous employees of the European Investment Bank during a 2009 evaluation exercise: “If you’re a good public sector, you shouldn’t need PPPs. If you’re bad, you shouldn’t go near them.”

4.1. PPPs and debt - Build now, pay later

Perhaps the most serious risk of PPPs is that of hidden debt. Many governments have used PPPs in because it would enable them to procure infrastructure without raising public sector borrowing figures. This leads to claims that PPPs mobilize additional financial resources for projects that would otherwise have to wait for several years to be implemented. However, this is misleading. Any PPP which requires payments from public authorities means tying up part of the public budget for several decades to come.

The only differences are that the first payment happens only after the construction is complete, and that many PPPs are not recorded on public sector balance sheets. But the infrastructure still has to be paid for, and often at a higher price than would otherwise be the case (*see section on Value for Money*).

PPPs are often not recorded on balance-sheet because the private sector partner is supposed to secure the financing and do the construction, and the public sector is only supposed to oversee implementation (for concessions) or pay a fee for the service and oversee implementation (availability-based concessions).

Eurostat first published rules on this issue in 2004, based on the principle that the assets involved in a public-private partnership should be classified as non-governmental, and therefore recorded off balance sheet for government, if both of the following conditions are met:

1. the private partner bears the construction risk, and
2. the private partner bears at least one of either availability or demand risk.

These conditions are not hard to meet, at least in theory, for any PPP and thus many PPPs are off-balance sheet.

Since then, the rules have evolved to be based on the concept of economic ownership, which includes rewards as well as risks. This means that the party that bears most of the risks and has the right to most of the rewards is the one who is counted as the economic owner. If this is the public sector, the PPP must be on-balance-sheet.

In practice this has meant that PPP projects have often been developed with keeping them off of the government balance sheet as one of the main considerations. As the European Court of Auditors put it: *“Such practises increase the risks of negative side-effects that may undermine value-for-money, such as a biased approach towards PPP projects even in cases where value-for-money considerations could lead to different choices, unbalanced risk-sharing arrangements and higher costs for the public partner. Together with the lack of reliable publicly available databases on PPP projects showing the public entities commitments for the years to come, keeping PPP projects off the governments’ balance sheets reduces the level of transparent information provided to the wider public on the long-term PPP commitments and their associated liabilities and therefore on their impact on debt and deficit levels of the Member States concerned.”*

This was the case in the UK, where the PPP boom started during the 1990s under the name of the Private Finance Initiative (PFI) and local authorities were often told that they had to use PPPs due to the need to keep public borrowing under control. Although most infrastructure is still publicly owned, as of March 2016 there were over 700 operational PPP deals, with a capital value of around GBP 60 billion (EUR 68 billion). Annual charges for these deals amounted to GBP 10.3 billion in 2016-17 (EUR 11.7 billion). Even if no new deals are entered into, future charges which continue until the 2040s amount to GBP 199 billion (EUR 226 billion).

These enormous costs have gradually manifested themselves in a shortage of funds for public services competing for the same budget lines (*see section below on Impacts on Public Services*). As a result of the massive criticism of the Private Finance Initiative, in recent years it has been reviewed and replaced with PF2. However, this initiative is rather similar to PFI. The main difference now is that since the financial crisis, much smaller numbers of projects are being procured through this method.

In other countries, debt resulting from PPPs has resulted in more dramatic policy changes.

Hungary was an early mover in using PPPs and by 2010 had around 100 active projects. Once the financial and economic crisis set in, the Hungarian government finally recognised the problem, declared a moratorium on new PPPs, and started to review existing contracts.

Portugal too suffered from its enthusiasm for PPPs. Starting in the mid-1990s, the Portuguese authorities signed tens of PPP contracts up until 2010 (exactly how many is surprisingly hard to pin down). However, when its financial crisis hit, as part of its drive to cut expenditures and qualify for assistance from the IMF and EU, in early 2011 the government announced a freeze on PPPs and a review of existing contracts. By the end of the year it had reviewed 36 contracts, committed to renegotiate some of them, and promised to publish all PPP contracts on the Ministry of Finance website (albeit excluding some confidential clauses).

It is therefore crucial for governments, if they decide to undertake PPPs at all, to limit exposure to them and to be absolutely clear about where the money is going to come from to pay for them.

The IMF has long been aware of the role played by PPPs in creating hidden debts in countries like Portugal and Hungary but only in 2017 did the IMF and World Bank accept demands from civil society to include some hidden PPP debts in their system for monitoring debts of impoverished countries, known as the Debt Sustainability Framework.

In Southeast Europe none of the countries have carried out enough PPPs to run into significant hidden debt problems. But as small economies, most with existing debt issues, all the countries need to be extremely cautious as even relatively small projects could have a large impact, especially cumulatively.

The IMF has already warned that in Kosovo, the fiscal costs and fiscal risks associated with PPPs are neither systematically assessed nor reported, and that the PPP unit does not assess and estimate the fiscal risks of existing projects or projects in the pipeline.

Serbia's PPPs have also attracted IMF attention and the Government has stated to the IMF that:

“to improve control of fiscal implications and risks, we amended the existing Law on Public-Private Partnership and Concessions mandating that PPPs larger than EUR 50 million are submitted to the government for consideration only after receiving the MOF's (Ministry of Finance) consent. By end-March 2018 we will adopt additional amendments to the Law aimed at limiting overall fiscal exposure, ensuring a competitive tender process.”

However, it appears that the latter has not been completed, even though it is part of Serbia's national action plan for Chapter 23 negotiations. The explanation given by the Ministry is poor cooperation by the Anti-Corruption Council and unclear responsibility for carrying out a corruption risk assessment of the law, so it is not clear if this will be resolved soon.

We have not found any evidence that any of the countries have a legal ceiling set for governments' exposure to PPPs. Such a ceiling is in place in Croatia where total PPP payments by local authorities may not exceed 25 percent of their previous year's budgetary income minus capital income. However, due to the low number of PPPs in Croatia it is not very clear how this is working out in reality.

4.2. Failure to obtain value for money

Getting better value for money than a traditionally procured project should be the main factor in any decision to use a PPP. However, as we have seen above, this is rarely the case, as PPPs are often driven by the wish to keep projects off-balance-sheet.

It is also rather counterintuitive that a PPP would bring greater value for money than traditional public procurement, for three main reasons:

- PPPs involve equity (shares) plus bank loans to provide funds for the project company. Since private companies are more at risk of going bankrupt than governments, private sector borrowing is more expensive than public sector borrowing. For example, in the UK the National Audit Office found that: *“that the effective interest rate of all private finance deals (7 to 8 percent) is double that of all government borrowing (3 to 4 percent)”*.
- Unlike public authorities, private companies expect to make a significant profit on their investment. In the UK this typically ranges between 12 and 15 percent. The European Court of Auditors also found that *“high remuneration rates (up to 14%) on the private partner’s risk capital did not always reflect the risks borne.”* No average figure for the Balkans is available, but the Kosova e Re plant is expected to bring a return of no less than 18.5% for the private company ContourGlobal.
- The preparation of PPPs is long and costly. There is little recent international information available but a 2009 World Bank publication put the figure at around 5-10 percent of the capital costs, noting also that this does not decrease proportionately for small projects.

The idea is that these increased costs should be offset by the efficiency gains from using the private sector. However, it is doubtful whether these efficiency gains are really large enough to offset the higher costs. Even if they do it is unclear, whether they are always coherent with the objective of providing good quality public infrastructure and services.

Since it is not clear whether PPPs offer better value for money than public procurement, it needs to be assessed for each project. Here a dilemma arises: an important tool in assessing whether a PPP could be cost-effective is a Public Sector Comparator (PSC) calculation, which attempts to compare the costs of a PPP with that of the same project carried out through public procurement. However, there is no standardised way of doing this, so it can be subjective and open to manipulation.

In many cases, no such calculation is done at all. The European Court of Auditors has found that:

“For most of the audited projects, the PPP option was chosen without any prior comparative analysis of alternative options, such as Public Sector Comparator, thus failing to demonstrate that it was the one maximising value-for-money and protecting the public interest by ensuring a level playing field between PPPs and a traditional procurement.”

But where PSC calculations are carried out, the outcomes cannot be relied on. During the UK

PPP boom in the late 1990s and early 2000s, the government tended to prejudice the results of the PSC assessment before it had even begun by making it clear that public funding would not be available. As a result of criticism for rigging calculations in favour of PPP schemes, the UK has in recent years supplemented the calculation with a qualitative analysis.

Most of the time such calculations are not available to the public, but for the D1 motorway in Slovakia, in April 2009 data comparing a public option with a PPP option was published. It found an advantage of implementing a PPP of just over 5 percent. The larger document on which it was based was not published, but some of the assumptions used appear highly dubious, most notably the “earlier onset of selected socio-economic benefits” in the PPP, apparently adding EUR 593 million in value onto the PPP option. This seems very optimistic. It is also unclear how the ministry arrived at the figure of EUR 221 million for “risk transfer”.

The situation later became even more intriguing as it turned out that the Ministry of Finance’s data contradicted the Ministry of Transport’s data, on which it was supposedly based. When confronted with the differences between the Ministry of Finance and Ministry of Transport figures, Slovakia’s then Transport Minister Ľubomir Vážny brushed the topic aside, saying that there had been several versions of the analyses and that he could not recall which was the analysis that was forwarded to the Government for approval. Eventually the project was dropped after a change of government.

In October 2011 the daily paper SME reported that the Slovak Police had opened a criminal investigation for attempted fraud against Peter Havrila, then director of the Project Management section at the Ministry of Transport. Havrila was alleged to be responsible for the manipulation of data in the analysis. However, the case was dropped in 2014 as no damage to state property had been proven.

It is clear that PSC calculations have several faults and need to have a clear and publicly available methodology to enable scrutiny and improvements. However, if PPPs are to be implemented, such a calculation does need to be carried out, and it must be done in good faith, not just to justify a pre-decided course of action.

4.3. Corruption in PPPs

Any infrastructure project is an opportunity for corruption, but PPPs may be even more prone because of:

- a) frequent lack of competition and
- b) the complexity of projects making it extremely hard to follow who is agreeing on what with whom based on what analysis and how it is being implemented. Together with weak rule of law in most southeast European countries, this makes for a toxic mix that can cost the public dearly.

Some observers have even argued that PPPs are inherently corrupt because they virtually guarantee high corporate profits, but are almost never decided on democratically based on sound evidence. Thus, it is argued, they are the result of a corrupted decision-making process that puts corporate profits before real public infrastructure needs. This certainly should not be the case, but the highly negative experience with PPPs in the UK certainly raises questions about the extent to which such contracts can avoid corrupting the public policy agenda in countries with less capacity, money and a lower level of transparency and public participation.

4.3.1. Lack of competition

Lack of competition comes in different forms in PPPs and concessions: unsolicited proposals, lack of competition in the tender process and significant changes during the preferred bidder stage.

Unsolicited proposals: Some of the countries, for example Bosnia-Herzegovina and Serbia, allow unsolicited proposals for concessions, which as mentioned above, can introduce innovative ideas but can also result in projects which are not really priorities and are carried out at excessive cost due to lack of competitive tender process. The United Nation Commission on International Trade Law (UNCITRAL) has produced recommendations on this issue. The authority needs to:

- First consider whether the proposal is potentially in the public interest;
- If so, request further information from the proponent in order to make a full evaluation.
- If the authority decides to go ahead with the project, determine whether the project involves intellectual property, trade secrets or other exclusive rights of the proponent.
- For projects that do not involve these rights, a full selection procedure is followed, with the proponent being invited to take part in the selection. If it does necessarily involve the proponent's intellectual property, a full selection procedure does not need to be followed.
- The PPIAF has complemented this with recommendations on developing a policy framework for unsolicited proposals, building institutional capacity, and following competitive procurement process and procedures.

The first issue in Southeast Europe is that the legislation is not sufficiently developed to include all the relevant details and elements of these recommendations. For example, the Bosnia and Herzegovina state and entity-level legislation does not include any requirement to hold a tender procedure following unsolicited proposals, nor does it state what information has to be submitted with the proposal. The second is that the concept of “public interest” is very often misused in the region and practically any project can get this status if the project promoter is on good terms with decision-makers. This raises a high risk of projects being supported by the government that would otherwise not be high priority.

As an example, in the Federation of BiH, the Concession Commission reports that for Federal level concessions: *“As already emphasised, all Concession Contracts so far were concluded on the basis of unsolicited proposals, although the provisions of Article 28 of the Law on Concessions stipulate the possibility of submitting unsolicited proposals for the issuing of concessions only as an urgent and exceptional procedure. Projects which are the subject of the proposed concessions may be implemented only if a process, project development, methodology and engineering concept is used to which the proposer has exclusive rights and urgency of providing the service or the existence of the infrastructure for public use.”*

So here we see an attempt to include the UNCITRAL recommendations in the law, but in reality, they are abused.

Lack of competition in the tender process and significant changes during the preferred bidder stage: Due to the size and complexity of PPP projects, there are often very few bidders. As the European Court of Auditors put it: *“While traditional works projects can be split into lots in order to attract more bidders, PPP projects require a minimum size to justify the cost of procurement and facilitate the economies of scale that are needed for enhanced efficiency of operation and maintenance. However, the very large scope of a project can sometimes reduce the level of competition, as few companies generally have the financial wherewithal to submit bids. With very high-value contracts, only a small number of operators, perhaps as few as one, are able to offer all the products or services requested; this could place the contracting authority in a position of dependence.”*

Although there is limited experience with PPPs in Southeast Europe, some examples of this stand out: In the Kosovo e Re coal power plant project, below, there was only one bidder; and in the Vinča waste management project in Belgrade there was a competitive dialogue procedure so there was competition at the beginning but ultimately only one consortium made a final offer. Even in the EU lack of competition can be a problem but the additional political risks in the Southeast Europe exacerbate this issue.

Even where there is more than one bidder, once a preferred bidder is chosen, a space opens for the company to try to obtain further benefits from the contract. The competition has now been eliminated and at the end of a time-consuming and expensive procurement procedure, the public authority is not very likely to say no and risk sending the whole process back to the beginning.

Recent EU legislation on concessions has tried to clarify on this point: *“The contracting authority or contracting entity may hold negotiations with candidates and tenderers. The subject-matter of the concession, the award criteria and the minimum requirements shall not be changed during the course of the negotiations.”* It is not always easy to define what does and does not fall into this category but at least this provides some basis for the development of further guidance and case law.

4.3.2. Complexity

PPPs are, as should be clear by now, highly complex. They have to try to anticipate and address every situation which could occur during the whole lifetime of the contract, usually several decades. They also have to try to put a price on the risks and benefits of the project, which is extremely difficult and leaves a lot of room for negotiation between the public and private sector.

Any risk taken on by the private sector gives the private partner a reason to ask for more money. As a result, there are numerous background studies and calculations as well as huge contracts that are extremely difficult to understand, implement and monitor - even if they are publicly available.

The private partner may well have a superior legal team working on developing the contract compared to the public partner, and all this complexity makes it easier to “hide” provisions that are excessively favourable to the private partner and to get governments and parliaments to approve contracts harmful to the public interest.

This leaves relatively wide room for nepotism, corruption, or other bad governance practices. This situation is also facilitated by weak public information, assessment, and irregular reporting, as well as the lack of published procedures, directions, criteria, or measurable targets. The limited capacity of all administrations, media, civil society, and courts, to develop, monitor and enforce such procedures, is a further issue. There are still very, very limited number of qualified experts in the region capable of formulation, quantification, economic assessment, negotiation and advocacy for public, natural, historical, cultural, or other social interests.

4.3.3. Corruption in PPPs and concessions in the region so far

Concessions across the region are often plagued with allegations of corruption but few cases get as far as investigations or prosecutions. Two cases in Montenegro can however give us some clues of the type of issues which have come up already and are alleged to have damaged public budgets.

For example, the TQ Plaza shopping and residential centre in Budva was built by the Tra-deunique company based on a contract signed in 2007 and later amended with several annexes. The Municipality provided free land and exemption from paying for communal services, and in return was supposed to get a quarter of the business and car-park space as well as a multi-storey car park.

The state prosecution later on launched an investigation and arrested several individuals for damage to the budget of the Municipality of Budva. The amount of money taken from the budget of the Municipality of Budva through this project is estimated at EUR 19 million by expert witnesses. Several people have confessed their guilt and signed plea bargains with the Special State Prosecutor's Office, including Svetozat Marović, a high-rank official of the governing DPS party and former president of the State union between Serbia and Montenegro.

In February 2016 the Podgorica High Court accepted the plea agreement between Tra-deunique and the Special State Prosecutor and required the company to pay EUR 19.5 million into the Budva municipal budget. In 2017 the Prosecutor accepted a plea bargain from Marović, sending him to prison for two years, fining him EUR 50 000 and ensuring that he pays EUR 1.09 million back to the state.

Very similar is the case of the Bazar shopping centre in Podgorica, where the Montenegrin company Čelebić entered a partnership with the city council in 2010. On 29 July 2015 Democratic party officials submitted documentation to the Supreme state prosecutor for two cases regarding Bazar.

In the first case, former main administrator of Podgorica, Željko Vuković, was claimed to have illegally exempted Čelebić from paying EUR 1.6 million in local taxes for using public space. In May 2018, a verdict was reached that his actions were lawful as the contract for the project guaranteed that the city would enable the company unhindered access to the building site. Since the company needed to use public space for operating cranes, his actions were considered in line with the contract.

In the second case, the Democrats claimed that after the completion of the works, the official opening and the issuance of the operation permit, the space in the Bazar centre was divided up according to an annex to the contract. The Podgorica local assembly never approved this annex, even though it had approved the basic contract on 28.04.2011. The first annex was signed on 16.11.2012 and allocated almost 6000 m² of exclusive commercial space to Čelebić, while the city got 6924 m², of which 5676 m² is parking space and 930 m² for a vegetable market. All the parking space was later rented to Čelebić for EUR 20 000 annually, so Čelebić in fact has over 90% of the centre available for itself even though the city of Podgorica provided 8107 m² of land in a favourable location and freed the company from fees for connecting a centre of almost 13 000 m² to communal utilities.

The Democrats claim that the City of Podgorica makes only EUR 20 000 annually while Čelebić makes that amount from only one commercial space in the centre. According to the official statement of a Čelebić representative, the company invested EUR 4 million into the project - the same as the City was obliged to invest in kind. Yet Čelebić got nearly 6000 m² of exclusive business space but the city only got parking space.

In a second annex of 28.12.2012, in an attempt to show that the value obtained by the city was equal, the value of parking space was put at EUR 450 m2 and the value of vegetable market space EUR 1090 m2, which the Democrats consider completely unrealistic. As far as we have been able to ascertain, the state prosecutor is looking into the case but has not yet brought charges against the former Mayor Miomir Mugoše, although he has recently been in court for abuse of position in relation to another case. The State Prosecutor has charged him with selling city land to the company Carine, for a lower than market price, without a tender or decision of the local assembly, thus harming the budget to the order of several million Euros.

Whatever the outcomes of the cases, they show the thin line between partnership and corruption, and the difficulties of ensuring that each partner benefits appropriately from the deal. They show the need for contract transparency, but also the difficulties for decision-makers trying to understand what lies behind each clause while approving and implementing it. What might look like a harmless clause can turn out later to be very costly.

4.3.4. Transparency as an aid to preventing corruption

Transparency means different things to different people. For businesses it is about making sure the procedures are clear, that all competitors have the same information, and that the rules are the same for all those involved.

While these are important, in order to properly manage public resources and - if they are used - to ensure adequate results from PPPs and concessions, it is crucial that not only businesses have clarity, but that the public and decision-makers also have access to information and opportunities to provide their opinion on what exactly is planned, what it will cost, and whether it is better than alternative ways of tackling the problem.

More detailed recommendations on transparency are provided in the Recommendations chapter, below, but include the need for public consultations, the disclosure of draft contracts and public sector comparators, clarity about which budget the payments will come from and how much they will cost, and including independent expert observers in the process of evaluating the bids. Once the project is signed, publication of information about contract implementation and fulfilment of commitments by concessionaires is also crucial in order to obtain a comprehensive picture of the impact of concessions on public budgets.

This may seem particularly relevant in the context of the Balkans where special interests prevail in the selection of projects and concessionaires and there is very low capacity to develop good quality contracts and implement them. However, it is important to bear in mind that transparency of plans around PPPs has been a problem also in much more experienced countries as well, including the UK.

The active involvement of civil society in influencing and monitoring the spending of public money is crucial in order to contribute to the improving governance in the countries, but especially in areas like PPPs and concessions where the issues can be highly complicated.

The complexity of PPPs and some concessions is a major problem and even full transparency cannot always be considered a panacea. Grasping the full implications of the contract requires the work of experienced corporate lawyers, so it is not surprising that decision-makers approving the contracts often fail to notice unfavourable provisions concealed within their hundreds or even thousands of pages. This can be a problem with contracts generally, but the long lifetime of PPPs and the need to provide the public service in a timely manner means that if an unfavourable contract is signed, it is highly difficult to change it.

Some problems with PPPs are possible to reduce by refining PPP processes, improving enforcement and so on, but this is one of the problems with PPPs which is by definition unsolvable. Most decision-makers will never have either the time or training to analyse the background documentation or contracts in detail before approving them, and PPP contracts will never become simple to understand. Transparency, therefore, is highly desirable, but pursuit of it should not replace a thorough examination of whether the countries benefit from using PPPs at all.

4.4. Impacts on public services

PPPs can impact on public services in three ways:

- Directly, through poor contract design or implementation;
- By failing, and causing disruption while a solution is found;
- By crowding out funding for non-PPP budget streams.

To some extent, the first and second issues can apply to any infrastructure project: Inappropriate designs, contractors cutting corners or contractors going bankrupt are problematic wherever they happen. But the third is an issue specific to PPPs.

4.4.1. Poor contract design or implementation

In PPPs, it can be argued that poor design and implementation should be less rather than more likely, because the same company has to maintain the infrastructure so it should design and build it as well as possible in order to make its own job easier later on.

However, reality has sometimes proven otherwise. Regarding design, the question is for whom the infrastructure is designed. Ideally, it should indeed be easy to maintain, but the service users' needs should be in first place. This should be defined in the contract. However, in reality some PPPs are adjusted too much to the wishes of the private sector and too little to service users.

Examples include the oversized Zagreb wastewater plant in Croatia, which was designed for a city of 1.2-1.5 million people, even though the city has around 0.8 million inhabitants, and was built without adjusting the city drainage system to separate sewage water from other

drainage water. So, there is a huge variation in the amount of water entering the plant depending on rainfall and the plant costs more money and energy because of cleaning a large amount of moderately polluted water instead of a smaller amount of actual sewage.

The Walsgrave hospital in Coventry, UK, provides an even more telling example: Originally it was planned to renovate two hospitals at a cost of around EUR 33 million, but in order to make the project more attractive to private investors, it was decided to knock them down and re-build outside of the city centre, with a final cost of around EUR 450 million. Health experts already in 1998 projected that 600 staff would have to be cut in order to make the scheme at all affordable. 160 000 people signed a petition to at least have the new hospital in the city centre for easier access. But all to no avail, as the plan was pushed through.

This is not an isolated example: The first wave of UK hospital PPP projects was associated with average reductions in bed numbers of around 30 percent. By 1999, the government launched an investigation into the national bed shortage that had resulted from these measures. It called for a temporary halt in reductions and an increase in bed numbers. But this policy was not implemented.

As well as the project specifications, major mistakes have been made in the implementation of PPP projects. One of the most notorious examples occurred in Scotland in 2016 as PPP schools in Edinburgh started to fall apart and 17 schools were closed due to concerns over the standard of construction.

After this incident, Dave Watson of public service trade union UNISON pointed out that although problems can happen with any construction project, such failures are a bigger risk in PPP because:

- The construction company in a PPP is almost always an equity partner of the special company set up to implement the project, so it is both the client and the contractor. Unlike conventional procurement, there is no public service provider performing the client supervisory role during construction.
- There is a profit incentive to keep costs to the minimum. Any saving increases profits to both the construction company and the other special partner vehicle (SPV) partners. There is therefore a stronger cost saving incentive than in conventional procurement.
- Many PPP schemes are under pressure to cut costs at a late stage because of budget overrun.
- PPP schemes for multiple buildings like schools tend to use standard designs to keep down architectural costs. If a design feature fails, it could have implications for several buildings, not just one.

Poor contract design and implementation in water supply PPPs has proven highly controversial worldwide. Such PPPs usually do not involve building whole new systems but rather investing in existing ones and sometimes extending them. An obvious issue is affordability of water and access to water, but lower than expected investments and poor quality of public services is another issue. This can lead to high levels of water losses or poor-quality water.

A 2009 World Bank study examining private sector participation in the water and electricity sectors found that although there are some efficiency gains associated with private sector participation, investment does not necessarily increase. This is quite logical, as profit-making companies are motivated undertake only minimum investments in order to increase returns for shareholders.

Cases of water supply PPP contracts being cancelled and control being returned to the public sector have increased rapidly since 2000, when only two cases had been recorded. By March 2015 the number of water remunicipalisation cases had grown to 235 in 37 countries. Interestingly, most have taken place in high-income countries - 184, compared to 51 in middle- and low-income countries. France with 94 cases - including Paris - and the US with 58 cases, account for the great majority. In Southeast Europe, water privatisation has been tried only in very few locations, including Sofia, Bulgaria, as the poor results of privatisations in other sectors has made the public very wary.

4.4.2. Failure, and causing disruption while a solution is found

The issue of PPP failures is explored more under section 9.5 on the costs of PPPs going wrong. However, costs are not the only problem - essential public services also need to be kept running in the meantime.

Contract failures in traditional public procurement can also cause delays in construction projects (e.g. Vranduk hydropower plant in Bosnia-Herzegovina) so they are not unique to PPPs, but finding a new contractor for a traditional project is likely to be quicker than re-developing or re-nationalising a PPP.

The collapse of the massive Carillion company, a concessionaire for numerous PPP and outsourcing projects in the UK and Ireland, in January 2018, for example, led to work stopping overnight on two new hospitals. It also led to the fire brigade being put on standby to deliver school meals in Oxfordshire and to local authorities having to figure out overnight how to make sure that schools were cleaned and maintained. Only some of these were PPPs but they illustrate the risks involved in private sector provision of public services.

4.4.3 Crowding out funding for non-PPP budget streams

As discussed above PPP contracts tend to be several decades long, raising the risk that they are too inflexible to adapt to changing conditions and needs. From a private sector perspective, it is ideal to be able to predict one's income for years ahead, and from a public sector perspective, it also appears to be an advantage that infrastructure maintenance is built into the contract and so the costs are relatively clear from the outset. However, apart from the fact that additional costs sometimes appear, in reality, public budgets expand and contract according to the economic situation and government decisions.

So if, for example, a health service or schools budget has a PPP contract with fixed costs for 30 years, but fluctuating income, it is the non-PPP services which will suffer from cuts, if the public authority is not to be accused of breach of contract by the concessionaire.

So as well as the staff and bed cuts needed to make even the planned PPPs affordable, mentioned above, more cuts often come during the contract. One example is the Frederick Bremer School in London, where the head teacher has reported having to cut staff, increase class sizes, freeze new equipment purchases and cancel school trips due to the cost of paying of the PPP. Yet other costs that could otherwise be delayed such as painting walls and cleaning windows cannot be changed because they are part of the PPP contract.

For hospitals, the PPP-built ones get maintained, but the others suffer. The UK National Audit Office has recently confirmed that: *“current pressures on public sector budgets are resulting in significant reductions in maintenance spending on non-PFI assets in some sectors. For example, between 2014-15 and 2015-16, health trusts reported an increase in the critical infrastructure maintenance backlog of more than 50% to £2.3 billion.”*

Such issues have received most coverage in the UK because of the large number of contracts there, but with the smaller size of the Southeast Europe economies, the dangers of PPPs crowding out other budgets are very high, even with a small number of projects - see for example the Kosova e Re case study below.

4.5. Who pays if it all goes wrong?

For all the talk of risk transfer, reality has shown that if a PPP goes wrong, it is the public sector that ends up paying. A public authority faced with a PPP that has not turned out as hoped often finds itself between a rock and a hard place. The private partner has the ultimate trump card that it can walk away from a contract if the public sector becomes too demanding and wants to change some terms of the contract. Often the public authority cannot allow this to happen as it needs the public service.

Even in the best case, if a public authority demands changes from the private sector it will most likely have to pay dearly for them. If the project fails completely, the public authority has to pay the cost of taking over the service again. This might sound dramatic but it has happened several times, for example in the M1/M15 and M5 motorway cases in Hungary, the London Underground PPP, and most recently, the collapse of Carillion in the UK and Ireland. In the latter case, the company collapsed in January 2018, and by May the UK government had already committed GBP 150 million (EUR 169) to keep essential public services running. Over 2000 people had already lost their jobs, 27 000 people's company pensions had been reduced, and the company left a debt of EUR 2.2 billion to its 30 000 suppliers, sub-contractors and other short-term creditors.

V. Case studies

5.1. Kosovo: The Kosova e Re coal power plant

In December 2017 the Kosovo government signed a series of commercial agreements with UK-registered ContourGlobal for the construction, financing and operation of a new 500 MW¹ lignite coal power plant near Prishtina. However, the contracts, published in January 2018,² raise more questions than they answer.

Numerous issues have been raised by the Kosovo Consortium for Sustainable Development (KOSID) and other NGOs regarding the Kosova e Re project, including carbon emissions, re-settlement, water supply, a dubious single-bidder procurement process and many more,³ but the sheer cost of the contract threatens to become the biggest issue yet.

The contracts signed include a 269-page 20-year power purchase agreement (PPA) between the Republic of Kosovo and ContourGlobal Terra 6 S.à r.l. The agreement sets out that the Republic of Kosovo will pay ContourGlobal “energy payments,” “availability payments,” and “additional payments.” The first would cover the power plant’s operating costs, including for fuel. The availability payments would cover fixed figures, including ContourGlobal’s equity return and interest payments. “Additional payments” would cover ancillary services to balance the power grid.⁴

This includes a “target” consumer cost for the power plant’s electricity of €80 per megawatt hour (MWh). However, even this very high figure would not cover total costs, which in the contract appear to be based on calculations that take 22 pages to explain.⁵

No explanation has been given by the Government of Kosovo what these calculations mean in terms of concrete figures, leaving significant uncertainty as to what such a plant would really cost for consumers and for the public purse. In fact, the Government misleads the public by constantly claiming that the project will not cause a burden for the Kosovar state.⁶

1 The exact capacity is not yet clear - the power purchase agreement stipulates 430-470 MWe net.

2 Kosovo Ministry of Economic Development: MED publishes commercial contracts on Kosova e Re Power Plant, 19.01.2018, available at: <http://mzhe-ks.net/en/news/med-publishes-commercial-contracts-on-kosova-e-re-power-plant-#.Ws9rpNa-INw>

3 More info on KOSID website: <http://www.kosid.org/en> and CEE Bankwatch Network website: <https://bankwatch.org/project/kosova-e-re-lignite-power-plant-kosovo>, last accessed 2 September 2018

4 Gerard Wynn and Visar Azemi: IEEFA Update: Kosovo’s Latest Coal-Plant Plan Would Violate EU Standards for Market Competition, 5 March 2018, available at: <http://ieefa.org/ieefa-update-kosovos-latest-coal-plant-plan-violate-eu-standards-market-competition/>

5 Gerard Wynn and Visar Azemi: IEEFA Update: Kosovo’s Latest Coal-Plant Plan Would Violate EU Standards for Market Competition, 5 March 2018, available at: <http://ieefa.org/ieefa-update-kosovos-latest-coal-plant-plan-violate-eu-standards-market-competition/>

6 Kosovo Ministry of Economic Development: MED publishes commercial contracts on Kosova e Re Power Plant, 19.01.2018, available at: <http://mzhe-ks.net/en/news/med-publishes-commercial-contracts-on-kosova-e-re-power-plant-#.Ws9rpNa-INw>

Given the agreement to pay an availability payment, this is clearly untrue. Although in theory such a payment could be added to electricity bills, this is highly unlikely to happen, as electricity bills are anyway likely to rise massively if the project goes ahead, with all the social consequences this may bring.

Electricity generation is in general in the EU considered to be a commercial activity, although subsidies are allowed under certain circumstances to reach policy goals such as the promotion of renewable energy or ensuring security of supply. But the Kosovo e Re power purchase contract looks more like a PPP for a non-commercial activity like building and operating a hospital or school, with almost no commercial risk at all for ContourGlobal.

The contract is almost certainly non-compliant with EU state aid legislation. The circumstances under which subsidies could be awarded to ensure security of supply do not apply in this case because the availability payment has not been based on any tender for capacity mechanisms. It has been awarded solely to one company, so it is neither competitive nor technology neutral, nor have other options for Kosovo's capacity issues such as liberalization been fully implemented.⁷

As an Energy Community Treaty Contracting Party, Kosovo is obliged to apply most EU state aid legislation. Its Agreement on Stabilisation and Association (SAA) with the EU, which entered force on 01.04.2016, requires the same. However, the state aid system in Kosovo is not yet operational, so this contract has been signed without a proper assessment of its consequences.

The Energy Community Secretariat has examined the contract. And although its full results are not available to the public, it has confirmed in a Western Balkans 6 Electricity Monitoring Report that *"The recent contractual framework adopted for the new Kosovo e Re power plant will seriously hamper the development of a market"* and *"The absence of functioning authorities exacerbates the lack of State aid compliance of the contractual framework for the Kosovo e Re project."*⁸

A huge mistake has been made, and the question now is how to limit the damage for Kosovo. It may well be cheaper to cancel the contract than to go ahead with it, even though this will surely entail penalties, but the courses of action need to be carefully assessed by the Kosovar government - much more carefully than the original contract seems to have been.

⁷ Gerard Wynn and Visar Azemi: IEEFA Update: Kosovo's Latest Coal-Plant Plan Would Violate EU Standards for Market Competition, 5 March 2018, available at: <http://ieefa.org/ieefa-update-kosovos-latest-coal-plant-plan-violate-eu-standards-market-competition/>

⁸ WB6 Electricity Monitoring Report, Energy Community Secretariat, March 2018, available at: <https://www.energy-community.org/documents/reports.html>

5.2. Macedonia: Drisla landfill, Skopje

Starting in 2009, the International Finance Corporation (IFC) provided technical assistance to the City of Skopje Landfill Company – Drisla for the preparation of a feasibility study for *“rehabilitation and improvement of the existing landfill and exploring the opportunities for development and implementation of PPP transactions.”*⁹ The study concluded that a PPP would be the best option to further develop the landfill. It is not clear whether there was any analysis behind this conclusion or just an assumption on the part of the consultant, as the second volume of the feasibility study was not published.¹⁰

In 2012 the City of Skopje selected Italian company FCL Ambiente for a PPP, comprising the reconstruction of the Drisla landfill and construction of new installations for the disposal of waste. The project company, Drisla DOO, is 20% owned by the city of Skopje and 80% by the Macedonian company FCL Ambiente MK DOOEL, which is solely owned by FCL Ambiente.

However, the deal was controversial from the outset, partly due to the selection of the bidder, partly due to the project itself, and partly due to implementation.

In 2012, German competitor Scholz challenged the tender procedure in court and won.

In 2014 the Balkan Investigative Reporting Network (BIRN) revealed¹¹ that FCL Ambiente had not even been formed as a company at the time of the first tender deadline in January 2012. The deadline was extended by the Skopje city council’s tender board following a request for more time from an unnamed bidder. The two other bidders – Scholz of Germany and Austria’s Asa International Environmental Services – told BIRN they did not ask for extra time. FCL Ambiente declined to comment.

BIRN also found that according to documents from the Italian Chamber of Commerce, FCL Ambiente was created on February 14, just three days before it and its consortium partner – the large Italian construction firm Unieco – entered its bid.

Yet the tender dossier required that contract bidders were required to show both annual profits of at least EUR 20 million and a minimum annual turnover of EUR 250 million for the previous five years. The bidding firms also had to demonstrate they had been involved in waste disposal for the past seven years and were capable of treating 300,000 tonnes of rubbish per year.

Without Unieco’s experience and its annual turnover of more than EUR 500 million, FCL Ambiente could not have secured the landfill contract. However, it appears Unieco has played no further part in the Drisla landfill project and it does not feature in the private-public partnership company set up to run the site.

9 IFC Advisory Services in Sustainable Business, 2011 Report, available at: <https://www.ifc.org/wps/wcm/connect/9729b00049589817a9d3bd19583b6d16/2011%2BIFC%2BSustainable%2BBusiness%2BAdvisory%2BReport.pdf?MOD=AJPERES&attachment=true&id=1323339931698>

10 Mott MacDonald: Drisla Landfill Feasibility Study, Volume 1 of 2 - Main Findings - Final Report, 2011, available at: <http://drisla.mk/uploads/Drisla-Landfill-Project-Feasibility-Study.pdf>

11 Saska Cvetkovska, Vlado Apostolov, Nela Lazarevic: Skopje Landfill Tender Winner: No Experience, No Investment, Balkan Insight, 23 September 2014, available at: <http://www.balkaninsight.com/en/article/skopje-landfill-tender-winner-no-experience-no-investment>

BIRN has also uncovered evidence that FCL-Unieco's bank guarantee for the tender was invalid as it was supplied by a tiny investment firm, Finanziaria Centro Lazio, which owns 99% of FCL Ambiente's shares. According to a copy of the tender seen by BIRN, the guarantee should be provided by a bank or institution that has a Fitch credit rating "A". Finanziaria Centro Lazio and the City of Skopje failed to respond to BIRN's request for confirmation that the Italian firm had such a distinction.

The Italian business registry lists the firm as a 'merchant bank' which deals with audits and investment banking. It had "between 0 to 1 employees" in 2011 and 2012, according to company reports.

In 2014, BIRN was threatened with legal action by FCL Ambiente for the article revealing this information, but as the company failed to specify exactly which claims were problematic, BIRN decided to republish it again.

After Scholz's successful court challenge, another decision was made by the City Council in 2013, but with FCL Ambiente once again selected.¹² The then Mayor of Skopje, Koce Trajanovski, justified this by saying that the court decision did not require the re-running of the tender, but only a new decision, and that if there had been a different decision on the basis of the same tender then there would be grounds to sue the City.¹³

Once again Scholz challenged the decision in court.¹⁴ It was concluded and FCL Ambiente was again chosen as the concessionaire in early 2017. However, in January 2018 it was reported that the court challenges are still not finished.¹⁵

12 Saska Cvetkovska, Vlado Apostolov, Nela Lazarevic: Skopje Landfill Tender Winner: No Experience, No Investment, Balkan Insight, 23 September 2014, available at: <http://www.balkaninsight.com/en/article/skopje-landfill-tender-winner-no-experience-no-investment>

13 Kurir: City of Skopje acts according to the law, adopted the decision for choosing the partner for management with Drisla, 26 November 2013, more information available at: <http://kurir.mk/en/?p=14350>

14 Vlado Apostolov: Случај „Дрисла“: Ни радиоактивен отпад, ни денар инвестиција од Италијанците, Prizma.mk, 5 December 2017, available at: <http://prizma.mk/sluchaj-drisla-ni-radioaktiven-otpad-ni-denar-investitsija-od-italijantsite/>

15 Goran Adamovski: Five million euros for a new incinerator in "Drisla", 11.01.2018, more information available at: <https://nezavisen.mk/en/news/2018/01/15318/>

The project itself consists of several elements, costing EUR 73 million until the end of 2018.¹⁶

- Sealing the existing landfill and construction of:
- a new landfill;
- a landfill gas extraction system to produce electrical and heat energy;
- a wastewater treatment facility;
- an atmospheric water intake system;
- a communal waste packaging facility;
- a solid communal waste treatment/selection facility for over 250,000 tonnes/year, producing refuse-derived fuel (RDF);
- a facility for biodegradable waste treatment;
- a facility for inert (construction) waste treatment;
- a facility for the treatment of waste from green forests, trees and similar biomass;
- a facility for hazardous and non-hazardous industrial waste treatment;
- a new incinerator for medical waste to replace the existing inadequate one at the site.¹⁷

Incineration of medical waste is controversial due to air pollution and the fact that the resulting ash still has to be disposed of as hazardous waste, so the gain is relatively insignificant. Healthcare Without Harm has been working on this issue for years and demonstrating that there are a range of other technologies such as autoclaves available for treating medical waste.¹⁸ However, no alternatives to incineration appear to have been considered in the feasibility study.¹⁹

Refuse-derived fuel is also controversial as it is basically a way to make incineration of communal waste more socially acceptable and less visible by burning it in facilities such as cement plants. As such it suffers from most of the disadvantages of burning unprocessed waste, including air pollution, destroying valuable resources, disincentivizing waste prevention etc.²⁰ Such a waste sorting and RDF production facility as the one planned in Skopje cannot be a substitute for separated waste collection door to door.

16 Drisla - Skopje LLC: Presentation regarding the concession project on the landfill Drisla was held in the village of Batinci, March 2013, available at: http://drisla.mk/news_detail_en.asp?ID=26&IID=7, City of Skopje: ОДБЕЛЕЖАНИ 20 ГОДИНИ ОД ОТВОРАЊЕТО НА ДЕПОНИЈАТА ДРИСЛА, 20.09.2014: <http://skopje.gov.mk/ShowAnnouncements.aspx?ItemID=6808&mid=482&tabId=1>

17 Paul Brown: UK makes toxic gift to the Balkans - Waste incinerator for Macedonia breaches EU regulations, The Guardian, Monday 21 May 2001, available at: <https://www.theguardian.com/environment/2001/may/21/globalwarming.europeanunion>

18 Healthcare Without Harm, available at: <https://noharm-global.org/issues/global/waste>, accessed 12 June 2018

19 Mott MacDonald: Drisla Landfill Feasibility Study, Volume 1 of 2 - Main Findings - Final Report, 2011, available at: <http://drisla.mk/uploads/Drisla-Landfill-Project-Feasibiity-Study.pdf>

20 Global Alliance for Incinerator Alternatives: Understanding Refuse-Derived Fuel, October 2013, available at: <http://www.no-burn.org/wp-content/uploads/RDF-Final.pdf>

The third issue is implementation of the contract. BIRN in December 2017 accused FCL Ambiente of failing to invest in the planned new equipment. Although the project to seal the landfill and generate electricity had begun, it was reported to be far from ready. The Director of Drisla, Goran Angelov, confirmed this, but stated that it was due to the ongoing legal battles around the project.²¹

In January 2018, Drisla LLC was fined EUR 8500 for mismanagement of the existing medical waste incinerator, which did not have any filters.²² The Public Prosecutor's Office also opened an investigation into an alleged environmental pollution crime.²³ In April 2018 it was announced that a new filter had been fitted, suggesting the new facility is not going to arrive that soon.²⁴

It remains to be seen what will be the final fate of the Drisla PPP. While there are no guarantees that a publicly-run facility would have been more environmentally sound or that investments would have been made in a more timely fashion, at least the lengthy court cases could have been avoided.

5.3. Macedonia: Čair district public lighting - a positive example

On 05.03.2012 the District of Čair in Skopje signed a 14-year contract for the modernization of the street lighting system.²⁵ The rationale behind it was to save electricity, reduce the costs of maintaining the system and provide funds for new investments and development.

In a 2017 report by the Macedonian State Audit Office on local-level PPPs,²⁶ it was the only local PPP project which did not attract critical remarks. It should be noted that the State Audit Office examined implementation rather than the method of choosing the PPP, so it is not guaranteed that the PPP was the best choice compared to public procurement for the same works, but it has at least saved money and energy compared to the pre-PPP period.

According to the report, the private partner has carried out detailed surveys and undertaken the necessary activities, including replacement of light bulbs and introduction of a time-control system. All activities are carried out with the approval from the public partner. The municipality pays the private partner with an invoice for each current month with the attached work orders for the work done in the month, monthly reports and construction diaries.

21 Vlado Apostolov: Случај „Дрисла“: Ни радиоактивен отпад, ни денар инвестиција од Италијанците, Prizma.mk, 5 December 2017, available at: <http://prizma.mk/sluchaj-drisla-ni-radioaktiven-otpad-ni-denar-investitsija-od-italijantsite/>

22 Marija Mitevaska: Контроверзите на Дрисла, Slobodna Evropa, 15 January 2018, available at: <https://www.slobodnaevropa.mk/a/28976697.html>

23 Telma: Обвинителството отвори предмет за Дрисла, 12 January 2018, available at: <https://telma.com.mk/obvinitelstvoto-otvori-predmet-za-drisla/>

24 Nova TV: Во Дрисла од денеска нов филтер за согорување медицински отпад, 25 April 2018, available at: <https://novatv.mk/vo-drisla-od-deneska-nov-filter-za-sogoruvane-meditsinski-otpad/>

25 Marjan Nikolov: Comparative analysis of lessons learned from recent developments in implementation of PPP projects in Macedonia, ReSPA, November 2017, available at: http://cea.org.mk/wp-content/uploads/2017/11/Macedonia_PPP-FINAL.pdf

26 Macedonia State Audit Office: Public-private partnership on the local level, 29.09.2017, available at: http://dzt.mk/Uploads/55_RU_Javno_partnerstvo_lokalno_nivo_2017.pdf

The State Audit Office found that in the period from 2012 to 2016 the following positive effects occurred:

- 17% increase in revenues from the communal tax for public lighting, allowing more money for investments in new infrastructure. In 2014, approx. EUR 81.000 were invested, in 2015 there were no investments, and in 2016 EUR 114.000.
- Consumption of electricity was reduced, resulting in savings: the share of electricity consumption for public lighting in the public utility bill was 35.5% in 2012 but only 16.47% in 2016.
- Savings in the maintenance of public lighting (light bulbs, labour). In 2012, the maintenance and new investments in public lighting amounted to EUR 237 or 67.31% of the income from the communal fee. From 2013, there are no separate expenditures for public lighting repairs, but they are covered by the concession fee paid per month which was EUR 212 for the first five years of the contract.

5.4. Montenegro: Small hydropower concessions – a business for the privileged

One of the most common forms of PPPs in Southeast Europe is the construction of small hydropower plants. Although rarely presented as PPPs, in fact the mechanism for their construction and funding is very much a PPP model. Here we take a closer look at Montenegro, where concessions issued for hydropower allow private companies to finance and construct hydropower plants, while guaranteeing a so-called feed-in tariff to be paid for the electricity generated.

Although electricity generation is generally seen as a commercial activity in which electricity should be sold at market prices, some exceptions are possible in the field of renewable energy due to the European Union's goals to increase its share of renewable energy.

This has provided Southeast European governments with a convenient excuse to implement generous support schemes for small hydropower plants, which have resulted in well-connected individuals enriching themselves while carrying only minimal risk during the construction period and even less during operation.

Of all the countries, this is probably best documented in Montenegro, where construction of small hydropower plants via concessions has become a business for various privileged individuals linked to the former Prime Minister Milo Đukanović or his party, the ruling Democratic Party of Socialists (DPS), as well as for those known to the public for their controversial business affairs.

This case study is a summarized and updated version of an analysis carried out by MANS Investigation Centre in November 2017²⁷

5.4.1. Legal procedures for the construction of small hydropower plants

Montenegro allows two procedures for the construction of small hydropower plants. The first is a tender procedure on the basis of the Law on Concessions for hydropower plants with an installed capacity of 1 MW to 10 MW. The second procedure is for so-called mini hydropower plants with installed capacity of up to 1 MW: these projects are implemented on the basis of energy permits issued by the Ministry of Economy.

The concession contracts have so far covered a period of 25-30 years. After this, the plant is transferred from the private concessionaire to Montenegro's state property. However, it is unclear how long their lifetime will be after being exploited for three decades by private owners.

27 MANS: Case study: Small hydropower plants or business for the privileged ones, November 2017, available at: <http://www.mans.co.me/en/wp-content/uploads/2018/02/CStudyNov2017.pdf>

5.4.2. Timeline

- **2007:** Montenegro started measuring the potential for small hydropower plants on 35 rivers.²⁸
- **2008:** The first concession contracts were signed, although at that point the plants were not included in municipal spatial planning documents, which is a condition for issuing construction permits. The Government therefore resorted to issuing spatial planning consents and technical conditions for the plants based on the national Spatial Plan of Montenegro,²⁹ enabling the concessionaires to start the projects. The first hydropower plants also encountered unresolved issues with property ownership, so, under the Law on Expropriation, the Government declared the projects to be a matter of public interest, enabling them to move forward.³⁰
- **2010:** A Law on Energy is adopted which includes the basis for incentive schemes for renewable energy, such as feed-in tariffs, priority grid access, and exemption from charging for system balancing services.³¹
- **2012:** Energy Community adopts renewable energy targets. Montenegro needs to attain 33 percent of its gross final consumption in 2020 from renewable resources.
- **2014:** The Montenegrin government adopted a National Action Plan for the Use of Energy from Renewable Sources in December 2014.³² This document specifies that renewable electricity production will be based on small hydropower plants, wind farms, solar power plants and various forms of biomass, and sets an indicative target for electricity of 51.4 percent by 2020. Most of the new capacity should come from hydropower.
- **2015:** The Montenegrin Parliament adopted a new Law on Energy, in which electricity generation from renewable sources was declared to be an activity of public interest.³³

28 Ministry of Economy of Montenegro: Energy Development Strategy of Montenegro by 2030 - White Book, May 2014, available at: http://www.energetska-efikasnost.me/uploads/file/Dokumenta/Strategija%20razvoja%20energetike%20CG%20do%202030.%20godine%20-%20Bijela%20knjiga_10072014.pdf

29 Government of Montenegro: Spatial Plan of Montenegro Until 2020, available at: <http://www.mrt.gov.me/rubrike/planska-dokumentacija/2008/92943/174889.html>

30 Law on Expropriation of Montenegro, available at: <http://www.oie-res.me/uploads/archive/Zakon%20o%20ekspropijaciji.pdf>; <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B541CAEBD-04E0-4B79-95C2-EABBF4B5B11F%7D>

31 Official Gazette of Montenegro, no. 28/2010 and 6/2013, available at: http://www.oie-res.me/uploads/archive/E_Energy-Law_final.pdf

32 Information of the Government of Montenegro with the National Action Plan for the Use of Energy from Renewable Sources from the Government session held on December 11, 2014, available at: http://www.gov.me/sjednice_vlade/93

33 Official Gazette of Montenegro, no. 05/16, available at: <http://www.sluzbenilist.me/SluzbeniListDetalji.aspx?tag={9B568CB4-0A0A-433E-A917-0D3801C0951F}>

5.4.3. Hydropower concessions so far

Data from MANS based on the concessions register³⁴ shows that by the end of 2017 the Government had granted concessions for 57 plants altogether.³⁵ As of May 2018, 12 of the planned plants have been built.³⁶

This might not sound like a huge number but they have caused a number of problems for local people since roads and forests are being destroyed and entire rivers run dry downstream from the intakes as they are diverted into pipes to gain more speed to generate electricity. In 2017, there was an upsurge in local citizen protests, urging the Government to suspend further construction of small hydropower plants.³⁷

In December 2017 the Government decided not to issue any energy permits for small green-field hydropower plants in 2018, citing the fact that Montenegro has almost reached its target of 33 percent of final energy consumption from renewable energy.³⁸ However the rising resistance to projects may have also influenced the decision.

5.4.4. EUR 4.7 million in subsidies by September 2017

According to data provided to MANS by the Montenegrin Electricity Market Operator CO-TEE, from mid-2014 until September 2017, EUR 4,667,365 in subsidies was paid to the owners of the ten small hydropower plants then producing electricity. These take the form of guaranteed prices for the purchase of the generated electricity. Of this sum, Hidroenergija Montenegro received EUR 3,465,827, Kronor EUR 435,026, Synergy EUR 396,981, and Igma Energy EUR 369,531.³⁹

The subsidies levels are determined on the basis of the Decree on the tariff system for determining incentive prices for electricity produced from renewable energy sources and high efficiency cogeneration.⁴⁰

34 Search carried out 13 July 2018 available at: <http://www.komisijazakoncesije.me/cg/index.php/reg-koncesija>

35 Vanja Čalović Marković, Dejan Milovac, Ines Mrdović: State Capture in the Energy Sector in Montenegro: Small hydropower plants bring large profits, 30.01.2018. available at: <http://www.mans.co.me/wp-content/uploads/2018/07/State-CaptureEnergySector.pdf>

36 COTEE: Monthly report for renewable energy and high-efficiency cogeneration, May 2018, available at: <http://www.cotee.me/attachments/article/139/Mjese%C4%8Dni%20energetski%20izvje%C5%A1taj%20slu%C5%BEbe%20za%20OIE%20i%20VEK%20za%20D0%BC%D0%B0%D1%98%202018.god.pdf>

37 Dan: Nema gradnje prije razgovora, 6 July 2017, available at: <http://www.dan.co.me/?nivo=3&rubrika=Regioni&clanak=605741&datum=2017-07-06>; Dan: Tajkuni opustošili šumu, Murinjani će braniti vodu, 16 June, 2017, <http://www.dan.co.me/?nivo=3&rubrika=Regioni&clanak=602971&datum=2017-06-16&najdatum=2017-06-16>; Monitor: Gradnja mini hidroelektrana nekad i sad: Pionire elektrifikacije zamijenili tajkuni, 24 March, 2017: http://www.monitor.co.me/index.php?option=com_content&view=article&id=7527:gradnja-mini-hidroelektrana-nekad-i-sad-pionire-elektrifikacije-zamijenili-tajkuni-&catid=5279:broj-1379&Itemid=6656

38 Plan izdavanja energetske dozvole za 2018. godinu, 28.12.2017, available at: <http://www.mek.gov.me/ResourceManager/FileDownload.aspx?rid=298547&rType=2>

39 Response of the Montenegrin Electricity Market Operator, 1 November, 2017, submitted on the basis of the Law on Free Access to Information, MANS numbers 17/114198-114200 and 17/114201-114209

40 Decree on tariff system for determining the incentive prices for electricity produced from renewable energy sources and high efficient cogeneration, the Official Gazette of Montenegro no. 33/16, available at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BBE72989B-E5EA-4453-AE3C-76D13CB5448E%7D>; Decree on amendments to the Decree on

For small hydropower plants, Montenegro's National Renewable Energy Action Plan estimated that the cost of incentive measures by 2020 will reach an annual sum of EUR 26.7 million.⁴¹ Solar is planned to receive only EUR 2.9 million while wind would receive EUR 39.9 million. The incentives for the price of electricity are paid for by consumers through electricity bills, and they will continue to do so even after 2020, since the Government has guaranteed electricity prices for renewable producers for 12 years.

On the other hand, concessionaires for small hydropower plants are obliged to pay a concession fee of 5-6 percent of the annual electricity production.

Data from the Tax Administration show that in the four years from 2014, the state received EUR 433,487 in concession fees for the use of water energy potential for electricity production in small hydropower plants.⁴²

Year	Fee in EUR
2014	5,803
2015	29,840
2016	195,217
2017	202,627
TOTAL	433,487

Table: Paid fee, Source: Tax Administration

tariff system for determining the incentive prices for electricity produced from renewable energy sources and high efficient cogeneration, the Official Gazette of Montenegro no. 03/17, available at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BB1399BC2-FA7C-43D0-B5F8-3F66069A507E%7D50>. Previous versions were: Official Gazette 52/11, 28/14, and 79/15.

41 National Action Plan for the Use of Energy from Renewable Sources by 2020, 11 December 2014, available at: <http://www.mek.gov.me/ResourceManager/FileDownload.aspx?rId=194055&rType=2>

42 Tax Administration's response to the request for free access to information, 9 November, 2017; MANS number 17/115002-115005

5.4.5. Company owners mostly close to the DPS party

Six operating small hydropower plants are owned by Hidroenergija Montenegro from Berane, whose owners are Ranko Radović and the company Hemera Capital from Podgorica,⁴³ founded by Oleg Obradović,⁴⁴ known for the Telecom affair,⁴⁵ one of the country's largest corruption scandals. Obradović was also Chair of the Board of Directors at Prva Banka, where the largest shareholder is Aco Đukanović, brother of former Prime Minister Milo Đukanović.⁴⁶ Hidroenergija was formerly part-owned by Ranko Ubović,⁴⁷ who has been convicted of tax evasion.⁴⁸

Two plants are owned by Igma Energy from Andrijevisa,⁴⁹ owned by Igma Grand, whose founder is Igor Mašović, brother of the Mayor of Andrijevisa Srđan Mašović, member of the ruling DPS.⁵⁰

Another plant is owned by Synergy from Podgorica, behind which are several natural persons, but also the KIA Montenegro company⁵¹ headed by Vuk Rajković,⁵² "best man" (*kum*) of the former Prime Minister of Montenegro and DPS leader Milo Đukanović.⁵³

Two plants are owned by Kronor, behind which are the companies Kroling, Mont Hidro and Normal Company.⁵⁴ These are owned by Montenegrin construction businessmen Željko Mišković,⁵⁵ Predrag Bajović,⁵⁶ and Žarko Burić⁵⁷ respectively. Predrag Bajović, is married to

43 Central Registry of Commercial Entities of the Tax Administration website, search done on 14 July 2018, available at: www.pretraga.crps.me

44 Ibid.

45 The Telecom Affair refers to the sale of Montenegrin Telecom in 2005, in which the U.S. Securities and Exchange Commission found that fictitious consulting contracts, which included Oleg Obradović, served for the alleged bribery of Ana Kolarević on behalf of her brother, Milo Đukanović: Vijesti Portal, March 27, 2014: "Afera Telekom: Oleg Obradović ključni igrač da se za posao angažuje Kolarević", available at: <http://www.vijesti.me/vijesti/afere-telekom-oleg-obradovic-kljucni-igrac-da-se-za-posao-angažuje-kolarevic-190247>

46 Blic: U Podgorici ranjen bivši direktor Crnogorskog telekoma i Prve banke, 27.05.2015, available at: <https://www.blic.rs/vesti/hronika/u-podgorici-ranjen-bivsi-direktor-crnogorskog-telekoma-i-prve-banke/rt46n1m>, Dan: Za biznis od 21 million dozvole dobili ekspresno, 08.01.2018, <https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&clanak=629968&datum=2015-12-18&najdatum=2018-01-08>

47 Informacija o realizaciji ugovora o koncesiji zaključenih sa koncesionarom „Hidroenergija Montenegro“ doo, 3 May 2016, available at: <http://www.mek.gov.me/ResourceManager/FileDownload.aspx?rid=212707&rType=2&file=Informacija%20o%20realizaciji%20ugovora%20o%20koncesiji%20zaklju>

48 Dan: Ubović kažnjen 60.000 eura, 4 April, 2017: Ubović kažnjen 60.000 eura, available at: <http://www.dan.co.me/?nivo=3&rubrika=Hronika&datum=2017-04-04&clanak=593089>

49 Central Registry of Commercial Entities of the Tax Administration website, search done on 14 July 2018, available at: <http://www.pretraga.crps.me>

50 Dan: Mašoviću dozvola za drugu elektranu, 10 May 2017, available at: <http://www.dan.co.me/?nivo=3&rubrika=Ekonomija&clanak=597993&datum=2017-05-10>

51 Central Registry of Commercial Entities of the Tax Administration website, search done on 14 July 2018, available at: <http://www.pretraga.crps.me>

52 Ibid.

53 Dan: I rođak i kum dobili koncesije, 8 October, 2016, available at: <http://www.dan.co.me/nivo=3&rubrika=Ekonomija&clanak=567573&datum=2016-10-08>

54 Central Registry of Commercial Entities of the Tax Administration website, search done on 14 July 2018, available at: <http://www.pretraga.crps.me>

55 Ibid.

56 Ibid.

57 Ibid.

the sister of the former Montenegrin Prime Minister, Igor Lukšić.⁵⁸ Normal Company privatized the majority of the hotels of the former tourist giant in Podgorica, the Hotel and Tourist Company Crna Gora, and the Special State Prosecutor's Office launched an investigation against Burić and several state officials for selling the Zlatica camp in Podgorica.⁵⁹

All these companies have concessions to build new plants on other rivers as well, both individually and in consortia. Hidroenergija Montenegro is allowed to build 13 more hydropower plants,⁶⁰ Synergy three, Igma Energy two, Kronor one, and Normal Company one.⁶¹

Another construction businessman and business partner of Milo Đukanović,⁶² Tomislav Čelebić, is in the small hydropower plant construction business as well. He is part of a consortium with Synergy and football player Stefan Savić for the construction of Bjelojevička rijeka hydropower plant in Mojkovac.⁶³ The Special State Prosecutor's Office initiated an investigation into the contracts concluded by the Police Directorate with Čelebić's company for construction of the police building in Podgorica.⁶⁴

Milo Đukanović's relatives are also involved - the company Hydra from Podgorica appears in the Hydro MNE consortium with Igma Energy⁶⁵ for the construction of two new hydropower plants. Hydra is half owned by Milovan Maksimović, brother of Đukanović's uncle.⁶⁶

In addition, Blažo Đukanović, Đukanović's son, also has the right to build two plants via his company BB Hidro, where he has half of the ownership.⁶⁷

58 Dan: Lukšićev šura gradi mini-elektanu, 15 August 2015, available at: <http://www.dan.co.me/nivo=3&rubrika=E-konomija&clanak=505736&datum=2015-08-15>

59 CDM: Kamp Zlatica opet pod lupom Tužilaštva 18.09.2015, available at: <https://www.cdm.me/hronika/kamp-zlatica-opet-pod-lupom-tuzilastva/>

60 Informacija o realizaciji ugovora o koncesiji zaključenih sa koncesionarom „Hidroenergija Montenegro“ doo, Berane, 03.05.2016, available at: <http://www.mek.gov.me/ResourceManager/FileDownload.aspx?rid=238425&rType=2&file=Informacija%20o%20realizaciji%20ugovora%20o%20koncesiji%20%20Hidroenergija%20Montenegro%2020.pdf>

61 Concessions register, available at: <http://www.komisijazakoncesije.me/cg/index.php/reg-koncesija>, accessed 14 July 2018

62 He is business partner with Milo Đukanović in the private university University of Donja Gorica Podgorica.

63 Goran Kapor: Braća i kumovi u redu za mHE, Vijesti, 3 August 2016, available at: <http://www.vijesti.me/vijesti/bra-ca-i-kumovi-u-redu-za-mhe-898708>, Izvještaj o sprovedenom postupku javnog nadmetanja za davanje koncesija za korišćenje vodotok za izgradnju malih hidroelektrana u Crnoj Gori sa predlozima odluka o davanju koncesija i predlogom ugovora o koncesiji za izgradnju malih hidroelektrana na vodotocima: Lještanica, Bistrica, Bjelojevička i Bukovica, 28.09.2016, available at: <http://www.mek.gov.me/ResourceManager/FileDownload.aspx?rid=257412&rType=2&file=Izvje%20C5%A1taj%20o%20sprovedenom%20za%20davanje%20koncesija%20za%20kori%20C5%A1%C4%87enje%20vodotoka%2015.pdf>

64 Vijesti: Sumnjivi ugovori Veljovića: Dva puta platio isti posao za novu zgradu policije, 28 October 2013, available at: <http://www.vijesti.me/vijesti/sumnjivi-ugovori-veljovica-dva-puta-platio-isti-posao-za-novu-zgradu-policije-157255>

65 Central Registry of Commercial Entities of the Tax Administration website, accessed 14 July 2018, available at: <http://www.pretraga.crps.me>

66 Dan: I rođak i kum dobili koncesije, 8 October 2016, available at: <http://www.dan.co.me/?nivo=3&rubrika=Ekonomija&clanak=567573&datum=2016-10-08>, Central Registry of Commercial Entities of the Tax Administration website, accessed 14 July 2018, available at: <http://www.pretraga.crps.me>

67 Central Registry of Commercial Entities of the Tax Administration website, accessed 14 July 2018, available at: <http://www.pretraga.crps.me>

Persons	Connection
Oleg Obradović	Prva banka owned by Aco Đukanović
Blažo Đukanović	Son of Milo Đukanović
Milovan Maksimović	Brother of Milo Đukanović's uncle
Vuk Rajković	"Best man" (kum) of Milo Đukanović
Tomislav Čelebić	Business with Milo Đukanović
Igor Mašović	Brother of a DPS member
Predrag Bajović	Brother-in-law of former Prime Minister Igor Lukšić

Some of the owners of the companies building small hydropower plants and their connection to the Government

While the system of feed-in-tariffs has proven to provide a boost to renewable energy sources across Europe, the cost across Southeast Europe has been very high in terms of boosting nepotism and corruption but also in terms of the environmental destruction wrought by small hydropower plants.

In fact, in the EU, feed-in tariffs are being phased out and replaced with a more market-based approach. These changes are also obligatory for the Southeast Europe countries under the Energy Community Treaty. Under the new rules, only the smallest plants, under 500 kW, would be able to receive feed-in tariffs. However, the new rules will only apply to new contracts, leaving DPS's friends and family to enjoy several more years of guaranteed income.

5.5. Serbia: The Vinča waste management PPP, Belgrade⁶⁸

The Vinča waste PPP contract was signed between the City of Belgrade and the Suez-Itochu consortium in September 2017. It includes:

- Remediation of the existing landfill;
- Construction and operation of new landfills for municipal waste, incinerator residues and inert construction waste;
- A leachate collection facility and a landfill gas facility;
- Facilities for construction waste storage/processing;
- A 340,000 tons per year municipal waste-to-energy incinerator, which would burn about 66 percent of Belgrade's communal waste.⁶⁹

⁶⁸ An issue paper by Ne Da(vi)mo Beograd and CEE Bankwatch Network detailing more environmental issues with this project can be found at: <https://bankwatch.org/publication/belgrade-waste-public-private-partnership-ppp>.

⁶⁹ Itochu: ITOCHU has signed a waste management contract with the City of Belgrade, the First Major PPP Project in Republic of Serbia, 02.10.2017, available at: <https://www.itochu.co.jp/en/news/press/2017/171002.html>

A draft of the contract has been made public on request from Transparency Serbia, but not all the annexes have been disclosed, and it is not clear what changed in the signed version.⁷⁰ Numerous other documents have also been disclosed on request, but these mainly serve to highlight the limitations of transparency around PPPs. The mass of information, not all of which is internally consistent, means it is very hard to ascertain what exactly has been agreed on.

One of the most unclear aspects is how much the PPP will actually cost the City of Belgrade and the Serbian state compared with either a publicly procured version of the same project, or a different project more oriented towards waste prevention and recycling. Excessive profits have been a frequent feature of PPPs and it is of great concern that there is not more clarity about this. What is known is that it is planned to provide a guaranteed feed-in tariff for the electricity generated by the incinerator.

This practice was until recently allowed also in the EU due to the perception that incineration of biodegradable waste is a form of renewable energy - even though in incinerators, large amounts of diesel or gas have to be added to make it burn and it is mixed with other non-renewable municipal waste. The newest EU rules on state aid no longer allow the signature of new contracts with feed-in tariffs for large renewable energy installations,⁷¹ but Serbia has not yet changed its rules in line with this move towards a somewhat more market-oriented system.

The main problem with the project is that it mainly consists of a municipal waste incinerator. While the health impacts of incineration are hotly debated, what is indisputable is that they require a constant inflow of waste and are therefore in danger of crowding out waste prevention and recycling initiatives. This is especially the case in a city like Belgrade where there is currently a low level of recycling. A PPP arrangement exacerbates this problem by cementing it into a contract that is costly and difficult to re-negotiate.

In point 26.1 of the draft contract, the City of Belgrade is obliged to offer all “Contract waste” to the concessionaire. This means residual municipal waste and construction and demolition waste.

At first glance it may look like the contract excludes recyclable waste from the incinerator as “*Recyclable Residual Municipal Waste*” is specifically excluded. However, the definitions in the draft contract make clear that “*Recyclable Residual Municipal Waste means the recyclable fraction of Municipal Waste which the City is extracting from Municipal Waste through separate collection and/or sorting*”. In other words, if the City is not extracting any recyclable materials from municipal waste, then there is no waste in Belgrade defined as “recyclable” and everything is to be burnt.

Serbia, as an EU candidate country, will need to meet the EU’s increasingly strict waste recycling targets in the next few years. The EU Waste Framework Directive 2008/98/EC sets recycling targets of 50 percent for municipal waste by 2020, and the European Commission is proposing a recycling target of 65 percent by 2030.⁷² It will be almost impossible to achieve these targets without Belgrade leading the way.

70 More info available Transparentnost Srbija website <http://www.transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts#a2017>, last accessed 2 September 2018

71 Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, 28.06.2014, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0628%2801%29>

72 More info available at: http://ec.europa.eu/environment/circular-economy/index_en.htm

If the incinerator is expected to burn 66 percent of Belgrade's municipal waste then the 2020 targets can only be met by more waste being generated than is now the case - in direct contradiction with the waste hierarchy prescribed by the EU Waste Framework Directive:

- Prevention
- Preparing for re-use;
- Recycling;
- Recovery;
- Disposal.⁷³

Not only the amount of waste to be burned is problematic, but also the type: One of the project documents⁷⁴ shows that no less than 29 percent of waste in Belgrade is food waste. In addition, paper and cardboard make up 18 percent, plastics 14 percent and green garden waste 7 percent. These should be prevented, recycled or composted, not burned. However, incinerators need calorific waste, so they are in direct competition with recycling e.g. for paper and plastic.

A further problem with the project is its potential impact on informal waste collectors. There are several families living at the current landfill site itself and collecting waste to sell. In addition, there are another estimated 5,000-10,000 people across Belgrade living from informal waste collection.

Those living at the site are supposed to be resettled as part of the project, but previous experiences in Belgrade with resettlement of informal communities are not encouraging. For example, in the Gazela Bridge rehabilitation project, families were forcibly moved from Gazela and taken to settlements on the far edges of the city consisting of construction containers. As well as such containers being unsuitable for long-term living, the locations also made it difficult to carry out their waste collection activities. Only a few people were provided with alternative employment.⁷⁵

If Belgrade has difficulty providing the contracted amount of waste to the incinerator, it may clamp down on informal waste collection in order to increase the volume available. It is estimated that between 5 000 and 10 000 people in Belgrade survive from such practices, so the social impacts could be extremely serious.

In sum, Belgrade's waste PPP looks set to be yet another barrier towards increasing prevention and recycling of waste in the city, and it may come at a great cost, which no-one yet truly knows.

73 More information available at: <http://ec.europa.eu/environment/waste/framework/>

74 Form T2.3 Base Case Waste Flow, available at: <http://www.transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts#a2017>

75 See for example CEE Bankwatch Network, available at: <https://bankwatch.org/project/gazela-bridge-rehabilitation-belgrade-serbia>, last accessed 2 September 2018.

VI. Conclusions and recommendations

Given the challenges of implementing PPPs and concessions in Southeast Europe, a fundamental question arises as to what would be the best approach: Regulate them properly and invest in human and institutional resources in order to make them work better, or try to avoid them altogether?

The answer is probably a combination of both. Existing contracts need to be properly implemented and it is important to increase oversight and enforcement of this process. But given the inherent risks of PPPs, as well as the problems with low capacity and high levels of corruption in the region, setting up new PPPs is generally not to be encouraged.

Concessions can be simpler than PPPs and can be useful in certain circumstances, but in the regional context they need to be subject to better democratic and auditor control, and should be relatively short-term to avoid countries being locked into unfavorable long-term contracts.

The countries should concentrate much more on the basics of getting project selection and public procurement right, fighting corruption and increasing public participation in decision-making and political accountability.

This is also a message that needs to be heard loud and clear by the international institutions such as the World Bank and European Bank for Reconstruction and Development, which tend to promote PPPs and other concessions without adequately examining the evidence base of their real impacts and considering the unlikelihood of the countries having capacity to do them well. Trying to get the countries to run before they can walk is not likely to end successfully. It is more likely to end up with the countries locked into unfavorable and unenforceable contracts for several decades.

Therefore, many of our recommendations are those which apply to project planning generally, and which have been laid out in our recent publication on public infrastructure in the region: *Public infrastructure in Southeast Europe: in whose interest?*⁷⁶

76 Balkan Monitoring Public Finances: Public infrastructure in Southeast Europe: in whose interest? April 2018, available at: <http://wings-of-hope.ba/wp-content/uploads/2018/04/Public-infrastructure-in-southeast-Europe-in-whose-interest.pdf>

These include the need for public authorities to:

- dramatically improve strategic planning and to frequently review projects planned for decades that may no longer be the best solution;
- include the public in decision-making in a genuine manner and when all options are open, and to truly consider public comments and suggestions;
- take environmental sustainability and climate resilience seriously, not just settle for slight improvements compared to the current situation: no more new fossil fuel projects, railways, urban public transport and waste prevention and recycling need to be prioritized;
- truly take project alternatives into account;
- avoid putting all one's eggs in one basket in huge and expensive projects and consider smaller, more local projects as a priority;
- promptly conclude corruption cases and permanently bar those convicted from public office. Those formally charged with corruption offences must be barred from office until the trial is concluded and only reinstated if found innocent.

Based on the experience so far with PPPs and concessions in the region, we also have a number of recommendations specific to this type of project.

Start small and get the public involved

- Go for small projects first and learn lessons before considering whether to upscale.
- Consider public opinion in deciding on local needs and interests.

Avoid hidden debts

- Set ceilings on the total amount of future taxpayers' money each ministry or local authority is permitted to commit for PPP projects per annum.
- Disclose the cost to public budgets of ongoing PPPs before starting new ones.
- Publish the annual stream of future PPP payments in government accounts.

Obtain good value for money

- Decide whether to undertake a PPP or concession with other options truly open. If public funding is scarce, scale down projects to a more affordable size.
- Carry out an affordability assessment for each project and publish it, including an assessment of risks for users, taxpayers, workers and the government, also if the project fails.
- Carry out a PSC calculation and publish the results. The methodology must be publicly available and explained, and must avoid vague categories that can easily skew the calculation.
- Complement the PSC with qualitative considerations related to the public interest.
- Use tender selection criteria based on the best overall economic option and level of public service - not only on the lowest price.
- Make sure that approved PPP projects must be harmonized and that they incorporate future EU standards (from the related chapter/s) which the WB countries must fulfill at the moment of joining the EU and when the vast majority of PPPs will be still in place or in implementation. Otherwise that will produce additional, not planned costs.

Transparency

- Carry out meaningful public consultation for planned concessions and PPPs at a stage when it is still possible to change or stop the project.
- Publish draft PPP contracts in order to allow suggestions for changes to limit fiscal risks before the contract is signed. Provide also briefer explanatory documents on the real costs.
- In order to limit opportunities for corruption and inflation of projects, publish all tender documents, bids and contracts, including financial details.
- Regularly update registers of concessions and PPPs, not only to name the planned and ongoing projects but also to show how they are performing in reality.

Tender procedures and unsolicited proposals

- Refrain from implementing unsolicited proposals immediately and examine them as part of wider sectoral planning to see whether they are a priority. Carry out an open tender procedure with no advantage given to the company proposing the project.
- Conduct tenders according to EU procurement rules, but stop the procedure if there is only one bidder. If a new tender would likely not bring different results, re-design the project.
- Set ceilings for maximum cost changes allowed in the preferred bidder stage. Have a clear strategy and triggers for walking away from negotiations if the private sector becomes too demanding. If major changes are made in the project, carry out the PSC calculation again and re-open the tender procedure.

Contracts

- Ensure that fines for poor performance automatically exclude the payment of bonuses for good performance in other areas.
- Ensure that the PPP contract stipulates public sector gains of minimum 50 percent of any refinancing benefits, preferably with a ceiling for maximum gains by the private sector.
- Include a clause allowing contract termination in the public interest in unforeseen situations.
- For road PPPs, do not base payment on the expected level of traffic. This may lead to efforts to increase its volume, thus increasing air pollution and greenhouse gas emissions.
- Make sure the private sector partner bears significant financial risk in operating the road.
- Require compliance with current and future environmental and labour standards.

Contract enforcement

- Show how the public authority will ensure adequate capacity and funds to enforce compliance with performance standards. Hiring consultants for the task is not an adequate solution.
- Be aware of when the public authority is entitled to terminate the contract and be prepared to use such powers. Draw up and maintain contingency plans for contractor default.
- Carry out evaluations for all PPP projects, and publish them: once when the initial investment is complete and the service has begun to operate, and later, 4-6 years after operation has begun.

Institutional set-up and capacity

- Avoid promoting PPPs where they are not the best option by approaching procurement as an integrated topic, i.e. developing procurement expertise, not just PPP expertise.
- Oblige the public auditor of each country to audit PPPs and concessions on an annual basis and to publish the annual audit reports on project implementation.
- Strengthen institutional capacity at all levels of government to manage existing projects and critically assess new ones.
- Implement adequate checks and balances, such as a central body in the Ministry of Finance to ensure good quality project management. Information on project implementation must be promptly delivered to this body and legislation must foresee penalties for failure to do this.

VII. CREDITS

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За Земята
Приятели на Земята България

