

# LOCAL SELF-GOVERNMENTS AND PUBLIC-PRIVATE PARTNERSHIP



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**LOCAL SELF-  
GOVERNMENTS AND  
PUBLIC-PRIVATE  
PARTNERSHIP**

*Podgorica, 2014*

## Local Self-Governments and Public-Private Partnership

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## 1. INTRODUCTORY REMARKS

The analysis „Local Self-Governments and Public-Private partnership” has been produced within the project *Corruption at the local level- zero tolerance!*<sup>1</sup>, with the aim to draw attention to the importance of transparent implementation of the public-private partnership and concessions as instruments for improvement of the quality of services and facilitation of the development of the infrastructure facilities of public importance at the local level. At the same time, this analysis represents a continuation of the research activities of the Institute Alternative in these areas which resulted in production of several publications.

Based on the presentation of principles and importance of implementation of the model of public-private partnership, criteria for adequate implementation at the local level are presented at the beginning of the analysis. This section is followed by an overview of problems Montenegrin local self-governments are faced with in transparent implementation of public-private partnerships and concessions, with a special focus on 14 municipalities encompassed by the project<sup>2</sup>. The analysis also presents good practices in implementation of public-private partnerships at the local level in the neighboring countries and countries of the European Union. Based on the identified problems and challenges,

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1 The project is supported by the European Union, and implemented by Centre for Civic Education (CCE), in cooperation with the Institute Alternative (IA), NGO Bonum from Pljevlja and NGO Nada from Herceg Novi

2 Bar, Budva, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Kotor, Mojkovac, Nikšić, Pljevlja, Plužine, Podgorica, Rožaje and Tivat

recommendations have been formulated for improvement of this field in Montenegro.

Research on public-private partnership and concessions at the local level in Montenegro has been conducted during 2013, on the basis of the analysis of the: legislative framework in this field; reports of competent institutions and concluded partnerships contracts between public and private sector at the local level in Montenegro. During the work on this analysis information obtained on the basis of the requests for free access to information have been used, as well as opinions of representatives from 14 Montenegrin municipalities collected during consultation trainings conducted by the Project team in July 2013.

## 2. IMPORTANCE OF IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIP AT THE LOCAL LEVEL

Obligation of the public sector to provide quality services to local population, i.e. to invest in important infrastructure projects, is put to the test when it is not possible to direct money in such investments from the current budget funds or secure loans which will not impair financial stability of the municipality in a long-term. It is possible to overcome the challenges local self-governments in Montenegro face in ensuring of fiscal sustainability, i.e. inability to make significant investment of public revenues in infrastructure projects through the use of modern methods of financing, of which public-private partnership (PPP) is the model which is being increasingly applied in the countries of the European Union.

Advantages of implementing PPPs are manifold, and the most important ones are the following:

### *Reduction of the fiscal pressure on local budgets*

The aim of participation of the private sector in providing of services, which are, as a rule, provided by the public sector, can be seen in the need to reduce the fiscal pressure on the budgets of local self-governments. Planned and timely planning of partnerships with private sector within the joint projects provides

not only construction of facilities and providing services which would be impossible to achieve through traditional manner of financing, but it also improves the quality of services while reducing the prices citizens pay for the services. The concept of public-private partnership relieves the public sector from the part of the expenses they need to invest in construction of an infrastructure facility or provision of services. In European Union countries, even cities which have high credit worthiness have determined the upper limit of debt obligations.

### ***Use of technical, innovative and financial capacities of the private sector***

The private sector possesses appropriate expertise which enables planning, financing (or providing financiers) of the projects. The private sector gets more easily adapted to market conditions, and thus more easily upgrades and improves its potentials and service providing. Rationalization of costs is achieved through the use of capacities of the private sector.

### ***Distribution of risk between the public and private partners***

Implementation of public-private partnership is preceded by comprehensive analyses which enable adequate allocation of risk between the contractual parties. First, the risks need to be identified and analyzed, and, then, conditions need to be created for elimination or reduction of these risks.

Risk is usually defined as „uncertainty in relation to costs, loss or damage“<sup>3</sup>. Therefore, the aim of eliminating the risks is targeted at preventing them to affect realization and success of the project. Each partner undertakes those risks which it can, because of being equipped with necessary financial, technical and expert capacities, successfully eliminate. The distribution of risk is defined in PPP contract, and in that way responsibility for the failure of the project can be clearly identified.

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3 Cvetković Predrag, Sredojević Slađana, „Public-Private Partnership - Manual for Implementation at the Local Level“, Permanent Conference of Cities and Municipalities of Serbia, Belgrade, 2013, pg. 65

In distribution of risk between public and private partners we should take into account that the interest of the public partner is to provide quality service, whereas the interest of the private partner is to gain profit and return the funds invested in the project.

**Table 1: Allocation of risks**

<b>Risks</b>	<b>Public</b>	<b>Private</b>
<b>Planning and construction</b>		X
<b>Financial risks</b>		X
<b>Legal and political risks</b>	X	
<b>Environmental protection</b>		X

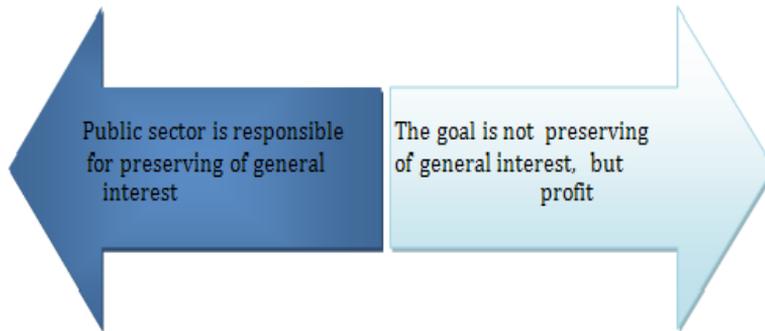
In the category of risks that public sector is trying to transfer to public sector are the risks relating to the deviation with respect to the expected standards in constructions and quality of services; risk of exceeding the agreed costs or deadlines; damages caused to facilities in the event of *force majeure*<sup>4</sup>, whereas the public sector takes over the risks relating to the potential applying of the requirements in relation to the service that is being provided; changes in legal or political context that may cause problems in implementation of the PPP; the risk of inflation (which is typically divided between the partners)<sup>5</sup>.

Risks should not be fully transferred to the private sector, because, due to impossibility to fulfill the commitments, it will often lead to termination of the contract.

<sup>4</sup> Superior or irresistible force

<sup>5</sup> According to: Marenjak Saša, "Development of the Concept of the VfMM that fit the best in Serbia's legal and economic contexts for PPPs and concessions", Belgrade, 2012

**Graph 1: Public-private partnership vs. Privatization**



In relation to the process of full privatization, PPP allows public sector to determine, control and keep responsibility for preservation of general interest.

### 3. PRECONDITIONS FOR IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIPS AT THE LOCAL LEVEL IN ACCORDANCE WITH THE PRINCIPLE “VALUE FOR MONEY”

#### *Defined and clear legislative framework*

Law that defines public-private partnership must set transparent procedures and must establish responsibilities of competent institutions.

#### *Strong institutions*

Institutional framework for PPP should include central unit on national level that will be able to provide necessary expert and technical assistance in this field, as well as to build capacities. Also, role of the Ministry of finances and secretariats on local level is very important, because they should facilitate appropriate analysis of fiscal policies, integrate PPP within budgets and make estimation related to payments and guarantees.

#### *Defined strategy of development and reform of local self-government*

PPP should be implemented as a part of overall strategy for reform of public sector, to be a product of this strategy and completely aligned with goals defined in it. Selection of project that will be realized under this model is especially important. Plan of realization of PPP must be integrated in mid-term budget cycle.

### ***Transparency of process***

Public must have an insight in all phases of preparation and implementation of public-private partnership, concluded agreements and plans of financial payments. In line with that, public sector must provide transparent procedures in selecting private partners and negotiations, in preparing of contracts, as well as in a phase of monitoring, i.e. must make public all commitments, deadlines, annexes to contracts and payment plans.

### ***Use of public goods by private partners must be under scrutiny of political public***

#### ***Involving a wider circle of participants***

”Implementation of public-private partnership must involve wider circle of participants. “Bigger the number of direct beneficiaries of public-private partnership project, political pressure and the risk of political pressure is smaller”<sup>6</sup>.

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<sup>6</sup> Cvetković Predrag, Sredojević Slađana, “Public-private partnership – Guidebook for implementation on local level”, p. 17

## 4. PUBLIC- PRIVATE PARTNERSHIPS AT THE LOCAL LEVEL IN MONTENEGRO

State institutions identify concept of public-private partnership as novelty in Montenegro<sup>7</sup>.

Montenegrin legislation does not recognize public-private partnership as such, and therefore concluding of such contracts was regulated by dozens of other laws and regulations.

There is no strategic plan in Montenegro to regulate this filed in middle or long term. Program of work of the Government does not envisage adoption of the Law on PPP in 2014, but there are plans to prepare Strategy and Action plan for public-private partnership in medical field. Government's plan for privatization for 2014 envisages that 28 objects during this year will be valorised through using of model of public-private partnership.<sup>8</sup> However, the practice has shown that planning of valorisation through PPP is unrealistic, because year after year the same locations are being mentioned.

It is difficult to monitor concluded PPP contracts, because there is no electronic data base of these contracts, and municipalities

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7 Report on analytical overview of harmonization of legislation of Montenegro, Chapter 5 – Public procurements, p. 4

8 See: Privatisation plan for 2014, available at: <http://www.gov.me/vijesti/134885/Sav-jet-za-privatizaciju-i-kapitalne-projekte-usvojio-Predlog-odluke-o-planu-privatizacije-za-2014-godinu.html>

do not respect fully their obligation to publish them on their Web sites.

*Local self-government and PPP in Montenegro – public vs private interest*

Municipalities do not have a plan of valorization of objects and locations through PPP on their territory; do not have necessary expertise in this field, while they do not receive expert assistance from national level. Since there is no legislative framework for public-private partnership, there are no institutions that would provide expert support in preparation and realization of such project and that would conduct monitoring of concluded agreements.

These are the reasons why only a small number of municipalities so far realized projects using this model. Only three projects were submitted following the competition issued by Union of municipalities in 2012: building of shopping mall “Bazar” in Podgorica, developing of city square in Mojkovac, and building of two local roads and playgrounds in Baošići (Municipality Herceg Novi).<sup>9</sup>

So far, local self-governments invested through PPP in economic infrastructure, while when speaking about social infrastructure, social housing in Podgorica should be mentioned<sup>10</sup> which, together with Cetinje, has the most experience in implementing projects through PPP model.<sup>11</sup>

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9 “Examples of good practice in local self-government in Montenegro in 2012.”, Ministry of Internal Affairs, Union of Municipalities, OSCE, 2013, p. 55

10 “Montenegro – PPP Unit and Related Institutional Framework”, EPEC, December 2013, p. 4

11 Ibid, p. 4

**Table no. 2: Examples of PPP in municipalities Cetinje and Podgorica**

<b>Cetinje<sup>12</sup></b>	<b>Building of cable car Kotor-Lovćen-Cetinje</b>
	<p>Italian company DBA group was selected in January 2013 to provide consulting on project of building of cable car Kotor-Lovćen-Cetinje and this company improved Feasibility Study. Engaging of services of consultancy company was financed by EBRD, together with expressed interest to support loan arrangement with concessioner/private partner in the amount of 15 million EUR. However, even with this announcement of favorable loan arrangement, tender was not issued in June 2013, although it was planned. In absence of legislative framework for public-private partnership, it is planned that the project of building of cable car be realized in a form of concession contract.</p>
<b>Podgorica</b>	<p><b>Building of shopping mall “Bazar”<sup>13</sup></b></p> <p>Public competition for building of shopping mall and green market in Blok V was issued on August 25, 2011, while decision to select company “Čelebić” was made on September 27. Five companies applied for the tender, but only company “Čelebić” delivered their offer “in time frame envisaged by the tender”. Contract between the capital city and company “Čelebić” was concluded on 17th December Capital city’s share in public-private partnership investment was in value of 3,998,696.80 EUR in land property and expenses for communal infrastructure of the location, while it was obligation of private partner to finance design and building of the shopping mall and green market in Blok V.</p>

<sup>12</sup> Project of PPP realized in Cetinje are projects of street lighning of small value and touristic development of location „Lipska cave“, “ Montenegro – PPP Unit and Related Institutional Framework “, p. 5

<sup>13</sup> Capital city Podgorica also realised project of building of Mall of Montenegro through PPP. More on this: „Public-private partnership in Montenegro – accountability, transparency and efficiency“, Institute Alternativa, 2010, p.10.

Division of built content	
Capital city - Podgorica	Company "Čelebić"
Space of green market, area of 1,124.19 m <sup>2</sup> , 6,189.1 m <sup>2</sup> of garage space, overall value 4.010.462,10 euro.	All other contents of business complex and 45 garage spaces

The contact defines rights and obligations of partners, but does not specify what happens in case of unforeseen circumstances, tardiness etc, and therefore does not provide adequate risk division between partners.

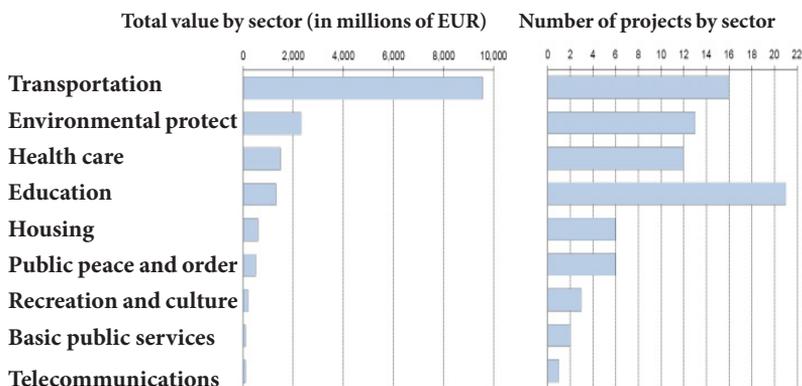
Goal of overall project was to solve a problem of "non-standardized market sales in urban and developed part of the city", and that was the basis for "bargain" where public partner was supposed to receive space for green market after the completion of the project. The contract does not specify overall size of the object. Also, the contact stipulates that if Capital city would express the need for more contents than those specified in the agreement, agreeing parties will define conditions under which private partner will relinquish them to public partner through annex to the contract.

There are numerous problems related to all of so far realized local PPP projects in Montenegro. Some of those problems include lack of clear competencies in project management on local level; lack of specific risk division between private and public partners, and not respecting obligations stipulated in contracts.

## 5. GOOD PRACTICES IN IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIP AT THE LOCAL LEVEL

In 2013 there were 80 PPP projects concluded in Europe, and their value was 16,3 billion EUR. Most of the projects were concluded in Great Britain. Most common projects in 14 countries where at least one project was concluded were: *by value* – in transport; *by number* – in education.<sup>14</sup>

**Table 3: Overview of concluded PPP contracts in 2013 by sectors<sup>15</sup>**



<sup>14</sup> See: "Review of the European PPP market in 2013", EPEC, February 2014.

<sup>15</sup> Ibid., page 3

Number of concluded projects on European level in last year, indicates that implementation of public-private partnership is a challenge even for those countries that have defined legal and institutional framework, and have more experience in implementing of such projects. Experience of countries of European Union and countries in the region suggest that it is necessary to find a best solution in order to transfer expertise related to PPP to local level.

In accordance with the aforementioned, we would like to show three examples of good practice important to local self-governments.

### **Good practice example 1: Bulgaria** **Partnership of local authorities and small and medium sized enterprises in the municipality Sevlievo**

The aim of the partnership between local authorities and enterprises in the municipality Sevlievo in Bulgaria is to work together on achievement of the general interest. This form of cooperation is based on activities which are planned, initiated and implemented jointly by private and public sector, through non-profit association.<sup>16</sup>

Municipality Sevlievo and more than 40 small, medium and large enterprises from the municipality have registered a non-profit association „Sevlievo 21st century”, with the aim to invest resources of these companies in the social and economic development of the municipality. Management of the association is on a voluntary basis.

In this way, through association, public and private sector jointly define priorities, draft annual action plans and implement activities aimed at achieving the set goals.

Some of the joint projects are: improving living conditions in social welfare facilities; construction of cinema; reconstruction of sports facilities; introduction of safety measures on the roads, etc.

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<sup>16</sup> More about this: “Partnership of public and private sector- Good and bad experiences in selected countries in transition,” PALGO, Belgrade, May 2010, pages 42-43

## Good practice example 2: Serbia

In Serbia, during the first year of implementation of the Law on Public-Private Partnerships from 2011 only one PPP project was implemented. By selecting eight “pilot projects” of small value, National Alliance for Local Economic Development chose to „put to a test“ PPP concept on the level of local self-governments, by encouraging their economic development, while at the same time creating a „competitive spirit“ which enabled local self-governments to submit a project of importance for economic and social development. Similar model of implementation of pilot PPP project was used in Czech Republic, and Institute Alternative emphasized this in 2010 already.<sup>17</sup>

National Alliance for Local Economic Development (NALED) with the support of the USAID sustainable local development project has launched a competition for financing of eight projects under PPP model.

After the selection procedure the following projects related to construction have been selected: 1. Trade Centre in Doljevac (850,000 EUR); 2. Logistic-Distribution Center for Agriculture in Kanjiža (2,500,000 EUR); 3. Production and Education Facility for Grape Producers in Nib (700,000 EUR); 4. Cogeneration Facility in Nova Varoš (1,600,000 EUR); 5. Regional Cold Storage Plant in Prijepolje (1,600,000 EUR); 6. Recycling yard (142,000 EUR); 7. Centre for processing of forest fruits and herbs (263,000 EUR); 8. Reconstruction of Rusanda spa in Zrenjanin (5,500,000 EUR).<sup>18</sup>

Projects have been selected on the basis of innovation of the idea and how fast they will achieve effects in the economy.

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17 Compare: “Public-Private Partnerships in Montenegro- Accountability, transparency and efficiency”, Institute Alternative, 2010, pages 18-20

18 See: Web site of USAID Sustainable Local Development project at: <http://www.lokalnirazvoj.rs/naled-grant-ppp.html>

### **Good practice example 3: Croatia**

#### **Expert assistance from the national level- Center for Monitoring of Business Activities in the Energy Sector and Investments**

In the Republic of Croatia in 2009 already began with work the Agency for Public-Private Partnership which is responsible for implementation of the Law on Public-Private Partnership. However, in 2012 a Centre for Monitoring of Business Activities in the Energy Sector and Investments has been established and it communicates with local and regional self-government units and, in cooperation with them, prepares documentation for selection of private partners in public selection procedure.

Center for Monitoring of Business Activities in the Energy Sector and Investments<sup>19</sup> is a non-profit association with public authority which was established in March 2012. The main role of the Center is to monitor the development of the energy sector and implementation of strategic projects in this field; centralized monitoring of all investments in Croatia, as well as development of investment projects through PPP.

An important task of the Center is to provide expert support in realization of strategic projects, especially of public-private partnerships and local self-governments.

Experiences of these countries show that it is better to start the implementation of public-private partnerships with smaller projects in order to gain the necessary experience for bigger investments. In order to encourage competitive behavior and to determine mutual interests, public and private sector can plan together and make investments in joint projects, as is the case in Sevlievo Municipality in Bulgaria.

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<sup>19</sup> More on Center for Monitoring of Business Activities in the Energy Sector and Investments can be found on: [www.cei.hr](http://www.cei.hr)

## 6. CONCESSIONS AND MUNICIPALITIES

The field of concessions in Montenegro is regulated by the Law on Concessions which has been adopted in 2009,<sup>20</sup> and applied to the fields of mining, forestry, water management, education, transport and maritime affairs. In addition to this law, concessions are regulated by other laws and regulations.<sup>21</sup> Existing regulation of concession policy is non-compliant with the *Acquis*, and year after year European Commission points out to this. Working Group tasked with amending these regulations has been formed in 2011, but so far had not made any progress in this direction.

Montenegro recognized that the current definition and concept is not aligned with the relevant EU procurement *acquis* on concessions.<sup>22</sup>

State authorities or local self-government authorities<sup>23</sup> have competence to award concessions on the basis of the Plan of concessions they are required to prepare.<sup>24</sup> Concessions are awarded

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20 Article 7, paragraph 1, of the Law on Concessions, Official Gazette of Montenegro, 08/09 from February 4, 2009.

21 For example: the Mining Act, the Law on Geological Explorations, Water Law, Act on Water Management Financing, Law on financing of water management, Law on forests, etc.

22 Report on Analytical Overview of the Harmonization of Legislation with EU *Acquis*, Chapter 5- Public Procurement, page 4

23 Article 9, Law on Concessions

24 The Water Law (Official Gazette of Montenegro, 27/07), Act on Water Management Financing (Official Gazette of Montenegro, 65/08), Mining Act (Official Gazette of Montenegro, 65/08), Law on Geological Explorations (Official Gazette of Montenegro, 28/93, 42/94 and 26/07), Law on Forests (Official Gazette of Montenegro, 74/10), Law on Ports (Official Gazette of Montenegro, 51/08), Law on Games of Chance (Official Gazette of Montenegro 52/04, Official Gazette of Montenegro, 13/07).

on the basis of the public notice, and the procedure for selection of the first ranking company is conducted by the *ad hoc* Tender Commission. This Commission is appointed by the competent authority for the area for which the concession applies.

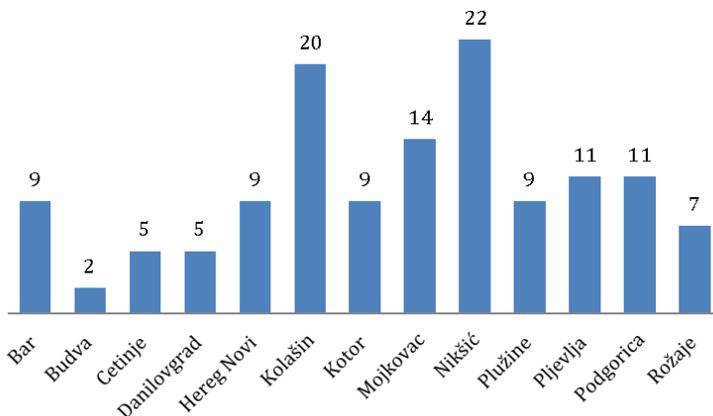
### *Local self-government*

70% of the revenues of fees belong to the municipality if the natural resources which are the subject matter of the concession are located at its territory.<sup>25</sup>

The exceptions are concession fees for use of ports, of which 20% belongs to municipalities, and in the case of fees for the use of forests where 50% belongs to municipalities.

Until now, a total of 183 of concession contracts have been awarded, of which 23 have been terminated. When it comes to municipalities which are the subject of this study, in this period 133 concessions in total have been awarded.

**Graph 2: Overview of concessions in 14 Montenegrin municipalities**



<sup>25</sup> Article 28 of the Law on Local Self-Government Financing, Official Gazette of Montenegro 5/08 and 74/10; Until the Law on Local Self-Government Financing was changed in 2010, municipalities received 30% of concession fees.

Until now, no concessions have been awarded in the municipality Tivat. In the previous period, all of the concessions have been awarded by the state administration bodies, and not municipalities.<sup>26</sup>

### *Payment of concession fees*

“In the part of appliance of the Law on Concessions which defines routing of the part of the concession fees to municipalities, and in line with the law which regulates the manner of financing of the local self-government units, it is necessary that the Government of Montenegro notifies the Parliament about the implementation of the law, and especially taking into consideration the objections from many municipalities that they do not receive, or receive late payments of their portion of concession fees.”<sup>27</sup>

Debts related to outstanding obligations arising from payment of concession fees are growing year by year in Montenegro. At the beginning of 2013, total debt of concessionaires amounted to 12,249,306.44 EUR. The existing system of collection of concession fees is conducted by the Ministry of Finance with Tax Administration.

**Table 3: Overview of total debt (debt and bankruptcy) related to outstanding obligations on January 19, 2013 in Municipalities covered by this research<sup>28</sup>**

Municipality	Forests	Water	Mineral resources
Bar		37.194,43	256.970,12
Budva		26.872,98	55.276,35
Herceg Novi			53.321,41
Nikšić	586.753,60	152.919,12	133.211,11
Pljevlja	1.814.598,59	3.772,51	3.402.279,07
Podgorica	358.788,48	93.150,82	
Rožaje	1.114.862,68		

26 Article 9, paragraph 2, of the Law on Concessions: „The Municipality shall adopt a decision o award a concession for the concession subject matter of which the Municipality exercises the ownership rrights and authorizations“. Competent state administration authorities are: Ministry of Economy, Ministry of Health, Directorate for Water, Forestry Directorate, Public Enterprise for Costal zone Management of Montenegro.

27 Report from the 26th Session of the Committee on Economy, Fiance and Budget held on July 26, 2013. Available at: [http://www.skupstina.me/~skupcg/skupstina/cms/site\\_data/25%20saziv%20ODBORI/EKONOMIJA%20FINANSIJE%20/Izvjestaj%20-%20zakljucci%20Komisija%20za%20Koncesije%202012.pdf](http://www.skupstina.me/~skupcg/skupstina/cms/site_data/25%20saziv%20ODBORI/EKONOMIJA%20FINANSIJE%20/Izvjestaj%20-%20zakljucci%20Komisija%20za%20Koncesije%202012.pdf)

28 Report on Realization of Obligations from Concession Contracts, January 2013

In addition to the problem of inadequate payment of concession fees which reflects on financial stability of local self-governments, municipalities do not have any information about the type of concession based on which they are receiving funds from the state level, i.e. from the State Treasury. Accordingly, municipalities are unable to make realistic estimates of the revenues on the annual or long-term level.

The State Audit Institution pointed out to this problem in the Report on final budget account of all local self-governments which were subject to audit from the adoption of the Law on Concessions in 2009.

**Table 4: Overview of findings of the State Audit Institution**

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**Bar 2011.**

“Municipality Bar was unable to prepare a precise plan of incomes from taxes on incomes of natural persons and concession fees, which are not collected by them, and thus Municipality cannot realistically estimate these revenues, because it did not receive timely information from relevant state authorities.<sup>29</sup>”

**Bijelo Polje 2012.**

“For all other revenues which are collected by other bodies in line with the Law, therein including concession fees, the funds are paid directly to the Treasury through the authorized holder of payment, so municipality does not have a possibility to control these revenues, nor the option to realistically estimate the revenues on these bases. Ministry of Economy awards contracts to the concessionaires and calculates the concession fees, and control of payment is done by the Tax Administration of Montenegro.<sup>30</sup>”

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29 Audit Report on Final Budget Account of the Municipality Bar for 2011, State Audit Institution, October 2012, page 5

30 Audit Report on Final Budget Account of the Municipality Bijelo Polje for 2012, State Audit Institution, October 2013, page 26

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**Kotor 2010.**

Municipality Kotor does not have information about the type of concessions based on which the payment is being made, time of payment and the time that elapses from the time of collection to the time funds are transferred to the Treasury of the Municipality of Kotor.”<sup>31</sup>

**Plav 2012.**

“Concession fees are paid to the municipality through the State Treasury so municipality cannot control payment of these revenues.”<sup>32</sup>

Particular limitation when it comes to the concession policy in Montenegro is weak control of realization of awarded contracts and lack of transparency. Control of implementation of concessions is to a great extent conditioned by the lack of capacities of the Administration for Inspection Affairs, and consequently, small number of inspections, whereas limited content of the Register of awarded contracts on concessions influences transparency of concession policy. The document which represents the Register of concession contracts in Montenegro is kept by the Commission for Concessions and it contains information about subject matter of the concession, term of validity of the concession and names of the grantor and the concessionaire. The Register does not contain financial repayment plan or other information of importance for local self-governments. When examining the Register it is impossible to obtain the information to which municipality belongs the location for which the concession has been granted.

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31 Audit Report on Final Budget Account of the Municipality Kotor for 2010, State Audit Institution, October 2011, page 18

32 Audit Report on Final Budget Account of the Municipality Plav for 2011, State Audit Institution, December 2012, page 11

## 7. CONCLUSIONS

Montenegro does not have defined legal and institutional framework for public-private partnership, whereas legislation on concessions is not harmonized with the European Union legislation. Although these are high risk areas for corruption, work on drafting of legislation that would create preconditions for their transparent appliance lasts for more than three years now.

Heretofore implementation of public-private partnerships at the local level in Montenegro is characterized by a number of problems. Lack of knowledge about the specificities of this model for filling of the budget deficit, and consequently its overhasty implementation, imprecise distribution of risks between the public and private partners, violation of established deadlines are just some of them. Municipalities do not have necessary expertise for implementation of PPP, and they do not receive expert support from the national level, since, due to absence of an adequate legal framework, an institution that would help them in preparation and implementation of this type of project has not been established.

Access to PPP contracts is hampered by the lack of an electronic database, and when it comes to concessions, the Register which is maintained by the Commission for Concessions contains only information about the subject matter of the concession, term of validity of the concession and names of the grantor and the concessionaire.

Poor coordination between the competent state authorities and local self-government bodies is reflected in the fact that

municipalities do not adopt annual concession plans, although they are obliged to do it by the Law on Concessions.

A particular problem in implementation of the concession policy is the system of payment of concession fees, and thus the total debt on this basis amounted to over 12 million EUR in January 2013. In addition to the negative effect on financial stability of local self-governments, poor system of payment of concession fees also makes local self-governments unable to monitor the plans for financial repayment for concessions awarded in their territory. Furthermore, the municipalities do not have information about the subject matter of the concession for which they receive funds from the State treasury, or about time frame for payment. State Audit Institution pointed out this problem while performing its regular audits in four municipalities from adoption of the Law on Concessions in 2009.

In Montenegro, there is also a problem of weak control of the realization of awarded concession contracts due to limited capacities of the Administration for Inspection Affairs.

## 8. RECOMMENDATIONS

- ✓ Adopt a legal framework for public-private partnership. The field of concessions should be fully harmonized with EU Directives;
- ✓ Competencies and composition of the Commission for Concessions should be changed, or a new body should be formed at the national level which would serve as a central unit for PPP and concessions and provide expert and technical assistance to local self-governments in preparation and implementation of contracts awarded by these models;
- ✓ Strengthen coordination and cooperation between competent authorities, and especially between the national and local level in all phases of realization of concession contracts;
- ✓ Establish an electronic database of awarded PPP contracts;
- ✓ Expand the contents of the Register of concessions contracts so that it entails the details of contractual obligations between public and private partners, the total amount concessionaire is obliged to pay to the grantor and financial repayment plans;
- ✓ Improve the system of collection of concession fees by

providing information about paid fees. It is necessary to make this information publicly available;

- ✓ Strengthen the inspection control over the implementation of awarded concessions by strengthening human capacities of all departments of the Administration for Inspection Affairs and increasing the number of inspections.

Local self-governments should:

- ✓ Prepare and harmonize the plan of PPP project with strategic objectives of development and reform;
- ✓ Initiate the process of educating and professional training of officers for PPP;
- ✓ Adopt annual plans of concessions and annual repayment plans which would enable realistic planning of the annual budget;
- ✓ Make available on their Web sites an overview of awarded concessions on their territory and contracts concluded in line with public-private partnership model.

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