



Network for Affirmation of NGO Sector

PUBLIC-PRIVATE PARTNERSHIP ANALYSIS

Executive Summary

Legislative and institutional frameworks in the area of public-private partnership (PPP) are still not in place, despite of Government's plans to regulate this area. Instead, PPPs are regulated by various sectoral acts and Law on Concessions. There have been several PPP projects implemented during previous years, mostly followed by controversies and suspicions, while some cases are investigated by the prosecution. While basic data on concession is proactively published, vast majority of information on other PPPs is kept far from public eyes. Key risks in relation to PPP are proper legal framework, lack of transparency and corruption.

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Introduction

Montenegro still does not have a special law on public-private partnership, although it should have been adopted years ago, according to the official Government's plans. The Government firstly envisaged adoption of that in 2015ⁱ and developed a draft version that was never put forward. Now the Government plans to propose this law by the end of June 2017. As of end of May, there is no information whether the law will be proposed in accordance with the programme of the Government.

I Understanding PPPs in Montenegro

There are two models of PPPs in Montenegro: authority-pay and user-pay contracts. ⁱⁱ Procedure for awarding the first type of contracts is not clearly regulated as there is no legal framework. User-pay contracts, defined by the Law on Concessions, are the most common.ⁱⁱⁱ PPPs are mainly used for implementing projects at the local level or for valorisation of tourist locations. Ongoing PPP projects include: "**NTC Marina**" and "**Bigovo**" localities in Kotor, "**Dobra luka**" in Herceg Novi, "**Ostrvo cvijeca**" in Tivat, cultural and historical entity "**Virpazar**" in Bar, "**Cmiljaca**" in Bijelo Polje, "**Valdanos**", "**Velika Plaza**" and "**Ada Bojana**" in Ulcinj and "**Kraljicina Plaza**" in Bar and Budva.^{iv}

The Privatization and Capital Investment Council plans to valorise five locations through PPPs in 2017, including **military-tourist complex "Mediteran"** in Zabljak, "**Donja Arza**" in Herceg Novi, **tourist complex "Ecolodge Vranjina"** in Podgorica, "**Kolasin 1600, Bjelasica and Komovi**" in Kolasin and "**Buljarica**" in Bar and Budva.^v When it comes to infrastructure, in form of PPP, the Government awarded concessions for construction of **small hydro power plants**.

Previous PPP projects implemented at the national level were: "**Wireless Montenegro Project**" in the IT sector in 2011^{vi}; **construction of student's dormitory project in Podgorica** in 2012^{vii}; financing, construction and operation of a **PET/CT^{viii} equipment** and financing, construction and operation of a **medical waste facility**.^{ix} Also, another PPP was related to the **registration of state owned ".me" domain** for private users, provided through a private company. At the local level, there have been also several PPP projects, such as construction of **two shopping malls in Podgorica** ("Bazar" and "Mall of Montenegro"), **one shopping mall in Budva** ("TQ Plaza"), **small street lighting project** under contract for the commercial and touristic development of the "Lipska Cave" in Cetinje and **road projects** in Herceg Novi.^x

Limited data about PPPs is available in Montenegro, and information is provided mainly in the official reports of bodies in charge of implementing PPPs, especially those prepared by the Concession Commission, having in mind that majority of PPPs are conducted in the form of concessions. Website of the Commission is very poor and contains limited information. Namely, it contains general information about the Commission, its composition, legislative framework and annual reports, but there is no regularly updated information about its activities.^{xi} The Commission also published 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. According to international experts, the distinction between PPPs and other types of concessions is not always clear.^{xii}

On the other hand, majority of data of the Privatization and Capital Investment Council is not available to the public. This body does not publish sufficient information regarding PPPs, including contracts with investors.^{xiii} Website of this body contains only several contracts, although majority of companies were privatised.^{xiv} The Council publishes annual plan of companies and tourist locations which should be valorised through PPPs, but it still hides information about certain projects.^{xv} Therefore, transparency of this body is at a very low level.

However, some stakeholders, such as the Montenegrin Chamber of Commerce are pushing for PPPs, since it is in the interest of its members to engage in high-profit business with the Government.

According to the official information, there is no public debt attributed to PPPs.

Several PPPs were very controversial, and number of stakeholders expressed concerns that corruption have occurred. There have been even proven PPP cases which caused damages for the budget and in one them plea agreement was signed, requesting for the money to be paid back for damages, as compensation.

II Legal and Policy Framework

Montenegro does not have law on public-private partnership, although process of drafting lasts from 2015^{xvi}. At the moment, public-private is regulated by a large number of sectoral acts.^{xvii} Main law for the area of PPPs is the Law on Concessions^{xviii}, while main bodies in charge of implementation of PPP projects are the Privatization and Capital Investment Council^{xix} and Concession Commission.

The Concession Commission is acting upon appeals, keeping registry of concession contracts and approving extension of terms or expansion of the location of concessionary activity.^{xx} However, it is not in charge of awarding the concession itself, which is jurisdiction of the Government or the Parliament. The Privatization and Capital Investment Council adopts annual plans which define tourist locations or business companies to be valorised through PPP.^{xxi}

There is no strategic document that would define PPPs, but it is part of separate strategic documents in different areas such as healthcare, regional development or information society. The EU does not have specific recommendations for the PPP, but they recommended further harmonisation of regulation on concession.^{xxii}

Major stakeholders at central level PPPs are the Government, the Parliament, public institutions, private domestic or foreign companies and State Audit Institution, responsible for auditing 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 authorising the award of concessions at the central level.^{xxiii} The Parliament adopts decisions on awarding concessions that are longer than 30 years, but cannot be longer than 60 years.^{xxiv} 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 contract on construction of small hydro power plants.^{xxv} The Ministry of Transport and Maritime Affairs is in charge of rail, road, sea, and air transportation and played the main role in the process of finding the partner for the construction of Bar-Boljare highway. In addition, this ministry also announced that there is an expressed interest for PPP in case of state-owned company Airports of Montenegro.^{xxvi}

Contracting authorities must report on the use of public funds for infrastructure projects among their regular reporting obligations 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 an approval or an opinion from this ministry.^{xxvii}

At the local level, 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.^{xxviii}

III Risks and Impact in Local and National Level

There have been several cases of PPP conducted at the national and local level, which are suspected to be causing damages for the budget.

Therefore, one of the largest risks in PPP is related to corruption. For example, **shopping and residential centre “TQ Plaza”** in Budva was built by company “Tradeunique”, for which the state prosecution later on launched investigation and arrested several individuals for damage to the budget of the Municipality of Budva.^{xxxix} Investigation in this case is still ongoing, although several people have confessed the guilt and signed plea agreements with the Special State Prosecutor’s Office, including Svetozat Marovic, high-rank official of the governing party DPS and former president of the State union between Serbia and Montenegro.^{xxx} The amount of money taken from the budget of the Municipality of Budva through this project is estimated at 19 million EUR by expert witnesses.^{xxxi}

Very similar is the case of Municipality of Podgorica built, where a **shopping centre “Bazar”** was build through PPP with Montenegrin company “Celebic” in the amount of 13 million EUR. Nevertheless, this project has been recognised in public as very suspicious, and therefore criminal charges against former Mayor of Podgorica, Miomir Mugosa were filed and an ongoing investigation followed up.^{xxxii}

Similar is the case of PPP for **registration of “.me” domain**, awarder to the private company Me-Net, owned by Oleg Obradović, former head of the Montenegrin Telekom, and person very close to the ruling elite.^{xxxiii} One political party accused the Government of ignoring the obligation of this company to pay over 13 million EUR to the Government, although this was its contractual obligation.^{xxxiv} However, the owner claims that the state generates all the revenues offered in the tender.^{xxxv} The Prosecution was called to react and investigate the case, but there is no publically available information on the outcome of the process.^{xxxvi}

One of the risks that contribute to inefficiency of PPPs is transparency. Transparency is still very low and it specifically represents large problem when it comes to concessionary policy.^{xxxvii} In order to overcome risks, much more transparency in PPP area is necessary. Crucial points where transparency must be improved are contracts on concessions given by the Government, as well as information about the implementation of contracts and fulfilment of commitments by concessionaires. This is necessary in order to have a comprehensive picture about the impact of concessions on the budget, both state and local budget

In theoretical sense, there are also multiple benefits of PPP on local level, including reduction of the fiscal pressure on local budgets, use of technical, innovative and financial capacities of the private sector and distribution of risk between the partners.^{xxxviii} In practical sense, things have been quite different, having in mind that the pressure on local budgets even increased, while the risks were mainly berried by local authorities.

In order to make the use of PPP more efficient, Montenegro should adopt a comprehensive legislative and strategic framework for PPPs, which would give a solid ground for further development in this area. This would also enable Montenegro to more easily target projects where state institutions and bodies would transfer responsibility to private sector. In addition, process of PPPs must be more transparent with more data proactively published, to enable public control of each particular contract.

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Endnotes

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