



# ReSPA

Regional School  
of Public Administration

## **Comparative analysis of lessons learned from recent developments in implementation of PPP projects in Macedonia**

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## Introduction<sup>1</sup>

Public-Private Partnership (PPP) model is beneficial to attract investments into public infrastructure and services worldwide. However, it continues to remain occasional case rather than comprehensively planned systematic action in Western Balkans (hereinafter referred as WB) region. This inevitably results in high uncertainty to the private sector as well as financial institutions and exposes WB PPP market to the risk of PPP model being abandoned instead of progressing well.

One of the reasons being is limited and insufficient knowledge and experience to launch and implement public investment projects in PPP model. Still estimating infrastructure investment gap in value of around 110 billion over the next ten years, various forms of PPPs can be used as tools to help bridge the infrastructure gap and improve the overall efficiency of public spending. Necessary capacities and experience to develop PPP project pipelines, regional PPP projects can be delivered through technical assistance programmes aiming to improve the existing legal, regulatory and institutional framework for PPP. Establishment of common projects' pipeline in the main sectors is identified as a tool necessary for further development. The pipeline should be in line with strategies and policies at country level and at the same time it's convergence with EU *acquis communautaire* should be ensured.

In another hand, the long-term liability of the governments in PPP and concession contracts require to make a realistic assessment of the fiscal impact of PPP projects, taking into account direct and contingent liabilities over the lifetime of the project. This assessment is prerequisite to manage fiscal risks from a budgetary point of view; i.e. safeguard the fiscal affordability and sustainability of a project. In this connection the public entity needs to conduct value for money assessment which requires the same type of analysis of project cash flows and risks as the assessment of financial viability with a business case. An instrument to be used to assess value for money from PPP ex ante is Public Private Comparator. It compares the project's cash flows and value of risks when organizing the project as traditionally public financed project and as Public Private Partnership (PPP benchmark). The option delivering the highest net present value is the preferred procurement option from a fiscal point of view. Both assessments are in line with the key requirements and principles of good financial management as included in OECD/SIGMA principles of public administration<sup>2</sup>.

In that sense the rationale of the comparative study is to increase the exposure of PPP public stakeholders to the above mentioned practicalities of PPP projects. Representative data on PPP contracts in force is envisaged to be collected and compared in order to identify and share findings on practicalities of PPP projects implementation as well as lessons learned and recommendations. It is also planned to identify sectors relevant to launch PPP projects' pipelines with regional dimension.

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<sup>1</sup> Introduction is taken from the Author's guidelines prepared by ReSPA. This report is the Macedonia PPP case study that was used to prepare the comparative study of ReSPA that is available here: <http://cea.org.mk/wp-content/uploads/2016/02/ReSPA-PPP-Working-Paper.pdf>.

<sup>2</sup> The principles are described under Chapter 6 Public Financial Management. The publication „The Principles of Public Administration“ is available at: <http://www.sigmaxweb.org/publications/Principles-Public-Administration-Nov2014.pdf> (downloaded on 27th February, 2015)

The general objective of the comparative study is to foster PPP market development in WB and to encourage development of common PPP practice in the WB region as well as regional PPP projects.

## **Public procurement system including public private partnership and concessions**

### **Analysis of the degree of compliance of public procurement regulations including PPP and concession with the EU acquis**

Public procurement law (PP law) and public private partnerships and concessions law (PPP law)<sup>3</sup> are aligned in general with the EU acquis<sup>4</sup>. The authority responsible for monitoring and control of PP law is the Ministry of finance and the authority responsible for monitoring and control of PPP law is the Ministry of economy. There is no distinguishing between procurement of PPP projects and general public procurement because the PPP law refers to the PP law.

Related to the procurement, there is a by-law adopted by the Public Procurement Bureau (PPB) where the criterion for the most economically advantageous tender is prescribed<sup>5</sup> as a contract award criterion. Further, public procurement legislation (including public-private partnerships/concessions) reflects principles such as value for money, free competition, transparency, equal treatment, mutual recognition and proportionality. Secondary legislation reflects the same key principles as the primary legislation and promotes sound and efficient procurement of public contracts in Macedonia. However, the recent frequent use of the lowest price as a criterion for awarding a public procurement contract (including PPP/concession contract) violates the principle of value for money (VFM).

Namely, according to the PP law, the criterion for awarding a public procurement contract is the lowest price. By exemption, criteria for awarding a public contract may be economically most favourable bid for the procurement of consulting and other services of intellectual character, as well as in cases where due to specificity of subject of the contract it is not possible to precisely determine the quality or other elements such minimum requirements of technical specifications. Using the economically most favourable bid as criterion for awarding the public procurement contract is allowed but it is a subject to the consent of the Public Procurement Council (body established within the Public Procurement Bureau) and that is why contracting

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<sup>3</sup> “Law on Public Procurement” Official Gazette of the Republic of Macedonia No. 27/2015 - consolidated text and Modification of the Law No. 78/2015 and “Law on Concessions and Public Private Partnership” Official Gazette of the Republic of Macedonia No. 13.2012, 144/2014 and 33/2015.

<sup>4</sup> However, the Defense Directive 2009/81/EC is not yet transposed in the Macedonian national legislation.

<sup>5</sup> See the by-law at the link: <http://javni-nabavki.finance.gov.mk/bjn-portal/wordpress/wp-content/uploads/METODOLOGIJA-ZA-IZRAZUVAVE-NA-KRITERIUMITE-ZA-DODELUVAVE-NA-DOGOVOROT-ZA-JAVNA-NABAVKA-VO-BODOVII.pdf>.

authorities are trying to avoid using this criterion because frequently this ends up in prolonging of the whole procurement procedure.

There is no explicit provision in the PPP law prescribing the prior consent from the Public Procurement Council for using the economically most favourable bid as the criterion for awarding the PPP contract, but in practice there is an understanding that such consent is required. This comes from the fact that PPP law prescribes that provisions from the PP law concerning the award procedures for PPP public work contracts and PPP public service contracts will adequately apply to the award procedures for PPP procurement contracts. Thus, in practice, this understanding works contrary to the VfM principle and it ends in adverse bureaucratic approach.

One of the most significant features of public procurement legislation is the Electronic System for Public Procurement (ESPP), which handles all procurement notices and enables contracting authorities (CAs) and bidders to publish and access<sup>6</sup> all tender documents, submit and evaluate bids and conduct e-auctions. Starting 2012 CAs have been obliged to use e-auctions almost 100% of the time in awarding procedures, with only a few legally determined exceptions<sup>7</sup>.

Since 2014, the PPP law obliged the CAs to use e-auctions, positive and negative auctions, in the evaluation bid process<sup>8</sup>. Electronic System for evaluating bids and conducting e-auction for PPP is made possible with the Amendments and Modifications to the PP law ("Official Gazette of RM" No. 144/2014 – 30.09.2014) stipulated that system had to be established within 6 months from the date of its entry into force (08.04.2015)<sup>9</sup>. According to the PPP law "electronic auction" means a positive or negative auction realized after an initial full evaluation of bids, in which the bidders have a possibility, exclusively by electronic means, to revise the offered prices so that the ranking is done automatically by electronic means. On the other side the awarding procedure of the PP law (Articles 47/48), related to the exclusion from the procedure to the award of public contract for economic operators and potential bidders, is not in line with the EU Public Sector Directive (Directive 2015/24/EU replacing Directive 2004/18/EC which has similar provisions).

## **Analysis of the mutual harmonisation of procurement regulations, budget and expenditure regulations and other related regulations**

Public procurement regulations (including PPP/concessions), budget and expenditure regulations and other related regulations, such as contract law, are harmonized so that public contracts can be prepared, awarded and managed within a time frame and in a manner that commensurate with good project management principles.

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<sup>6</sup> Access is allowed only for the bidders who shall pay fee to the Public Procurement Bureau.

<sup>7</sup> See more at: [http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment\\_2013.pdf](http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment_2013.pdf).

<sup>8</sup> Positive auction cannot be provided by the ESPP.

<sup>9</sup> See more for this e-tool at: <http://e-koncesii.mk/jpp/Account/Login?ReturnUrl=%2fjpp>

According to the PP law before starting the procedure of awarding a long term contract, the contracting authority is obliged to plan the resources needed for its implementation in relation to the budget, investment program and financial plan for the respective year.

Budget users and spending units of the central government can start the procedure for awarding long-term contracts, which is provided with the program covered by the development part of the Budget, based on the authorization issued by the Government of the Republic of Macedonia, upon prior opinion by the Ministry of Finance.

According to the PPP law the total amount of funds to which the public partner may assume financial commitments in a given year related to PPP contracts, should be determined by the budget of the public partner.

In PPP law in Macedonia there are neither specific provisions of the procurement value for PPP nor requirements for assessment of the fiscal impact of the PPP contract. The procurement value of PPP should be assessed within the PPP feasibility study. The by-law adopted by the government on the preparation of the PPP feasibility study gives the structure where the economic and finance analyses for the PPP is required as well as VfM calculation<sup>10</sup>. In Macedonia there are no particular provisions regarding high-value PPP procurements. On the other side, the public partner during the adoption of the budget must take into account:

- costs required to cover the obligations arising from the PPP contract;
- effects of rewarding, temporary suspension (interruption) or limitation of the business, which may arise from the PPP contract;
- the cost of compensation (reimbursement) for the private partner, which may arise from the PPP contract.

Contract law (Law on Obligation) is applicable to the PP and PPP contracts adequately. There are no standard PPP tender documents in Macedonia (no templates of PPP contract, tender documentation for competitive dialogue and other type of procurement, output specification, risk matrix, etc.)

As per the Registry for implemented PPP<sup>11</sup> of the Ministry of economy, the total value of the PPP contract signed is 274€ millions for 12 PPP projects. Highest value is for the Technological industrial zone in Tetovo (157€ millions) and the lowest is 321€ thousands for the Public street lightning in St. Nikole. See more in the attached annex on these PPP signed contracts.

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<sup>10</sup> See more at the following link: [http://www.economy.gov.mk/javno\\_privatno\\_partnerstvo.html](http://www.economy.gov.mk/javno_privatno_partnerstvo.html).

<sup>11</sup> Retrieved 15th of July 2015. See more at the link:  
[http://www.economy.gov.mk/javno\\_privatno\\_partnerstvo.html](http://www.economy.gov.mk/javno_privatno_partnerstvo.html).

# Assessment of functions and responsibilities of central procurement and public private partnership and concession institutions

## Central procurement institution

The FYR Macedonia PP law provides for modern and uniform public procurement regulation, in accordance with the 2004 EU Directives, with procurement methods suitable for different contract types. In the EBRD 2010 assessment regulatory framework in FYR Macedonia scored moderately well among the EBRD countries of operations, with a compliance rate of 65 per cent to the assessment benchmark<sup>12</sup>.

The Public Procurement Bureau (PPB) is the main policy making and training institution. The PPB receives all data regarding conducted contract award procedures and makes most of the data (contract notices and tender documentation) available to all interested stakeholders. Thus, it contributes to the transparency and integrity of the entire system. These data are not only used to prepare detailed statistical reports, but are analyzed and serve as the basis for further (legislative) measures. Published tender documents are also used by other CAs as models for their procurements<sup>13</sup>.

On the basis of the Law on amendments and modifications to the PP law, since 2013, the Public Procurement Council has been established within the Bureau to resolve requests for consent. This body is authorized to issue consent for various issues stipulated in the PP law as well as for certain issues (using the technical and professional ability as a criteria for selection the bidders or using the economically most favourable bid as a criteria for evaluation of bids ) relating to the procedure for awarding the PPP contracts.

## Central public private partnership institution

The **Ministry of Economy (MoE)** is responsible for implementing the Law on Concessions and PPP. The MoE performs the following tasks:

- developing and implementing measures and activities in order to achieve and maintain fully transparent and efficient system for public private partnership;
- keeping and maintaining the Register for the awarded PPP contracts;
- preparing draft-proposals on amending the regulations in the area of public private partnership as well as instructions for implementing the provisions of the proper Law;
- organizing and realizing education and training in the public private partnership area for all participants in the process;
- monitoring, analyzing and providing expert assistance and opinion in the part concerning implementation of procedures;

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<sup>12</sup> See more at: <http://www.ebrd.com/legal-reform/where-we-work/fyr-macedonia.html#a8>.

<sup>13</sup> See more at: [http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment\\_2013.pdf](http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment_2013.pdf).



- monitoring, analyzing and studying current European and global tendencies, knowledge and experience in the area of public private partnership; and
- executing other works and assignments related to the public.

The **PPP unit** established within the MoE is understaffed (only 2 employees) and it is governed by the common administrative, organizational and audit rules of the parent ministry. This PPP unit is meant to serve as a basis for support and training for all stakeholders. So far, no support has been given to the CAs, even though support is needed for concession and PPP projects at the central and local government levels as well.

The **PPP Council** which should consist of members that includes central and local governments, utilities, business and independent experts, has been established 26<sup>th</sup> of June 2009<sup>14</sup> but it was not operational. The PPP Council should have had an advisory role to the Government in the PPP area, promotion of the PPP, should have had proposed projects for PPP, and should have had gave initiative proposals to amend the legislation in this area. The new PPP Council as per the new PPP Law, from 2012, was established with a government decision on 16<sup>th</sup> of July 2013<sup>15</sup> but still not operational.

The **Register of awarded concessions and PPP contracts** is on place since March 2013 and some data is available on the number of PPP projects and concessions that have been awarded. The register of started, but not completed tenders is not presented yet although the PPP law stipulates such obligation.

## **Mutual institutions**

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

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

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<sup>14</sup> Official Gazette 81/09: <http://www.slvesnik.com.mk/Issues/6252669BC3DF174992990E81D7ED6C9C.pdf>.

<sup>15</sup> Official Gazette 103/13: <http://www.slvesnik.com.mk/Issues/357cc0c8f365400b92ad49208bfcfa62.pdf>.

## **Findings on central institutional and administrative capacity to develop, implement and monitor PPP policy effectively and efficiently**

The Ministry of economy, as the authority to monitor and control the PPP law, and the PPP unit do not approve the PPP tender documents. In Macedonia there is a one level of local government. For the competencies of the central government, the government on the proposal of the proper ministry approves the tender PPP documents. At the local level the Mayor approves the tender PPP documents. There is also no need to consult the PPP unit on these tender documents. However, it is obligatory for all procuring authorities to follow the tender documents approval procedure.

The methodological guidelines on the PPP procurement procedure are prescribed by the Ministry of economy through the PPP law which law refers to the PP law. The Mayor, at local government level, establishes the opening/evaluation committees and on the central government, the government establishes the opening/evaluation committees on proposal of the proper ministry. In case of claims received during PPP procurement procedure and dispute resolution there is no obligation to consult the PPP unit and the proper committees at central and local level government are responsible for the proper analyses. In case of a dispute there is a State Appeals Commission (SAC) on public procurement that is responsible for the dispute resolution.

In Macedonia there is no PPP project in the field of public services structured as one-stop-shop and the government is not planning such a project in the future. Actually, there is no PPP country strategy prepared yet. There was one attempt in 2008 sponsored by USAID to prepare PPP country strategy but it was never institutionalized.

### **PPP contracts in force**

#### **Types of PPP contracts according to international classification**

Depending on the means of remuneration by the public partner for the provided public works and/or public services, as well as allocation of key inherent risks, a public private partnership can be established, as per the PPP Law, either as:

- Public works concession, or
- Public service concession, or
- Public works contract, or
- Public service contract.

The listed types of PPPs have the following meaning:

- “Public Works Concession” is a contract of the same type as a public works contract except that the remuneration for those works consists either solely of the right to exploit those works or in that right together with payment;
- “Public Service Concession” is a contract of the same type as a public service contract except that the remuneration for those services consists either solely of the right to exploit those services or in that right together with payment; a public private partnership is established by contract.

According to the PP law “Public Works and Service contract” are a contract of financial interest, which includes utilities contracts, concluded in writing between one or more contracting authorities on one side and one or more economic operators on the other side, the subject of which is the execution of works, or provision of services, in accordance with the PP law.

Public works and services concession according to the international terminology are a concession contract, BOT or DFBOT projects i.e. user pay projects.

Public works and services contracts according to the international terminology are work contracts and service contracts i.e. authority-pay projects.

Experience of types of PPP contracts awarded by central and local authorities so far are the following:

- Publics work concessions (airport, landfill for waste disposal);
- Public service concessions (waste management, zone system of parking, public lightening); and
- Public works contracts (administrative offices buildings).

### **Time spent to sign PPP contract**

The provisions from the PP law concerning award procedures for public works contracts and public service contracts are adequately applied to the award procedures for contracts establishing a public private partnership. When awarding a contract establishing a public private partnership, the public partner can apply: open procedure, restricted procedure, and negotiated procedure with prior publication of a notice or the competitive dialogue in accordance with the PP law which stipulates the final time period for submission of the tenders or the requests to participate. The time required for the signing of the PPP contract covers preparation of feasibility study, tender documentation, and time to tender and evaluation of bids. Approximately the time spent to sign PPP contract is not less than 1 year.

### **Sectors**

According to the dates from the PPP register conducted by MoE, contracts are awarded so far in the following sectors: transport, utilities, governmental (administrative) buildings, energy.

At central government level the most significant concession is the airport project. At the local government level, a number of public utility contracts have been signed, mainly in the waste management, zone system of parking, public lightening and administrative offices buildings. A full list of the awarded contracts according to the PPP register with relevant dates is provided in Annex 1.

We illustrate PPP projects for various sectors further:

**Airport project:** Government as a grantor awarded a contract to operate the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul" in Ohrid. Under the agreement, the airport "Alexander the Great" is planned for construction of a new terminal building, extension of the runway, construction of a suitable parking area and access road, installation of navigation systems and other equipment in accordance with international standards. The airport "St. Paul" is planned for reconstruction of the existing parking lot, renovation of the cargo centre, construction of VIP facilities, reconstruction of existing administrative building and procurement of equipment. The investment is estimated at 200 million €. At the expense of investment, the concessionaire acquires the right to operate the airports and generate revenue. The period of the contract is 20 years.

**Waste disposal:** City of Skopje as a grantor awarded a concession agreement covering the reconstruction of the landfill "Drisla" – Skopje including construction of new installations for the disposal of waste in accordance with EU standards and within the investment dynamics given in the bid of the selected concessionaire. The concession is implemented as an institutional PPP, given that existing public enterprise established by the City of Skopje is transformed into a Limited Liability Company whose founders are the City of Skopje (20% equity) and the foreign private partner as majority partner (80% equity). City of Skopje is obliged to guaranty a certain amount of waste each year. In the case of less amount of waste, City of Skopje is obliged to compensate the unrealized income from the waste disposal to the concessionaire. The investment was estimated at about 90 million € and by the contract it is expected for the private investor to invest 73 million € of capital. The period of the contract is 35 years.

**Street lighting:** The Municipality of St. Nikole has awarded a concession contract for public service - reconstruction, modernization and maintenance of public lighting in the municipality of St. Nikole for a period of 13 years with an estimated value of 1.5 million €. The private partner is obliged to replace existing light bulbs with new energy-saving light bulbs and to maintain them for the period of the contract. The remuneration of the private partner pays the

municipality from the funds it collects from the citizens and legal entities on behalf of the communal tax. Given that energy-saving bulbs provide electricity savings after Electricity Company payments and payments to the concessionaire, the municipality should generate some income and assets will remain to the municipality after the expiration of the concession period.

**Parking:** Municipality of Bitola as grantor has awarded a public service concession - zone system of parking. The concessionaire is obliged to acquire the spider vehicle, management software system parking zone, PD devices for zone system of parking, foxes, vertical and horizontal signalling, "call centre" and other equipment needed for the operation of parking lots, as well as to do winter and summer parking-marking. In return for the investment, recovering the costs of operation and achieving reasonable profit, the concessionaire is entitled to charge end-users of the parking services. Concessionaire pays to the municipality a concession fee each year. The investment is estimated at about 261 thousand €. The number of parking places is 1,679. The period of the contract is 6 years. The public partner-Bitola is responsible for construction of the parking places. Most of the parking lots were already constructed and the smaller amount that needed to be constructed should be constructed by the Bitola municipality.

**Administrative offices building:** The Municipality of Gjorce Petrov has awarded a public works contract for construction of a municipal administrative offices building (municipal hall) with approximately 3,500 square meters. Private partner is obliged to design, finance, construct and transfer the municipal hall. The private partner on the other side was awarded the right to build commercial building with approximately 11,500 square meters in its ownership at the land which is owned by the public partner. Private partner got a 40% discount on the land construction fee. Implementation of this contract is in process. PPP contract of this type was already awarded by the municipality of Kriva Palanka.

So basically, this scheme is called a PPP project because private partner has financed construction of the buildings both the municipal hall and the commercial one. Once constructed, the municipal building O&M responsibility is on the public partner. The commercial building on the other side is completely responsibility of the private partner. Note again though that through this scheme the private partner benefits a 40% discount on the land construction fee.

**Hydro power plants:** The right to build hydroelectric plants in order to produce electricity is acquired on the basis of a concession to exploit water as a good of general interest for the Republic of Macedonia (water, forests, mineral rows and etc.). Concession for water exploitation is given for other activities as well, such as: bottling of water for commercial purposes; lake

traffic and providing of tourism activities, sports and other recreational services by building permanent facilities.

On behalf of the Republic of Macedonia concession grantor is the Government of the Republic of Macedonia and the awarding procedure is under the Ministry of Environment. The concession is awarded through a public call organized and conducted in accordance with the Law on Concessions and Public private partnership (provisions of the Law governing the concession of goods of general interest for the Republic of Macedonia).

The duration of the concession is determined by the concession agreement. Concession period is:

- for production of electricity in hydro power plants:
  - o with power of over 10 MW to 70 years,
  - o with power of 2 to 10 MW to 50 years, and
  - o with power of up to 2 MW to 30 years;
- for bottling of water for commercial purposes to 20 years;
- for lake traffic to 10 years; and
- for provision of tourism, sports and other recreational services with construction of permanent buildings, to 20 years.

The concessionaire pays concession fee depending on the type of commercial activity. The exact amount of the concession fee is determined by the agreement. Concession fee for hydro power plants consists of two parts:

- one-time fee payable by granting the concession; and
- annual fee as a percentage of the average price of electricity produced.

Granting concessions to exploit water is not considered as a PPP contract. This type of contract is governed by chapter II of the PPP law (procedure for awarding a concession for goods of general interest) and partially by chapter III of the PPP law (contracts for goods of general interest).

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

## **Projects' value**

Project values are typically depending on the PPP type and the service sector. For the analysed projects the project's value are ranging from 261,000€ (BOFT type) for the public parking zone in Bitola to 73mln€ (DBOFT type) for the landfill in Skopje. For the administrative building in municipality Gorce Petrov the project value was 12.6mln€ (DBFT type). For the landfill concession this is the amount that the private partner should invest in capital assets in the landfill as per the PPP contract.

Interesting for the public parking zone is that we can make a comparison between Bitola experience (already operational project) and two other parking zone PPPs that are in Tetovo municipality (cancelled) and in Kavadarci municipality (one tender procedure was not successful and second is in process). All three are BOFT PPP type. In Bitola the CAPEX per capita was 2.7€ per capita, in Tetovo it was 5.1€ per capita and in Kavadarci 7.3€ per capita. The CAPEX per parking place was: in Bitola 130€ per parking place, in Tetovo 497€ per parking place and in Kavadarci 267€ per parking place.

## **Duration of the contracts**

The duration of the PPP contracts in accordance with the PPP law is a maximum of 35 years if by special law it is not otherwise regulated. For each specific PPP project, the duration of the contract is determined by the decision for initiating a procedure for awarding a PPP contract or the duration period is a criterion for evaluation of bids. For example, from the analysed PPPs we have duration from 3 years for the administrative building project in municipality of Gorce Petrov (3 years to construct the administrative building after the construction permit is obtained) to 35 years for the landfill concession (this is also the maximum as per the law in Macedonia).

## **Affordability**

Usually, for the local level government when the affordability is analysed, it is the local budget constraints as per the fiscal rules for borrowing regulated in the law on financing local government in Macedonia that it is taken into account. Local governments in Macedonia can generate long term borrowing for financing capital projects and investments but also to refinance debts, to cover for guarantees issued and in cases of natural or environmental incidents. The service (principal, interest and other costs) of the long term debt cannot be higher than 30% of the total revenues of the current-operational budget from the previous fiscal year. The debt due (including guarantees issued) cannot be higher than the total revenues of the current-operational budget from the previous fiscal year. Macedonian local governments do

not have credit ratings and do not have enough fiscal space to provide better services to its citizens and that is why the PPP instrument, for the analysed service, is compared with the fiscal space of the local budget and the possibility to borrow. In that regards note that for example for the parking zone in Bitola the parking tariffs were first developed and then the PPP feasibility study was prepared.

## **Risk sharing**

The risk analysis in majority of the Macedonian PPPs is presented in the feasibility study together with the risk matrix. The risks analysed are the political risks, market-commercial risks, O&M risks, financial risks related to the interest rates, construction risks, risks related to the bidding process. The probability and the intensity of the risks are calculated together with the proposed mitigation actions and are distributed to the private or the public partner or to the both. In the analysed PPPs not one of the risks occurred so far that resulted in reimbursements, compensations or any other extra payments. In the PPPs analysed not one of the risks were monetised.

## **Value for money**

In the PPP feasibility study for the PPP projects in Bitola and in Gorce Petrov the Value for Money (VfM) was calculated by comparing the estimated Public Sector Comparator (PSC) that is the scenario if the public partner implements the project, with the scenario if the public partner enters in PPP contract. The calculations are done for the analysed period with net present value calculation and the PSC were not risk adjusted.

## **Monitoring of PPP contracts**

MoE is authorized in monitoring, analyzing and providing expert assistance and opinion in the part concerning implementation of procedures, but it is not involved in the monitoring of concluded PPP contracts. The monitoring of PPP contract performance (e.g. fulfilment of the private partner's contractual obligations) rests primarily with the CAs and the manner and way of monitoring is stipulated by the contract. The monitoring of PPP contract performance by the CAs does not exclude the inspection supervision of fulfilment of the private partner's legal obligations.

## **Other important findings**

The PPP projects analysed in the questionnaire are relatively new in implementation only from 2013 and so far not one of the pre-analysed risks occurred. Feasibility studies are done for all of them but it looks that pre-



feasibility PPP studies were not prepared. Also, the linkages of these projects with the proper strategic documents are weak and sometimes the technical documents are not ready even though the public partner starts with preparation of feasibility study. It looks like the decision to go with PPP precedes proper analysis within the public partner (before the PPP feasibility study) about the alternatives to PPP (own budget, borrowing, even postponing the project-go decision).

## PPP projects in tender phase

### Types of PPP contracts according to international classification

Types of PPP contracts in tender phase are the following:

- Public works concessions (distribution system of natural gas, construction of small hydropower plants);
- Public services concessions (zone system of parking, public lighting); and
- Public works contracts (administrative offices buildings).

### Preparation of PPP projects

#### Sectors

#### Published tenders

**Parking:** Municipality of Kavadarci as a grantor published a contract notice for awarding a public-private partnership for the provision of public parking and maintenance of public parking space in municipality of Kavadarci which should be realized as a public service concession. The concessionaire shall be obliged to acquire the adequate equipment for zone system of parking (spider vehicle, management software system parking zone, PD devices for zone system of parking, foxes, vertical and horizontal signalling, "call centre" and other equipment needed for the operation of parking lots) and to mark the parking space as well. Concessionaire shall be granted with right to charge end users of the parking services. The amount of the concession fee which the concessionaire will pay to the municipality is a criterion for evaluation of the bids. The first call was published on 07 April 2015 but no one bided. Second call is under preparation. Rumour has it that changes in the conditions apart from the feasibility study shifted more risks toward the potential private partners and made the project not attractive enough.

**Parking:** Municipality of Tetovo as a grantor published a contract notice for awarding a public-private partnership for the provision of public parking and maintenance of

public parking space in municipality of Tetovo which should be realized as a public service concession. The concessionaire shall be obliged to acquire the adequate equipment for zone system of parking (spider vehicle, management software system parking zone, PD devices for zone system of parking, foxes, vertical and horizontal signalling, "call centre" and other equipment needed for the operation of parking lots) and to mark the parking space as well. Concessionaire shall be granted with right to charge end users of the parking services. The amount of the concession fee which the concessionaire will pay to the municipality is a criterion for evaluation of the bids. The first call was published on 25 October 2013 but no one bided. Second call was 31 January 2014 but it was cancelled. Rumour has it that changes in the municipal leadership (with the new elections there was a new Mayor elected) led to cancelling of the tender procedure. The latest information is that the municipality established Local Public Company-City Parking in order to manage the parking in Tetovo.

**Distribution system of natural gas:** Republic of Macedonia as a grantor published a call for awarding a public-private to finance, design, build, operate, maintain and develop the distribution system of natural gas in the 3 regions which should be realized as a public works concession. Selected companies should construct the 650 km of distribution pipeline to end users and to manage the system. During the concession period of 20 years the concessionaire will have the right to charge end users and obligation to pay concession fee to the state budget in amount of 1% of the annual profit. This call was published on 12 January 2014 and it is in the evaluation process still. For each region a separate tender has been published.

**Hydropower plants:** Government of the Republic of Macedonia through the Ministry of Environment and Physical Planning (MoPP), in the name and on behalf of the Republic of Macedonia published a contract notice in early 2014 for awarding a concession for construction of 80 (eighty) small hydropower plants with power of up to 2 MW. The tender was divided into lots. Awarding procedure has to be conducted within 6 months from the date when the commission for conducting the procedure has been established. This type of concession is considered as a concession for exploitation of water (concession for goods of general interest for the Republic of Macedonia) and it is not registered in the Register of PPP contracts.

MoPP in the name and on behalf of the Government of the Republic of Macedonia at the beginning of July 2015 signed 14 contracts for concession of water use for the production of electricity by small hydropower plants.

The first contract covers 2 hydroelectric power plants on the river Zerovnica with a total installed power of 1,239 kW. The total investment cost of the projects is about 2.5 million €. The contract is signed with Hydro Energy Group – DOO (Limited Liability Company) Skopje, which is established as SPV by Feroinvest - DOO Skopje and Hydrogen – DOO Skopje.

The second contract covers 3 hydroelectric power plants on the river Markova Reka with a total installed power of 1,720.50 kW. The total investment cost of the projects is about 4 million €. The contract is signed with Hydro Indigo Makedonija – DOO Skopje.

The remaining 12 contracts covers 19 hydroelectric power plants on the river Ehloeka, Smiljanska, Padaliska, Ribnicka, Konska, Kobacka, Krapska, Topolka, Bregalnica, Belicka and Zelezna. Markova with a total installed power of 20 MW. The total investment cost of the projects is about 4 million €. The contract is signed with Hydro Indigo Makedonija – DOO Skopje.

In so far published five calls for construction of small hydropower plants in Macedonia 67 contracts was signed and 14 small hydropower plants are fully operational. The rest are under construction. World Bank Macedonia has recorded a potential total of 400 small hydropower plants.

### **Started but not completed tenders**

There are three significant examples of started, but not completed tenders.

**Passenger transport:** Public private partnership for the design, construction, financing, operation and transfer of lightweight rail system for passenger transport in the City of Skopje, which was supposed to be implemented as a public works concession. City of Skopje as a grantor published a call but tender procedure was cancelled because there were no interested bidders.

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

**Parking:** Municipality of Tetovo published a contract notice for awarding a public-private partnership for the provision of parking and maintenance of public parking space in municipality of Tetovo which should have been realized as a public service concession. The scope of the concession was very similar to other awarded concession(s) for parking explained above in Kavadarci and Bitola but the procedure in Tetovo was cancelled.

### **Projects' value**

The project's value for the Tetovo public-private partnership for the provision of parking and maintenance of public parking space was assessed in amount of 443,400€ as per the feasibility study.

## **Duration of the contracts**

Tetovo municipality predetermined the contract's duration in the feasibility study to 30 years. The comparable similar parking zone project in Bitola that is operational has duration as per the contract to 6 years. The assessed duration of the similar project in Kavadarci as per the feasibility study was 10 years.

## **Risk sharing**

The risks analysed, as per the feasibility study, were the political risks, market-commercial risks, O&M risks, financial risks related to the interest rates, construction risks, risks related to the bidding process. The probability and the intensity of the risks are assessed together with the proposed mitigation actions and are distributed to the private or the public partner or to the both.

## **Scope and structure of tender documents**

The draft tender documents prepared for the zone parking in Tetovo was prepared for open procedure and comprised invitation for proposal submission and instructions for the bidder. The Instruction for the bidders gives information on who the concessionaire is, what the subject for concession is, who is eligible to participate in the bidding process, subcontractors, what the assessed value of the concession is, what is the period for the concession, criteria for eligibility evaluation of bidders, other explanations, way of communication, visiting the site on spot, how to prepare the bid, guarantees, how to submit the bid, criteria for PPP evaluation of the bids, opening of the bids, informing the bidders, legal protection and proper annexes. Draft contract is part of the tender document.

## **Private sector involvement**

The private sector is involved in the informative sessions after the public partner announces that the public partner is interested in moving into PPP for certain public service. Examples are for the Bitola public parking zone project where the municipality published announcement and interested potential private sector representatives joined the session with questions. Bitola administration prepared minutes and provided written answers to all of the questions.

## Other important findings

Sometimes change of the Mayor can result in PPP not being processed to the next stage of tendering. This is what happened in Tetovo municipality.

On the web site of the electronic system of public procurement in Macedonia one can find the concession announcement menu<sup>16</sup>. The site provides information on who the CA is, description of contract notice, publication dates and proper documents to download.

## Main conclusions and recommendations

We summarize our conclusions and recommendations based on predetermined indicators for qualitative assessment (see annex).

**Macedonian PPP legislation is generally compatible but not fully compliant with the acquire.** The specific PPP/concession law exists where a clear definition of PPP/concession are prescribed together with criteria for PPP project approval. The PPP law refers to PP law thus; there is no distinguishing between procurement of PPP projects and general public procurement. In that sense the PP law stipulates fair and transparent tender procedure. On the other side the PPP/concession regulations do not provide criteria for fiscal impact of PPPs assessment and the PPP/concession regulations are not compliant with the EU (Eurostat) rules on government deficit and debt.

Lowest price as a criterion for awarding a public procurement contract violates the principle of value for money and the practice for asking consent from the Public Procurement Council on using the economically most favorable bid should be cancelled as it works contrary to the VFM principle and it ends in adverse bureaucratic approach.

**The functioning of the institutions is well defined but there is no coordination mechanism.** The system provides for definition of sound institutional framework for its implementation (competent Contracting Authority, eligible private party, roles and functions, coordination of the policy). On the other side even though the PPP unit exists in the Ministry of economy, the role of the Ministry of finance in terms of fiscal risks assessment, long term budget and expenditure planning, consent for approval of the PPP projects is not clear enough. In general a proper stakeholders analysis is always missing and proper focus and consideration from the public partner of the risk sharing in the feasibility studies is missing. The PPP registry should be improved in terms of scope, consistency, statistics, and details.

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<sup>16</sup> See more at: <https://e-nabavki.gov.mk/PublicAccess/home.aspx#/concession-announcements>.

**Even though the award and implementation of the PPP projects are generally in compliance with the law still important elements are missing.** For example steering committees are not been established to supervise the preparation process for tendering procedures. The process of appointing of legal, financial and technical advisors in general is not on merit base. Secondary regulations are not comprehensive enough to ensure proper management of the process. For example in the PPP management process there is a need for capacity building for the appointed project officers on what their role should be, how to monitor the PPP implementation and how to design and develop proper monitoring documents: check lists, reporting templates, design of KPI and proper performance measurement, carrying proper customer satisfaction care.

**In terms of administrative capacity key institutions are not yet operational like the PPP Council and the PPP Unit within the Ministry of economy is understaffed;** the guidance and manuals could be reviewed and improved; there is no PPP champion, PPP strategy is missing and training program on PPP is not provided. Proper technical assistance and resource center are missing.

**Proper PPP project cycle management is missing both at central and local level of government.** The process of identification of the PPP projects and its preparation (strategic planning, programming, option analysis, justifiability of the PPP project assessment – affordability assessment and VfM quantitative and qualitative assessment) is missing. PPP project decision is in general preceding the needs assessment and the strategic planning. That is one of the reasons why at later stage municipality might decide to go for establishing a public company instead of providing services via PPP (the case of Tetovo parking). Pre-feasibility studies are not prepared. Tender procedure is somehow more advanced as it refers to the PP law and PP procedures that are well established in Macedonia. On the other side the PPP contract management like monitoring – scope of reporting is missing and end users/customers satisfaction and evaluations are not done yet. There is one example of review for the purpose of continuation of the PPP contract for the zone parking in the city of Skopje. The review is based on affordability assessment, PPP risk sharing and VFM assessment.

In our view, in order to implement PPP policy more effectively and more efficiently it is necessary to take the following measures in future:

- PPP strategy should be prepared to help in getting insights on the legal, administrative and organizational bottlenecks to give new momentum to PPP success in Macedonia;
- to set up a separate PPP department with sufficient number of employees in order to develop and implement an effective PPP system;

- support of all CAs during the awarding procedure by the PPP department is recommendable;
- lowest price as a criterion for awarding a public procurement contract violates the principle of value for money and the practice for asking consent from the Public Procurement Council on using the economically most favourable bid should be cancelled as it works contrary to the VFM principle and it ends in adverse bureaucratic approach;
- to make most of the data available to all interested stakeholders through establishing a proper PPP resource centre;
- training of the staff and training for all stakeholders is required;
- improve the PPP registry for scope, consistency, statistics, details.

**Annex 1. List of PPP contracts recorded in the Register of awarded contracts from the ME**

No.	Sector	Name and type of PPP contract	CA	Value (EUR million)	Period of duration in years
1.	Energy	Public works for construction of small hydropower plants	Public enterprises for irrigation "Tikves" – owned by Republic of Macedonia	n.a.	30
			n.a.	27	
			0.8	30	
			Public enterprise for communal activities – "Mavrovo" – owned by Municip	n.a.	30



			ality of Mavrov o		
			Public enterpri se for commu nal activitie s – Kriva Palanka – owned by Municip ality of Kriva Palanka	1.2 5	30
			Public enterpri se establis hed by Republi c of Macedo nia	n.a.	21
2 .	Sport	Public works for constru ction of	Municip ality of Aerodro m – Skopje	7.9 7	35

		sport hall			
3.	Waste management	Service concession for waste management	Municipality of Gjorce Petrov-Skopje	0.3	15
		(collection and transport of waste)	Municipality of Struga	n.a.	10
4.	Parking	Service concession for zone system of parking	Municipality of Bitola	0.2	6
		Service concession for spider vehicle	Municipality of Struga	n.a.	10
5.	Green market	Service concession	Municipality of Struga	n.a.	30
6	Public administrative	Public works for	Municipality of Gjorce	12.6	5.5

.	buildings	construction of an administrative offices building	Petrov		
			Municipality of Kriva Palanka	0.5	n.a.
7.	Street lighting	Service concession for street lighting	Municipality of Cair – Skopje	1.8	14
			Municipality of Sveti Nikole	1.1	13
			Municipality of Kavadarci	n.a.	n.a.
8.	Technological Industrial Development Zone	Public works	Republic of Macedonia – Agency for Technological Industri	157	96

			al Zones		
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Source: ME PPP registry. Presentation layout of the author. See more at:  
[http://www.economy.gov.mk/javno\\_privatno\\_partnerstvo.html](http://www.economy.gov.mk/javno_privatno_partnerstvo.html).

## Annex 2. Indicators for qualitative assessment – Macedonia

	Low	Medium	High
1.Compliance with the EU regulations	Not fully compliant	<b>Generally compatible but not fully compliant with the acquire</b>	At high extent in the conformity with the acquire
2.Functioning of the institutions	Not functional	<b>Well defined but no coordination mechanism</b>	Well established and functional vertically and horizontally
3.Enforcement of the law	Award and implementation of the PPP projects are not in compliance with the law	<b>Not fully compliant</b>	Compliant with not significant gaps in conformity with the acquire
4.Administrative capacity	<b>Non or the key institutions are not yet operational; the guidance and manuals do not exists or are of no good quality; the training program on PPP is not provided.</b>	The key institutions are still understaffed; guidance and manuals exists and of good quality; the training program is provided on general PPP issues.	The key institutions are functional with ensured resources (HR and financial); the guidance and manuals are well structured and consistent. The comprehensive training program on PPP is provided.
5.Project management principles	<b>Not fully applied</b>	Applied but not following all principles	Satisfactorily applied all PCM principles