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Formation**

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Region**

Work Package 5

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Executive summary

The report compiles practices of private involvement into port operations, construction and finance in riparian countries on the Danube.

In **Austria**, no specific Public-Private Partnership (PPP) laws exist. Port companies (i.e. port authorities) are corporatized and work under the corporate (company law). Thus, port authorities are free to enter any kind of agreements (respecting the laws) with other public or private partners, including the lease of land, infrastructure, suprastructure and the right to operate the port or a terminal within a port.

Slovak legislation does not explicitly define any special regime for port-based PPP projects. All the terms of the concession contracts (PPP model based on risk distribution, financing, liability, etc.) are the result of agreement between the parties. Agreement cannot be against the law. There are two types of concessions in Slovakia: concessions of construction works and service concessions. Concession for construction works is a contract in which the consideration for the construction work to be carried out is either the right to use the building for an agreed time or the right related to the cash performance. Service concession is a contract in which the consideration for the services to be provided is either the right to use the services provided at an agreed time, or the right related to a cash payment.

In case of **Hungarian** ports, there is no relevant PPP system, as most of ports are owned and operated by private entities. However, the Freeport of Budapest, the Port of Baja and the Port of Győr-Gönyű are already managed in a concession structure. As an example, port operator Freeport of Budapest Logistics has a 75-year concession contract with the asset manager state-owned company for the management and development of the Freeport. Currently no regulation tackles port PPPs in Hungary. Currently, only these three PPP-like contracts exist in Hungary. All three contracts were made for different and special situations, but in all of the three cases the law of the management of state assets must be considered. Law of the management of state assets regulates among others that the high-value asset purchases must be organized by public procurement procedure. In the ports of Hungary, according to the form of the ownership, mostly asset management contracts have been signed, but there are examples for concession contracts and form long-term lease contracts as well. All contracts are binding on the concessionaire to carry out port activities, which is the same as the operating. The concessionaire is committed by the contract to return all the land, property and tangible asset in accordance with their original condition after the expiry of the concession contract. This also means, that concessionaire must build and develop facilities during the concession period.

In **Croatia**, concession for public works in public ports, where concession is granted for construction of port facilities, according to the public-private partnership model – duration can be up to 30 years, and with consent of the Government of the Republic of Croatia up to 50 years. Extension/change of the concession contract is possible only within the public bidding procedure except in following situations which are defined by the Concession Law. PPP contract is a long-term contract between public and private partner. Subject of PPP in Croatian ports is building/reconstruction of a public building with a purpose of public service providing. Public body delivers a PPP project proposal to the Agency for the PPP which

approves it, following a confirmation from the Ministry of Finance. Concession in inland ports can be given for: a) port services, b) right to exploit common good and c) public works. Port services in private ports and private wharfs are carried out based on concession for the right to exploit common good or other goods. Port Authority grants a concession with the approval of the Ministry of Finance.

In **Serbia**, two types of concessions are allowed: for the providing of port services, and concession for public works, with the right for the commercial use of executed public works. Port Governance Agency (having the role of national port authority) initiates procedure for the award of the port concession if the value of the concession is estimated to the amount of 5.186.000 EUR or higher. Law on Public Private Partnership and Concessions enables conclusion of the new agreement (extension of the previous concession), if the same procedure for selecting the private partner, prescribed by the law, is applied. Despite the existing legal framework, concession agreements were not concluded in IWT sector in Serbia yet. Actually, there is no experience in implementation of concessions in transport sector. Selected Port Operator/Concessionaire can act as Investor on the port land (area). For the contracted period, the concessionaire/operator has a right to use the port land and do all necessary actions for the construction of the port infrastructure and superstructure, in line with the concession agreement. After the completion, cancelation/termination or breaking of the agreement, all property rights on the port infrastructure and superstructure are transferred back to the state, free of any liens or encumbrances, without the obligation of the Republic of Serbia to compensate the market price of these assets to the concessionaire.

In **Romania**, the basic legislation for public-private partnerships is law on works concessions and concessions. New legal regulation allows for: a) the public-private partnership contract - the public-private partnership under a contract between the public partner, the private partner and a new company whose share capital is wholly owned by the private partner acting as a project company; b) the institutional public-private partnership - the public-private partnership under a contract between the public partner and the private partner, through which a new company is set up by the public partner and the private partner to act as a project company and, after becoming a member of the company register, acquires the status as a party to the respective public-private partnership contract. Furthermore, the Procurement Act divides concessions to: concessions for works and service concessions.

In **Bulgaria**, there are three basic types of concessions suitable for ports: concession for construction, service concessions and concessions for use of public (state or municipal) property. Ports of public transport of national importance may be granted to third parties under the procedure of the Concessions Act with a concession for a service or concession for construction. By granting a concession for a service for which the use of port territory and / or port facilities is required, the concessionaire shall be granted access to the market of port services. For both types of concessions envisaged, the port territory and infrastructure remain state-owned. The only form of PPP in the case of investment design of ports is the concession for construction. Duration of concessions is up to 35 years. After this period, a new concession procedure is started.

Finally, following a brief elaboration of rationale behind port PPPs, a set of recommendations for improvement of port PPPs is given. These recommendations include the variety of PPP models which are applied in the port industry world-wide, recommendations for risk allocations and recommendations based on experience and lessons learned in the countries along the Danube.

1 Introduction

Port development is seen as a catalyst to stimulate economic activity and create employment. In Europe, port developments relate mainly to building new terminals and upgrading the super- & infra-structure within existing ports rather than developing new greenfield sites.

As such, much of the reform process has more to do with the organization and operational aspects of ports. This WP will assess the situation along the Danube and will focus on 3 pillars that contribute to transforming ports into key-hubs of the European transport network and help trigger the reform process: infrastructure investments, funding sources for stimulating investments and innovation.

The goal is to provide a comprehensive package of the issues to be approached jointly in order to help compensate the unbalanced development level between the Upper Danube ports and the other river sections.

For this, four activities have been planned. In Activity 5.1 the focus will be on means of stimulating the upgrade of the port infrastructure & industrial development. This activity corresponds to the 1st pillar. The second activity will target the issue of financing port investments, as experienced via public-private partnerships (2nd pillar). In regards to the 3rd pillar dealing with innovation two activities have been planned.

Activity 5.2 will focus on public-private partnerships (PPP) for port investments which have become a very interesting and convenient development option in the last 25 years. The most common form of PPP is the operation of a concession agreement.

In Activity 5.3 the consortium will focus on the simplification of the work flow within the ports with the help of a modular port community system.

A pilot implementation of this IT system will be planned & implemented in 3 ports along the Danube. Other Danube ports will be able to apply this system by adapting to their own needs the IT model architecture developed by the DAPhNE PPs.

In Activity 5.4 innovative markets will be investigated in order to identify potential types of cargo that could be transported on the Danube and the special conditions that the ports have to comply with to accommodate these future changes. The findings will be reflected in the case studies for new markets - circular economy.

1.1 Objectives of the activity 5.2

Port development projects have become common place in the last 25 years. The most common form of PPP is the operation of a concession agreement.

This usually involves investment by the private company to develop or rehabilitate the port followed by a defined period of operation, during which the investors recuperate their initial layout and make a profit. The concession may adopt different forms of PPP including build-operate-transfer, build-operate-own-transfer and build-transfer-operate schemes. To the partnership the private sector brings much needed capital and know-how, as well as expected

increased efficiency gains associated with combining construction, maintenance and operations arrangements.

For the Danube region an overview of these schemes will be made and an analysis of what are the most popular versions implemented in the area will be achieved. Since the DAPhNE consortium also includes representatives from the national transport ministries, input from these PPs will be collected in regards to what bottlenecks are encountered when initiating such PPPs for port investments. The PPs from the private sector will also be consulted to provide their viewpoint as regards the obstacles faced when generating such PPPs.

Special attention will be paid towards the requirements of getting access to the new financial instruments and in particular the EFSI. A short list of questions will be elaborated for both sides, in order to collect the data in an organized manner. The report will also include a section on the profile of the infrastructure investors in the Danube region, by focusing on groups like government agencies, asset managers, public pension funds, funds of fund managers, corporate investors, banks, investment companies, endowment plans, insurance companies, private-sector pension funds and foundations, etc. The PPP report will serve as input for the elaboration of output 5.1.

2 Scope of the report

This report contains the theory (legal background) and the practice (answers to the list of questions agreed in D.5.2.1 which are intended to identify the obstacles for the smooth and successful public-private partnership (PPP) schemes) of the possibilities for cooperation of the public and private sector in construction, development and operation of ports.

As regards to the “theoretical” background, this report does not venture into the detailed analyses of the entire legislation related to public-private partnerships in each participating country. However, it intends to reveal the practical aspects of the issues raised in the question list, namely how are certain issues from the question list dealt with in the countries of the Danube region.

In addition, the report aims to reveal the problems and obstacles (if any) for the successful development of PPP initiatives (largely focused on concessions and similar PPP schemes) in the Danube region. These problems and obstacles are identified based on the questions list prepared in D.5.2.1 and on the answers received from the ministries, port authorities, port operators, port users, etc. The Ministries participating in the project from RO, BG & HR, private organizations (ILR, PDR, PDI), and private port operators provided input for this deliverable as well, through the participating project partners EHO, APDM, MPAC, MT, BPICo, PAV, PGA, ILR, HFIP, VP,a.s.

Each project partner has identified the main findings and key issues/messages for the current obstacles and proposed methods for improvement of PPP conditions in their respective countries. Findings and key issues from this report are aimed to be used as inputs for the D.5.1.3 Guidelines for industrial development initiatives in ports and for the Output 5.1: Port Investment Guidelines.

3 Austria

3.1 Regulations and practice of the PPP schemes in ports

3.1.1 Laws, directives, by-laws and other acts regulating PPPs

In Austria the ports are organized in the legal form of a “GmbH” and this makes it very easy and simple. There are no specific laws for PPP-items in a legal form of an entity according to private law (e.g. Austrian “GmbH”), even it is a “public equivalent body”. The most important law in this context of PPP is the Austrian “GmbH-law” in connection with some smaller inputs from the federal procurement law (“Bundesvergabegesetz”) and the non-discriminatory papers of EU as mentioned below.

For example: regarding the legal status of Ennshafen OÖ GmbH

- Ennshafen OÖ GmbH (EHOÖ) itself is a “private law body” according to the definitions of Austrian laws; EHOÖ has got the legal form “GmbH” (Ltd.) and is registered in the Austrian company register under the number FN 118997x
- however, the owners of Ennshafen OÖ GmbH are two companies (1) OÖ Landesholding GmbH and (2) OÖ Verkehrsholding GmbH which are both 100 % owned by the State of Upper Austria / “Land Oberösterreich” (OÖ Verkehrsholding GmbH itself is totally owned by OÖ Landesholding GmbH); the supervisory board of OÖ Landesholding GmbH is the government of the State of Upper Austria
- according to general EU-wide classifications it is necessary to classify the company Ennshafen OÖ GmbH under “public sector undertaking or body established in the EU”.

Concluding, the Ennshafen OÖ GmbH shall be understood as a “public sector undertaking or body established in the EU” governed by the private law. However, understanding the complex situation as regards the legal status of Ennshafen OÖ GmbH as being fully part of the public sector however governed by private law (usual situation in Austria where companies are 100 % owned by the public entities).

Since decades all public ports in Austria are formed in the legal status of “GmbH”. The great advantage of this status regarding to PPP-processes is, that the company is absolutely free to make all kinds of contracts according to the complete Austrian law system and all directives, by-laws, business rules, etc which are in force in Austria, when the manager of the port (= general Manager of the GmbH fulfils all internal guidelines of his company and the governance / owners above him and – as for all other items in the company – respects the laws of Austria relevant for GmbHs. This gives a very good framework for acting as a business partner.

Only some special chapters of special laws have to be fulfilled in Austria for those bodies. Relevant for PPP-processes are the federal procurement law (“Bundesvergabegesetz”) and the EU-wide regulations for transparency and non-discriminatory (“commission paper on publication / pari passu / expert appraisals”) These papers mean that some special activities

the ports have to fulfil regarding publicity of planned investments in order to call for suppliers and make a transparent decision process of selecting the relevant partner. The best example of the last years for such a process is the tender of Ennshafen regarding the long term contract of terminal renting.

Even the Austrian competition law (“Bundeswettbewerbsbehörde”) must be respected – but this is no special law for PPP, it is in force for everybody and the same is in force regarding the anti-trust law (“Kartellrecht”). As a summary: non-discriminatory is the core element of this laws regarding PPP and the port has to handle all his partners in equal manners.

Some laws regulate the ship business in ports – which have a little influence to the PPP-processes - are capitalized in the reports of WP3 of the DAPhNE-project, but these sections do not deeply influence PPP-processes but fix the elements of non-discriminatory activities in the ports. As a matter of fact, the Austrian ports actually have enough infrastructure capacities so there do not come up really problems regarding PPP from this side.

In Austria the main legal regulation governing ports is the Federal Navigation Law (*Schiffahrtsgesetz*). It consists of several individual parts and governs all regulatory aspects of Austrian navigation and port law. The application of the Navigation Law depends on the type of body of water concerned. The Navigation Law applies i. a. to the Danube which is defined as waterway pursuant to Article 1 (1) in connection with Article 15 (1) Navigation Law and Article 2 (1) Water Rights Act (*Wasserrechtsgesetz*). On the level of secondary legislation, the most important regulations are the Shipping Facilities Ordinance (*Schiffahrtsanlagenverordnung*) and the Waterway Traffic Ordinance (*Wasserstraßen-Verkehrsordnung*). Both ordinances were passed by the Minister of Transport, Innovation and Technology (“BMVIT”) and specify primary legislation. The Shipping Facilities Ordinance regulates, in particular, the operation and use of shipping facilities as well as port fees. The Waterway Traffic Ordinance, inter alia, lays down general rules for the navigation of the Danube and also stipulates rules for ports.

As far as EU port legislation is concerned the rules have generally been implemented in the Navigation Law. On the level of international law Austria is a contracting party to the Danube Convention (Belgrade Convention). The general principle of this convention is that navigation on the Danube shall be free and open for the nationals, vessels of commerce and goods of all states, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping. While the convention mainly sets out rules regarding shipping, it also contains general rules for port fees. The Danube Convention has the quality of a federal law in Austria. All the aforementioned legal regulations are general laws and thus apply to parties from the private and public sector. The highest port authority in Austria is the Minister of Transport, Innovation and Technology (“BMVIT”). The BMVIT also has the authority to pass secondary legislation in certain areas of port legislation. In addition, in the Austrian provinces the district administrative authorities (Bezirksverwaltungsbehörden) are competent in port matters. In particular, the district administrative authorities are responsible for granting permits for the construction of shipping facilities (ports) pursuant to Article 71 Navigation Law.

Although there are no critical problems regarding PPP-processes within these regulations. One small impact derives from the fact that fees such as shore money “Ufergeld” must be accepted by the authorities before ports can apply it in business processes, but this don’t have really great influence in PPP-business.

3.1.2 Available and permitted PPP schemes for ports

Everything is allowed which respects the Austrian laws if you perform as a legal entity “GmbH” und you respect the special laws mentioned in 3.1.1. So it is a simple business decision of the company (and his owners) for how long you go into contracts – like an ordinary business partner it is your strategic decision. The conditions must be non-discriminatory – this means that you have to treat all partners in the same way, but you have a broad range of possibilities to create tailor-made systems with your clients. The market sector is quite narrow in Austria so there are not really problems in practice.

3.1.3 Types of concessions and/or long-term leases in ports

Standard contracts are normally used in form of renting and transshipment („Pachtvertrag , Umschlagvertrag“), several kinds of operator contracts (“Betreiberverträge”), in combination with supraedificate or construction aw (“Baurechtsvertrag”), less are used contracts regarding usage of machines, etc or lease contracts, praecarium, concession agreements (“Gestattungsverträge”); these combinations are the preferred forms; only for special topics you find specialized others (e.g. temporary employment / “Arbeitskräfteüberlassung”); the only thing you have to be aware be choosing the forms of contracts: create a non-discriminatory system and give the same key figures even to other contract partners.

3.1.4 Fees types and methodology for determination of concession or lease fees

Mostly rent fee (paying fixed amount per m2 and month) and transshipment fee / shore money (operated per ton) are part of the business contracts; special fees are payed for vending of electricity (per kWh) or water – where applicable or other kinds of utilities or special services. Sometimes it is combined to monthly flat rates. It is a simply business decision which system is the best for which deal/contract. Monthly paying is generally used, even if the amounts are fixed in yearly figures – completely indifferent if it is a short term or a long term lease.

3.1.5 Types of revenues and charges of a concessionaire or private partner

Revenues for doing all kind of transshipment activities, storage or other business services - depends to the special company, what kind of business the offer (perhaps custom services, packaging, logistic services, ...).

3.1.6 Property rights transferred from the Grantor to the concessionaire/lessee

Usually you use “supraedificate” or construction law (“Baurechtsvertrag”) regarding the erection of assets (buildings) on foreign ground; all other items are clearly defined in Austrian laws to whom assets belong or have to be fixed in the contracts (e.g. underground facilities, asphalt, ...).

3.1.7 Requirements for minimum investment and performance

No regulations for investments if they are not fixed in a special contract for a special project; for quay usage: there is normally a minimum level of tonnage per meter and year, but it depends on the concrete business what kind of regulation will be fixed in a contract, because business is not a “demand-business” in Austria but a “supplier-business” and port authority has to look for companies which will use the infrastructure because there is surplus of capacity installed.

3.1.8 Agreements for the scope and type of port services operated

No specific legal act, scope and type must be fixed in the contract (usual procedure, no legal acts); red line is once more “non-discriminatory”, this is written in special sentences in the contracts

3.1.9 Rights and obligations towards existing personnel in ports/terminals

Personnel is dedicated to the employer in Austria (“Arbeitgeber”), otherwise you have to look for the special concession for temporary employment (“Arbeitskräfteüberlasser”); no temporary employment exist, every company has its own staff; if a company works for the other, you do it for the business service and you have to pay money for the service and not for the staff itself; if a port will “give his people” to other contractor for hourly basis, you work according to service contracts when working for others and you will be paid for it (b2b/ 2 x “GmbH”); only in special projects the Austrian “AVRAG” - employment contract law adaptation act - is necessary (perhaps when selling part of a company to a contractor or go into long term contracts).

3.1.10 Maintenance requirements for infra and suprastructure during concession or lease

Must be fixed in detail in the contracts; normally it is done in the way that 1) infrastructure is in the hand of the port and 2) superstructure is in the hand of the concessionaire and so it is clear which one is responsible for what part; but there can be other constructions, it depends on the special case and contract.

3.1.11 Early termination conditions

No special legal procedures for PPP; tailor-made fixation is necessary in the contract, depends on the special business and erected superstructure – otherwise the general business laws will come into force.

3.1.12 Role of port authority during the concession / lease period

Port company provides these services in the form of the “GmbH” – but in the small Austrian ports there are quite few of these services; monitoring system e.g. is a camera system in the port.

3.1.13 Treatment of land, infrastructure and equipment during concession

Distinct regulation is done in the contract, all kind of rights are defined between the partners; depends on the ownership, what must be regulated (principle: owner has the rights or gives rights to the user); a general right cannot be written, it depends on the special project and must be negotiated and put in the contract.

3.1.14 Participation of a port authority or grantor in concessionaire's company

Mixtures are not practiced know; but theoretically it can happen, but it would be more complicated to some special laws of the public ownership ("private investors test" or "pari passu" – so the owners of the port companies try to avoid constructions like this because it is really complicated for both partners and prefer clear systems.

3.1.15 Risk allocation and unforeseen events

It is fixed in detail in the contact according to the needs of the business, no general rule; risks of the quay are allocated to the port, risks of the rented land (incl. his own equipment / suprastructure) and the transshipment amount has the contractor.

3.1.16 Requirements for the experience of concessionaire / lessee

No additional special requirements – partner has to be a company ("GmbH") and has to bring good business figures ("KSV-rating" in Austria) and all the necessary papers for running a business (e.g. permission for logistic services, ...); regularly subleases are not allowed without information and written permission of the lessor – but conditions can be fixed within this process and the contract.

3.1.17 Direct negotiations and unsolicited proposal

In general, concessions ("great projects") are given after calls, (fulfilling al regulations of EU rights) – a very distinct process; direct negotiations only in "smaller cases" like ordinary settlement in the port areas – but: all these negotiations are proceeded in a general frame of contract items (rent price per m², quay fee, ...) and must be accepted be the supervisory boards of the ports (actually there is surplus of supply and not a surplus of demand !); due to the Austrian experience it is useful to negotiate within a frame of parameters and the two companies (port company and private company) can negotiate on a lot of details because every business is different from the other in order to bring the best result – bevor starting the result has to be accepted by the supervisory board – this procedure is quite practicable and useful.

3.1.18 Pre-qualification requirements

It depends on the detailed project – e.g. when a container terminal licence is offered, then other conditions will be written in the announcement as will be done when a licence for quay logistic (cranes, ...) will be let; it depends additionally on the scheduled time of the contract and the scope and the type of the business (e.g. service of railway company needs other pre-qualifications, special business ratings, etc.).

3.1.19 Return of land, facilities and equipment after the concession/lease period

In the first contract it is written what will be done by the end of the first contract time – is there a “negotiation process” or anything else or must the lessor make an additional call or etc. – as it is very seldom there is no great experience for this case (and everybody is happy if business will go on if both partners are satisfied – once more: because port/water business is not a “narrow business”, there is surplus of options and capacities.

3.1.20 Procedure in the case of disputes

Procedure according to general business law in Austria – judicial settlement process between two companies (sometimes court of arbitration is fixed in the contract before going to the judge) - no distinction for PPP-processes.

3.2 Main findings, messages and problems of PPPs in ports

Main findings and key messages:

- Finding / Key message 1: establish ports (port authorities) as companies according to private law, so every contract can be done like any other company in business processes
- Finding / Key message 2: give the ports (port authorities) great freedom to act as a really business partner for the private sector, but establish a control loop in the governance of the owners for supervising the general manager of the port company in order to make quick decisions on a documented base
- Finding / Key message 3: make it as simple as possible to create PPP-processes with the minimum requirements of EU laws (non-discriminatory, public announcement, public procurement)
- Finding / Key message 4: be flexible and work together – not against – the public partners, otherwise you will not be a good business partner and find a way to create “law security” for them, they need it in order to invest money

Main issues, problems and obstacles:

- No issues, problems or obstacles in Austria.

Solution proposals:

- No problems in Austria – no solutions required.

4 Slovakia

4.1 Regulations and practice of the PPP schemes in ports

4.1.1 Laws, directives, by-laws and other acts regulating PPPs

Following legislation determines and/or influences public-private partnership schemes in Slovakia.

1. Directive 2004/17/EC of the European Parliament and of The Council

Directive for public procurement in the fields of water management, energy, transport and postal services. This Directive constitutes a more lenient legal framework for the areas concerned compared to national law. For this reason, it would be likely that in the case of a dispute, the ECJ would have a direct effect on the provisions of the Directive. It may therefore be included among the sources of legislation.

2. Act no. 343/2015 Coll. on public procurement

The Act regulates the award of supply contracts, works contracts, service contracts, design contests, award of concessions for construction works, award of service concessions and administration in public procurement.

3. Act no. 278/1993 Coll. about state property management

This Act regulates the management of property owned by the Slovak Republic in the public and non-business sphere, which is performed by the asset manager of the state.

4. Act no. 513/1991 Coll. Commercial Code

This Act regulates the position of entrepreneurs, business engagement relationships, as well as some other business-related relationships.

5. Law 523/2004 Coll. on the rules of public administration

This law regulates

- a) budget of the public sector
- b) the budgetary procedure, the rules of budgetary management, the function and the preparation of the state final account and the summary annual report of the Slovak Republic
- c) the position of the Ministry of Finance of the Slovak Republic, other ministries and other central bodies of state administration and other legal entities of public administration in the budget process,
- d) the establishment of budgetary organizations and contributory organizations and the management of budgetary organizations and contributory organizations.

The Act regulates the area and the use of funds intended to finance the joint programs of the Slovak Republic and the European Union and the means intended to finance the purposes of international grant agreements concluded between the Slovak Republic and other countries and the procedures, legal relations, rights and obligations of persons in relationship to these means, unless otherwise provided in a separate regulation.

6. Act no. 583/2004 Coll. on the financial rules of territorial self-government

This law regulates

- a) local government budgets, which are the municipal budget and the budget of the higher territorial unit
- b) budgetary procedure, rules of budget management, preparation and approval of the final account of the municipality and the final account of the higher territorial unit,
- c) financial relations between the state budget and the budgets of the municipalities and the state budget and the budgets of the higher territorial units, the financial relations between the budgets of the municipalities and the budgets of the higher territorial units as well as the financial relations of the budgets of the municipalities and the budgets of the higher territorial units to other legal entities and natural persons.

7. Law 292/2014 Coll. on the contribution from the European Structural and Investment Funds.

This Act regulates the legal relations in the provision of the contribution in the 2014-2020 programming period, the procedure and conditions for the provision of the contribution, the rights and obligations of the contributors, the competence of the state administration bodies and local authorities in granting the contribution and the responsibility for the breach of the conditions for granting the contribution.

8. Resolution of the Government of the Slovak Republic no. 245/2005 Report on the creation of conditions for the implementation of projects with a private partnership

A government document analyzing the main benefits and risks of this method of building and financing public infrastructure and public service provision.

9. Resolution of the Government of the Slovak Republic no. 914/2005 on the draft policy for the implementation of public-private partnership projects (PPP)

Government resolution approving the draft policy for the implementation of public-private partnership (PPP) projects.

10. Resolution of the Government of the Slovak Republic no. 786/2007 on the proposal for the implementation of a public-private partnership (PPP)

Government resolution approving the proposal to implement a public-private partnership (PPP) technical assistance scheme. It also defines the following terms:

- a) the concept of PPP in general
- b) PPP on concessions for construction works, which will receive technical and financial assistance from the Ministry of Finance,
- c) concessions for construction work of central authorities of the SR.

11. Decree of the Public Procurement Office 171/2013 Coll., Laying down the details of the notifications used in the public procurement and their content

The Decree defines, among other, the content requirements of the following documents:

- a) Service Concession Notice
- b) Notice of the award of public contracts to contracts awarded by a concessionaire not a contracting authority.

12. Resolution of the Government of the Slovak Republic no. 80/2008 on the Proposal for Basic Methodological and Implementation Documents Related to the Management of the Technical Assistance Scheme for Public Private Partnerships

By Resolution, the Government of the Slovak Republic has adopted and approved the basic methodological and implementation documents related to the management of the Public-Private Partnership (PPP) Technical Assistance Scheme.

4.1.2 Available and permitted PPP schemes for ports

Since 2004, when preparations for the first PPP project in Slovakia have begun, PPP projects are used at national level in the sphere of road transport (construction of road infrastructure). A few projects in the area of territorial self-government can be identified. The basic legislation for public-private partnerships is Act No. 25/2006 Coll. on public procurement, the adoption of which Directives 204/18 / EC and 2004/17 / EC were implemented. The Public Procurement Act regulates public procurement as a *lex generalis* and also contains a legal regulation of concessions.

Therefore, Slovak legislation does not explicitly define any special regime for port-based PPP projects. All the terms of the concession contracts (PPP model based on risk distribution, financing, liability, etc.) are the result of agreement between the parties. Agreement cannot be against the law.

4.1.3 Types of concessions and/or long-term leases in ports

The Public Procurement Act divide concessions to:

- Concessions for construction works
- Service concessions.

A concession for construction works is a contract in which the consideration for the construction work to be carried out is either the right to use the building for an agreed time or the right related to the cash performance.

A service concession is a contract in which the consideration for the services to be provided is either the right to use the services provided at an agreed time, or the right related to a cash payment.

In the case of a concession having as its object the execution of the works and the provision of the service, the concession shall be assessed by reference to the main subject of the concession.

Concessions, the parts of which are inseparably linked and objectively form an indivisible whole, are governed by the rules applicable to the main object of the concession; in the case of a contract involving a service concession element and an element of the supply contract, the principal subject shall be deemed to be the one whose estimated value is the highest.

PPP by form

There are many different forms of PPP projects. Most often they are divided into four groups. They distinguish between the ownership of PPP assets and the sharing of risks between the state and the private partner:

1. PPPs with prevailing risks on the part of the public sector,

This form is currently used in our country. This includes turnkey construction, outsourcing, leasing, etc. Property ownership remains the state and private partner is responsible only for precisely defined tasks with limited liability.

- **D & B - Design & Build** (design and construction). The private partner designs and builds the infrastructure according to the state's requirements for a fixed amount, with the risk of exceeding the costs borne by a private partner. As a private partner does not own or operate a building, it does not risk that the investment will be loss-making or will lose its operational capacity over time.
- **O & M - Operation & Maintenance**. The private partner only operates and maintains the infrastructure, but ownership remains state-owned. It is currently a commonly used outsourcing.

2. PPPs with a higher share of risks on the private partner side, but with public finance guarantees

These are long-term projects, often twenty years or more. They are financed with the prevailing state resources. The private partner has the responsibility that the building meets all the prescribed criteria but is not responsible for whether or not the infrastructure will be available to the public.

- **BOT - Build Operate Transfer** (construction, operation, transfer of ownership to the state). Infrastructure financing is fully guaranteed by public finances and, in the event of a project failure, for example because of the loss of investment, the consequences are borne by the state. As a rule, a private partner has a minority shareholding in the SPV.
- **DBOT** - as a BOT, but the design is provided by a private partner. In Slovakia there have been projects of this type in the field of heat supply called "Energy Performance Contracting". The private partner has ensured a complete reconstruction of the central heat supply system, and the public administration sector has for a long time been committed to paying the same (or slightly lower) heat supply charges than before the reconstruction. The investment was repaid from the savings achieved.

3. PPPs with prevailing risks on the private partner side

In this group, the risk transfer to a private partner is substantially higher. The owner of the infrastructure is a purpose-built company (SPV), financing is provided by project financing or leasing. In many countries, only this group of private partnership projects is considered to be a PPP because they are implemented without the provision of public finance guarantees.

- **BOOT - Build Own Operate Transfer** (construction, ownership of infrastructure by private partners, operation, transfer of ownership). The private entity finances, builds, owns and operates the infrastructure, transfers property to the state after the end of the contract period.
- **BOOT concession** - same as BOOT but with concession. The private entity, on the basis of the concession, finances, builds, owns and operates the infrastructure, transfers the ownership to the state after the concession ends. Granting a concession gives the project more comfort in terms of its financing, because it is a form of "guarantee".
- **DBFM - Design Build Finance Maintain** (project, construction, financing and maintenance, or maintenance concession). Ownership share of a private partner in the SPV may vary and may change over time according to the development of the project. After the end of the project, assets go to the public administration sector.
- **DBFO (T) - Design Build Finance Operate (Transfer)**, (project, construction, financing, operation and transfer). Such a contract allows a private partner to design, finance, build (or reconstruct) the infrastructure he then runs, and transfers ownership of the state after the concession ends. Such a project has a transparent selection of a concession granted over a long period of time.

4. PPPs on the border of privatization and private ownership

- **B00 - Build Own Operate** (construction, ownership, operation). The private partner finances, builds, owns and operates the infrastructure permanently. State interests are enforced through a regulatory body, or contractually agreed competencies for the state, such as checking agreed criteria, and so on. Since full privatization, this type of project differs, for example, by the fact that the public sector has the right to withdraw from pre-established

contractual reasons and must ensure the economic and substantive regulation of that entity if it gives the private partner a monopoly position.

In the ports of Slovakia, all the above-mentioned forms of concessions can be applied, with the view that, for the future, from the point of view of the application of PPP projects in ports, it would be from the perspective of the company Ports, a.s. the best solution is to use PPP projects with prevailing risks on the part of a private partner when, after the end of the contractual period, the ownership will be transferred to the state, a company using public funds.

4.1.4 Fees types and methodology for determination of concession or lease fees

The best way to come up with a proposal for a payment mechanism is to start what the developer would consider an ideal scenario. Ideally, the payer would pay to the private partner payment after the end of the period and as a fixed amount only and exclusively for each unit of the service provided that met the qualitative criteria. This would be in line with the PPP principles that should make payments only when the service is available, of the agreed quality, and should not be designed merely as a mark-up for the real costs of a private partner (PPPs should not function as a freight contract). The ideal payment mechanism provides a strong incentive for a private partner to fulfill his obligations and should also carry significant risks to him.

On the other hand, it is necessary to avoid situations where these risks are excessive or disproportionate. Excessive risks would be that would cause a private partner to claim a premium that is not an adequate benefit from higher efficiency. At the same time, it would mean that a private partner would either generate excessive profits or, on the contrary, face significant losses. The design of the payment mechanism should thus ensure a balanced remuneration and risk relationship for a private partner. The following adjustments to the payment mechanism are considered:

- a. indexing the payment (the payment components) so that the risk of inflation remains on the public partner,
- b. costs and risks outside the control and reach of a private partner may be passed on to the public sector (in any case such mechanisms should be generally limited and very precisely defined);
- c. declines for inferior performance should not only be symbolic and should have a relatively significant impact on the return on equity but, on the other hand, they should not be even disproportionately high so that the less significant problems cause default on credit commitments. It is true that the deductions should reflect, in particular, the degree of deficiencies and the loss resulting from a public partner or users from a lower quality of service or unavailability,
- d. the emphasis must be on ensuring that the payment mechanism does not provide room for unwanted motivations.

For the purpose of long-term lease contracts, the calculation of the fee in the past was subject to the Decree of the Ministry of Finance of the Slovak Republic no. 465/1991 Coll. on prices of buildings, land, permanent crops, payments for the establishment of the right of personal use of land and compensation for the temporary use of land. At present, fees are determined by agreement between the parties on the basis of the relevant expert opinion in the light of current market conditions.

4.1.5 Types of revenues and charges of a concessionaire or private partner

Types of payment mechanisms

The highest possible involvement of a private partner in a PPP project is through a concession when the private partner is responsible for the complete implementation of the project (design, construction and operation) including financing, and recovers its costs from the collection of payments from end-users of the public service and thus runs the risk of demand. This type of PPP is particularly suited to projects that provide an opportunity for introducing user fees, for example, in the case of transshipment.

Payments in the form of fees, tolls or similar items are usually proposed by the concessionaire himself, in the case of a critical infrastructure or the real impossibility of using a different alternative to secure the user's needs may be subject to the amount of payments approved by the contracting authority. Transferring the risk of demand to the concessionaire means that the concessionaire will take over the risk of future long-term consumer behaviour of infrastructure users. It is generally appropriate in particular in cases where:

- a. it is a type of infrastructure / service that is commonly used commercially but there is also a public interest in regulating the service or infrastructure to a certain extent,
- b. the demand for infrastructure / service is predictable in the long term and is ideally dependent on the performance of the private partner and the quality of the service it provides,
- c. the tenderer is able to wholly or to a large extent renounce the subsequent possibility of significantly affecting service pricing and pricing.

If the risk of demand between the grantor and the private partner is to be shared, then the payment mechanism will be structured in much the same way as the so- shadow toll, which means the payer's payment to a private partner, which is partly or wholly deducted from the rate of use of the infrastructure or service. If the contracting entity takes full risk of the demand (or a majority thereof), the payment mechanism will take the form of a payment for availability (i.e. the payment to the private partner for the availability of the infrastructure or service of the required quality).

4.1.6 Property rights transferred from the Grantor to the concessionaire/lessee

Under the Public Procurement Act, this Act does not apply to the acquisition or acquisition of existing buildings or the lease of existing buildings or other immovable property in any form of financing.

The developer will consider in advance, according to the type of PPP project, who will be the owner of the project asset (eg real estate built within the project) and how the right to use it will be solved. The processor will consider who will be the owner of the asset used to implement the project. Except where this is excluded by special legislation, the project may be set up by the owner of the project (ie a private partner builds the infrastructure directly in the ownership of the contracting entity) or through the duration of the contract, the property owned by a private partner who termination of the contract shall be transferred to the contracting authority.

One of the key considerations in assessing the issue of the ownership of a private partner (which may be optimally taxable in some respects) or the contracting entity is the consequences of the possible bankruptcy of a private partner and the risk that the property owned by a private partner that is part of the project will become part of the insolvency and the contracting authority will lose control over it. This risk can not be completely avoided under current legislation.

In relation to the regulation of property law relations, due attention will be paid in the context of legal due diligence in particular to regulations regulating the management of state and territorial assets. The processor will focus on conditions relating to transfers of property of the State or territorial self-government, or the provision of such property to third parties, on the assumption that such property may be used for the project. The processor always verifies that the proposed model of ownership arrangement (eg, mode, scope, and length of provision of infrastructure built into use by a private partner) is complied with in accordance with these regulations.

The arrangement of property law relationships may also predominate to a large extent in some sectoral rules, so if relevant, the processor will investigate whether and how the arrangement of property law relations will affect. If certain restrictions or obligations arise from internal regulations or documents regulating the activities of some of the contracting entities (e.g. the constituent charters of contributory organizations) (for example, the consent of the creator to certain dispositions of property), the processor will assess how these documents will affect its progress in the implementation of the project.

The PPP Agreement deals with the ownership of the assets that are the subject of the contract. Traditionally, it is mainly land, infrastructure built and its equipment. In assessing whether these assets are the property of the contracting entity, the contracting entity should consider several of the following aspects:

- legislation,
- tax consequences,
- bankruptcy law.

The text of the PPP contract must clearly indicate which of the contracting parties - the contracting entity or the private partner is resp. will be the owner of the land on which the construction of the infrastructure will take place. In relation to legislation, however, the

contracting authority must carry out a legal analysis as to whether it is legally possible for the private infrastructure to be owned by the private partner.

If the legislation permits the construction of the infrastructure in the assets of a private partner, the contracting authority will consider possible tax impacts that greatly affect the financial flows of the project and, at the same time, assess the possible consequences of the bankruptcy law in force if the infrastructure was owned by a private partner.

Apart from ownership on the part of the contracting entity or private partner, it is possible in practice to apply a combined ownership model in which the contracting entities will own part of the infrastructure necessary for the provision of public services (including equipment) and, if necessary, retain only those parts of the infrastructure owned by a private partner, which are not intended for the direct provision of the public service, but as a complementary commercial infrastructure.

4.1.7 Requirements for minimum investment and performance

Public procurement legislation does not imply any conditions for a minimum investment, a concessionaire, or the achievement of a certain production capacity. Concession conditions are the result of prior mutual agreement between the parties, which may not be contrary to the law.

In the context of the "PPP Project Preparation and Implementation Process and Control Process", it is recommended that the contracting entity considers PPPs only for projects with estimated investment costs above EUR 10 million (or where the value of the interim service is of adequate value).

4.1.8 Agreements for the scope and type of port services operated

Services provided in port in the case of concessions are not regulated by any legal act, documents. It is up to the contracting parties to provide what services to agree.

In the case of PPP projects, it is necessary for the European Commission to approve an operational program to specify the project and the services to be provided to it.

4.1.9 Rights and obligations towards existing personnel in ports/terminals

In the case of a PPP project, the private partner will assume responsibility for securing the activities that have been provided so far by the specific personnel of the procuring entity, the feasibility study processor will assess the legal consequences of the assignment of the contracting entity's employees to the private partner.

This transfer can take place under the regulations of the Labor Code, which stipulates that if the role or activity of the employer or part of the employer is transferred to another employer, the rights and obligations of the employment relationship are transferred to the transferred employer by the transferred employer.

The processor will define the range of staff involved in this transition because it will be one of the aspects that will undoubtedly be considered by the tenderers in the procurement process and will also affect the feasibility, the costs and the risks of the project as well as the socio-economic impact of the project.

4.1.10 Maintenance requirements for infra and suprastructure during concession or lease

The issue of rights to infra structure and superstructure is discussed in more detail in the "4.1.6 Property rights transferred from the Grantor to the concessionaire / lessee" within the definition of the right of ownership between the contracting authority and the concessionaire.

4.1.11 Early termination conditions

The PPP project contract is concluded for a relatively long period and during this period it may be reasonably premature to terminate it for various reasons. Even if early termination should be rather exceptional, it is necessary to pay special attention to negotiating these provisions (and the compensation paid). These provisions contain a significant part of the risk transfer and can significantly influence the incentive of the private partner and the quality of the services provided.

The reasons for the withdrawal of the contract as well as the manner and consequences of withdrawal are primarily defined within the concession dialogue / wording of the concession contract text.

Typical situations where early termination is relevant are:

- termination by private partners for the failure of the contracting entity;
- voluntary early termination by the contracting authority;
- termination by the contracting authority for the failure of a private partner;
- termination by the contractor for corruption;
- termination for the dishonesty of a private partner
- termination by either party due to a force majeure event.

Each of the above situations should treat the contract in detail, including setting the conditions for granting and calculating the compensation of a private partner.

Legislation by the Public Procurement Act:

The contracting authority / entity may withdraw from the concession contract if:

- at the time of its closure, there was a reason to exclude the supplier or concessionaire from non-fulfillment of the participation condition under that law
- The Slovak Republic has breached the obligation arising from a legally binding act of the European Union claiming the contracting authority or the contracting entity has breached the obligation arising from this legally binding act decided by the Court of Justice of the European Union in accordance with the Treaty on the Functioning of the European Union.

- The contracting authority / entity may withdraw from the part of the contract or concession contract that substantially changed the original contract or concession contract and required new public procurement.
- The contracting authority and the contracting authority may withdraw from the concession agreement concluded with the tenderer who was not entered in the public-sector registrar at the time of concluding the concession contract or was deleted from the register of the public-sector partners.

This does not interfere with the right of the contracting authority or the contracting authority to withdraw from the concession contract or part thereof under a special regulation (eg Commercial Code, Civil Code.) However, the Commercial Code, like the *lex generalis*, contains a very general waiver of the contract. According to him, the contract may be withdrawn only in cases stipulated by the contract or the law.

Termination payment

Termination payment is an important part of the economic assessment and determination of project financing, as this payment sets out the limits of the risk of loss of return (principal and interest, shareholder profit). For this reason, an important part of the PPP contract is a provision on payments made to a private partner in case of early termination because it is a project that is bound by a concession period and whose value is estimated on the basis of project risk for a specific time frame.

From the perspective of the contracting authority, termination provisions are an important aspect of risk transfer. The termination payment can be divided into several basic types due to termination of the concession contract:

- a. withdrawal from the contract due to violation by the concessionaire,
- b. withdrawal from the contract on grounds of breach by the contracting authority,
- c. the termination of the contract due to a force majeure event,
- d. withdrawal from the contract by the contracting entity without giving any reason.

Withdrawal from a contract due to a violation by a private partner can be foreseen for reasons of serious violation of the contract by a partner (at the same time a reasonable deadline for notification and removal of grounds for serious breach of contract, preparation of a correction plan, the introduction of a tightened monitoring regime and the possibility of a private partner of the terms of the PPP contract). These reasons may include:

- any significant breach of contract with the effect on quality or timing of construction works and service provision,
- a breach of contract which prevents the contracting authority from performing its duties or providing the public service concerned,
- repeated violations by private partners of other non-critical provisions of the concession agreement,
- bankruptcy, restructuring, or liquidation of a private partner,

- non-compliance with important project dates,
- non-compliance with performance standards documented by reaching a certain number of penalty points,
- repeated or permanent unavailability in the agreed range,
- corrupt practices on the part of a private partner.

Compensation for a breach of contract by a private partner should take due account of the fact that the reason for the termination of the contract was the failure of the partner. Therefore, in the present case, the termination payment should not be paid for the partner's planned profit, on the contrary, the payment should take into account the costs of the contracting authority related to the alternative service provision, the loss of users resulting from unavailability. On the other hand, the opposite effect of the too restrictive set-up of the termination payment should be considered, for example through excessive fines or little consideration of the value given by the private partner as this will affect the risk assessment by the institutions financing and the subsequent over-execution of the project. Reasons for withdrawal due to breach of contract by the contracting entity should be materially equivalent to the reasons for withdrawal from the contract in case of breach of contract by a private partner.

It can be expected that the main serious breach of the contract by the contracting authority would be repeated retention of payments or non-payment. Payment in this case will most likely have the character of a final financial settlement on a contractually negotiated contract, in order to secure the project's economic outcome from the point of view of the private partner as presented in the tender. In the event of a contractual possibility to terminate the contract without giving any reason, the compensation should normally be the same as in the case of termination due to breach of the contract by the contracting authority.

4.1.12 Role of port authority during the concession / lease period

Public Ports, jsc was established on 21 January 2008 under the Act No. Act No. 500/2007 Coll., Amending Act No. 338/2000 Coll. on inland navigation. The founder of the company is the Slovak Republic, in which the Ministry of Transport and Construction of the Slovak Republic acts.

Public Ports, jsc is responsible for:

- ensuring the preparation and realization of the construction of public ports in the Slovak Republic, together with the elaboration of long-term and short-term concepts of their development,
- ensuring the operation, maintenance and repairs, as well as the registration of facilities and facilities in the territorial districts of public ports,
- renting land in the territorial districts of public ports and other activities directly related to the loading of property in the territorial districts of public ports,
- collecting payments for the use of public ports,
- creating the conditions for the development of combined transport, including the handling of combined transport cost units.

Within the limits of these activities, the company provides public procurement and supervising the fulfilment of existing contracts. Other activities such as towage, pilotage, VTS, gate/access controls and checks are carried out by the private company Slovenská plavba a prístavy a.s.

Public bodies

- **Public Procurement Office**

The Public Procurement Office is the central authority of the state administration for public procurement. It supervises compliance with the obligations of the contracting authority, the contracting authority or other controlled entity by law. In the performance of supervision, the Office also monitors the fulfilment of the obligations imposed by the Office's decisions. It is "a professional guarantor in the field of public procurement, supervising the principles of transparency, equal treatment and non-discrimination of tenderers and candidates, as well as the principles of economy and efficiency in the spending of funds". Its role is to "ensure the conditions for the correct implementation of Act No. 343/2016 Coll. on Public Procurement and on Amendments to Certain Acts".

Public Procurement Office in the supervision process

- a) issues notices of compliance or inconsistency of the documents submitted with the Public Procurement Act (Ex ante Assessment)
- b) issues relevant decisions,
- c) imposes fines for administrative delicts

- **Ministry of Transport and Construction of the Slovak Republic**

The public-private partnership project section fulfils mostly the following tasks:

- a) fully manage the preparation and implementation of public-private partnership projects
- b) comprehensively manage the processes related to the fulfillment of the procedures according to the methodological documents of the Ministry of Finance of the Slovak Republic for the area of public-private partnership projects

- **Ministry of Finance of the Slovak Republic**

The Department of Financial Instruments and International Institutions mainly performs the following tasks:

- a) ensures the preparation and updating of methodological documents for PPP projects,
- b) coordinates the preparation of opinions on individual forms of implementation of PPP projects,
- c) represents the Ministry of Finance of the SR in the European Center for Expertise in the Field of PPP (EPEC)
- d) draw up opinions and comments on proposals for measures to promote economic growth in public-private partnership (PPP) projects in cooperation with the value-for-money unit.

4.1.13 Treatment of land, infrastructure and equipment during concession

The issue of rights to infra structure and superstructure, as well as land and real estate rights, is dealt with in the "4.1.6 Property rights transferred from the Grantor to the concessionaire / lessee" within the definition of the right of ownership between the contracting authority and the concessionaire.

4.1.14 Participation of a port authority or grantor in concessionaire's company

The public procurer may, when awarding a concession, require the creation of a joint venture to be awarded the concession. The Joint venture is a legal entity that was established by the trustee together with the concessionaire for the purpose of concession. The Joint venture is also a legal person established by a concessionaire in which the capital of the State was incorporated under the concession agreement.

The activities of the Joint venture may be exclusively activities related to the implementation of the subject of the concession contract. The contracting authority and the contracting entity shall conclude a concession contract with a legal person that is a joint venture.

The only port authority in Slovakia is the Public Ports, jsc. However, its activities are exhaustively defined by the law on which the company was founded. Public ports, jsc, it is not entitled to set up a trading company or acquire a stake in an existing trading company. It would be necessary to change the law to create a joint venture.

4.1.15 Risk allocation and unforeseen events

The risk transfer must be clearly defined, and it is also necessary to take into account the conditions under which the risks are passed on to the parties involved. If a private partner would bear most of the risks, it could cause an unnecessary overrun of the project or the impossibility of financing it. Determining the risk carrier is not a problem in some cases. For example, the risk of non-compliance is borne by a private partner. This will be reflected by the fact that the public partner begins to pay for mandatory payments only after putting the construction into operation.

The private partner must also count on certain risks of changes such as rising construction costs or supply delays. Such risks are usually taken over by a private partner. In case of risk of changes in the tax area, this risk takes on the public partner. It is important to consider all types of risks that may occur in a particular project and to take them into account in the award of the contract, as they may affect the establishment of quality standards and performance requirements, the timing of delivery and the period during which the private sector may benefit from the performance and also on the total cost of the contract and the possibility of increasing it. In a public-private partnership, it is crucial that some of the risks associated with securing a particular property be borne by a private partner, and this must be a significant risk.

Construction risk includes cases such as delay of building submission deadline, failure to comply with valid standards, technical deficiencies, breaches of environmental standards, cost overruns, and others. In order for the State not to take this risk, the conditions laid down in

the contract should be that the state will not pay the agreed annual payments in case of non-compliance with the prescribed deadlines, timetable, budget, standards and agreed specifications.

Availability risk indicates that the infrastructure or service has predefined parameters and is publicly available. The fact that the state does not take the risk of being available is that its periodic payments to a private partner are automatically and significantly reduced if the infrastructure or service is not available to the public as agreed in the contract, does not work or does not meet technical, environmental or other standards.

Risk of demand poses a risk of interest in the given infrastructure or service. Lower-than-expected demand may cause a financial loss to the supplier. Interest in the given infrastructure or service can affect competitive projects, the ability of end-users to pay the specified prices, and so on. The analysis of these three risks serves to determine whether a PPP-funded project is included in the public finance budget or not.

Force majeure, based on past practice, does not constitute an entitlement to claim against the other Contracting Party claims for breach of contract obligations by the Contracting Party if an event of force majeure occurs and the respective Contracting Party can not fulfil its obligations under this Contract because of force majeure. The Contracting Party shall be bound by the power to interfere with force majeure without delay informing the other Party. Due to the complexity of the PPP projects, details of the procedure in case of force majeure are contained in the concession contract.

Higher power is regulated in the Civil and Commercial Code. The PPP projects are considered to be a subject to the commercial law. The Commercial Code regulates force majeure only for delays. In the Commercial Code mode, the borrower can only defer liability for delays if he is in delay due to the creditor's delay. For other reasons, the debtor cannot be held liable for delays. The disclaimer of liability for delay due to force majeure is therefore inadmissible.

4.1.16 Requirements for the experience of concessionaire / lessee

The legislation divides the conditions for participation in public procurement into three categories:

- *Personal status*
- *Financial and economic status*
- *Technical competence or professional competence*

Personal status and Financial and economic status are described in 4.1.18 Pre-qualification requirements.

Legislation sets out the conditions for participation in public procurement in general. For the purposes of a specific public procurement / concession, Public Ports, jsc to determine the individual technical, economic and other requirements of the tenderer in the tender specifications and in the tender specifications.

Technical competence

Technical competence or professional competence shall be demonstrated by the nature, quantity, importance or use of the supply of goods, works or services evidenced by one or more of the following documents:

- a) a list of supplies of goods or services provided for the preceding three years (if necessary to ensure an appropriate level of competition, the contracting authority and the contracting authority may specify for a prolonged period) from the award of the contract, indicating the prices, delivery terms and purchasers; the document is a reference if the customer was the contracting authority or the contracting authority under this Act,
- b) a list of the works carried out over the preceding five years from the award of the contract (if necessary to ensure an appropriate level of competition, the contracting authority and the contracting authority may specify for a longer period), indicating the prices, places and times for the execution of the works; the list must be accompanied by a certificate of satisfactory execution of the works and the assessment of the works carried out under the terms of the business and if the purchaser
 - a. was the contracting authority under the Public procurement act, the document is the reference,
 - b. was a person other than the contracting authority or the contracting authority under this Act, proof of performance shall be confirmed by the customer; if such a confirmation is not available to the tenderer, by a declaration of the tenderer or seeking to carry it out, accompanied by a document proving their performance or the contractual relationship on the basis of which they were made,
 - c. information on technicians or technical bodies, especially those responsible for quality control, regardless of the contractual relationship they have with the candidate or tenderer; in the case of a works contract, those to which the tenderer or the tenderer may apply for the work to be carried out,
 - d. a description of the technical equipment, the study and research facilities and the arrangements used by the applicant or the applicant for quality assurance,
 - e. in the case of complex goods to be supplied or goods intended for specific purposes, by checking the production capacity of the tenderer or the tenderer carried out by the contracting authority or the contracting entity or on its behalf by the competent authorities in the country of the place of business, habitual residence of the tenderer or candidate and with the consent of that authority; if necessary, by checking the available study and research facilities and the quality of the control measures in place,
 - f. in the case of complex services or services for specific purposes, the technical competence of the tenderer or the tenderer performing the service carried out by the contracting authority or the contracting authority or on its behalf by the

- competent authority in the country of establishment or place of business or habitual residence of the tenderer or candidate and with the agreement of that authority; if necessary, by checking the available study and research facilities and the quality of the control measures in place,
- g. in the case of works or services, data on education and professional experience or professional qualifications of persons designated to perform the contract or concession contract or the managerial staff unless they are a criterion for the evaluation of tenders,
 - h. by indicating the environmental management measures that the tenderer or the candidate applies to performance of the contract or concession contract,
 - i. in the case of construction works or services, data on the average annual number of employees and the number of managerial staff over the previous three years,
 - j. information on the machinery, operation or technical equipment available to the tenderer or candidate for the execution of the works or the provision of the service,
 - k. supply chain management and tracking information that the candidate or candidate will be able to use when performing a contract or concession contract,
 - l. by indicating the proportion of the performance of the contract or concession contract that the tenderer or the tenderer intends to provide to the subcontractor,
 - m. in the case of goods to be supplied,
 - i. samples, descriptions or photographs, the authenticity of which must be verified if the contracting authority / entity so requires or
 - ii. certificates or endorsements with clearly identified references to technical specifications or technical standards applicable to goods issued by quality control authorities or designated conformity assessment bodies.

Tenderers or candidates may use the technical and professional capacity of another person to prove their technical competence or professional competence, irrespective of their legal relationship.

In such a case, the tenderer or tenderer must demonstrate to the contracting authority / entity that in the performance of the contract or concession contract, he or she will actually use the capacity of the person whose capacity he / she uses to demonstrate his / her technical competence or professional competence. The fact of the second sentence shall be demonstrated by the tenderer or tenderer by a written contract concluded with the person whose technical and professional capacity is to prove his technical competence or professional competence. The written agreement must indicate the person's obligation to provide his / her capacity throughout the duration of the contractual relationship. A person

whose capacity is to be used to demonstrate technical competence or professional competence must demonstrate compliance with the terms of participation regarding personal status and there must be no grounds for exclusion; the right to deliver goods, to perform construction works or to provide the service proves in relation to that part of the object of the contract or concession for which the capacities were provided to the candidate or tenderer. In the case of a requirement relating to education, professional qualifications or relevant professional experience, in particular pursuant to paragraph 1 g), the tenderer or candidate may only use the capacity of another person if he / she will actually carry out the construction works or services for which the capacity is required.

The contracting authority / entity may require that the tenderer or candidate and any other person whose capacity is to be used to demonstrate technical competence or professional competence are responsible for the performance of the contract or concession contract jointly.

In the case of a supply contract which also includes the activities related to the placement, assembly and installation of goods, the provision of services or the execution of works, the technical competence or professional competence of the tenderer or the person seeking to carry out those activities shall be assessed, in particular, with regard to his / her ability, efficiency and reliability.

4.1.17 Direct negotiations and unsolicited proposals

Direct negotiation procedure

The direct award procedure may be used by the contracting authority only if at least one of the following conditions is fulfilled:

- a) no tenderer or tenderer has submitted a tender or documents demonstrating compliance with the conditions for participation in a previous call for competition or in a restricted procedure, or none of the tenderers or candidates fulfills the conditions for participation or none of the tenders, without substantial changes, satisfies the requirements and requirements specified by the contracting authority for the subject of the contract; and provided that the original terms of the contract are not substantially altered,
- b) goods, works or services may be supplied only by a particular economic operator, if:
 - the subject of the contract is the creation or acquisition of a unique artwork or artistic performance,
 - for technical reasons, there is no competition and provided there is neither a reasonable alternative nor a substitute and the lack of competition is not the result of an artificial narrowing of the procurement parameters or
 - Exclusive rights and provided that there is no adequate alternative or substitution and lack of competition is not the result of an artificial narrowing of the parameters of public procurement,
- c) a contract for the supply of goods, for the execution of works or for the provision of a service is awarded on account of an exceptional occurrence uninformed by the

- contracting authority which it could not have foreseen, and in view of the timing of the tendering procedure, a restricted procedure or negotiated procedure with publication,
- d) the goods required are produced exclusively for research, experimental, study or development purposes; it does not apply to large-scale production-related economic activities or to the cost of research and development,
 - e) it is the supply of additional goods from the original supplier for the partial replacement of the normal goods or equipment or the extension of the goods or equipment already supplied where a change of supplier forces the contracting authority to obtain material of different technical characteristics which would cause incompatibility or disproportionate technical difficulties in the operation or maintenance; the duration of such a contract as well as the recurring contracts may not exceed in aggregate three years,
 - f) the supply of goods whose prices are quoted, and which are directly purchased on a commodity exchange,
 - g) it is the procurement of goods offered under particularly advantageous conditions by the liquidator, the administrator or the executor,
 - h) is a service contract following a design competition made under this Act and awarded to a candidate whose proposal has been evaluated by the jury as a winner or one of the winners in the design contest; if more than one winner is involved, the contracting authority must invite all to the negotiations,
 - i) new works or services consisting in repeating identical or comparable works or services carried out by the original supplier, provided that:
 - are consistent with the core project, which lists the scope of possible additional construction works or services and the terms of their assignment,
 - the original contract was awarded by public tender, restricted procedure, negotiated procedure with publication, competitive dialogue or innovative partnership, and information on the award of the contract by direct negotiation was already part of the notice of award of the contract awarding the original contract,
 - Repeated award is made within three years of the original contract.

The Procurer may proceed with preliminary consultations with representatives of the private sector are an important phase of the project preparation. The public sector learns whether the project is interested in the private sector and also analyses the economic viability of the project. Project promoters can submit their offers as well as innovations. And just such competition between investors can lead to a reduction in the set price of the project. However, it is important that such consultations take place before the public procurement starts.

The very fact of involving the private sector is not in itself a guarantee of efficiency. The delegation of public sector functions makes sense if the private partner is sufficiently motivated by the specified performance conditions that would otherwise be difficult to achieve. Throughout the process of implementing the project, it is therefore crucial that

maximum competition between tenderers is induced to discover as much as possible the potential of potential private partners (eg pressure to reduce prices, design of innovative solutions, etc.). Since the competitive dialogue is the most elaborate public procurement procedure for complex PPP projects.

This process allows you to find the best project solution in the form of a dialogue with potential private partners. Within the framework of its own dialogue, the contracting authority, with qualified tenderers, shall submit proposals for the solution and the draft contract, which should be part of the dialogue documentation. Talks with individual bidders can take place in several rounds, separately with each candidate for confidentiality. It is true that the procuring entity cannot, without the consent of the tenderer, provide its draft solution or other confidential information obtained from it. For the purpose of each negotiation, the contracting entity shall prepare in advance a negotiation procedure covering the subject matter and scope of the negotiation which is the same for all tenderers and from which it is not possible to deviate. Very often, it is not possible to provide all relevant information and data (whether due to a large scale, format or because they were not yet available) only in the form of an informative document prepared for the competitive dialogue or its final version. In practice, therefore, the data room is often used, which contains various factual information, and which can be opened not only during the competitive dialogue but also during the tender submission period. For each negotiation held, the contractor should draw up a separate protocol or in the same structure for all, with all its substantive conclusions from the negotiations that are relevant in terms of concretizing the proposed solution. The tenderer can conduct negotiations in several successive stages to reduce the number of solutions, in particular by reducing the difficulty of conducting a dialogue on a number of different solutions. This exclusion shall be based on the quantifiable elimination criteria selected for the evaluation of the tenders referred to in the contract notice or in the information document. However, such a procedure must always be maintained and allowed for competition.

The developer continues the dialogue until he selects a solution (one or more) that meets his needs and requirements. The outcome of these negotiations should therefore be to select the most advantageous solution for the contracting authority, both technically and financially and legally. Upon completion of the competitive dialogue, the contracting entity shall prepare the final version of the tender document and invite all tenderers invited to participate in the competitive dialogue to submit final bids. Even though the Public Procurement Act allows in fact to choose more than one of the solutions specified in the dialogue, the tenderer should submit a final draft PPP contract to the tenderers before the call for tenders, since variant solutions are almost never equivalent in terms of economic benefits, make evaluation difficult, and reduce the transparency and simplicity of the process. The Public Procurement Act regulates the statutory deadlines for the individual stages of the process, but the length of the competitive dialogue will vary depending on the complexity of the projects. In any case, with regard to the quality of the project preparation, the deadlines set by the contracting authority should in principle be longer than the minimum statutory deadlines, only in view of the fact that, bidders will take the form of multi-vendor consortia, will have to undertake comprehensive due diligence, will have to negotiate pre-financing agreements with banks, and prepare a draft technical solution, respectively. estimating the cost of complex output, which takes time.

Unsolicited proposals

Slovak regulation does not allow unsolicited PPP proposals.

4.1.18 Pre-qualification requirements

The legislation divides the conditions for participation in public procurement into three categories:

- Personal status
- Financial and economic status
- Technical competence or professional competence

Personal status

Only those meeting the following conditions for participation in a personal status may take part in a procurement procedure:

- a) neither he nor his statutory organ, nor a member of the statutory body, nor a member of a supervisory body, nor a prosecutor legally convicted of a criminal offense of corruption, a criminal offense to the detriment of the financial interests of the European Communities, an offense of legalization of the proceeds of crime, the offense of founding, the offense of terrorism, terrorist offenses and certain forms of participation in terrorism, a crime of trafficking in human beings, a criminal offense related to the conduct of a business or a crime of public procurement and public auction.
 - the applicant or the applicant demonstrates the fulfillment of the conditions attested by the extract from the criminal record not older than three months
- b) has no arrears of health insurance, social security and old-age pension contributions in the Slovak Republic or in the State of residence, place of business or habitual residence,
 - the applicant or the applicant proves that the conditions attested by a certificate issued by the Health Insurance Company and the Social Insurance Company are not more than three months old
- c) has no tax arrears in the Slovak Republic or in the State of residence, place of business or habitual residence,
 - applicant or candidate demonstrates fulfillment of the conditions attested by a local tax authority not earlier than three months
- d) has not been declared bankrupt, has not been restructured, is not in liquidation, nor has bankruptcy proceedings been instituted against it for lack of assets or bankruptcy proceedings for lack of assets,
 - applicant or candidate demonstrates compliance with the conditions attested by a confirmation of the relevant court not older than three months
- e) is entitled to supply goods, carry out construction works or provide services,

- the tenderer or candidate demonstrates that the condition is met by documentary evidence of the right to deliver goods, to perform construction work or to provide a service corresponding to the subject of the contract
- f) does not have a prohibition on participation in a public procurement confirmed by a final decision in the Slovak Republic or in the State of residence, place of business or habitual residence,
 - the candidate or candidate demonstrates the fulfillment of the condition, as evidenced by an affidavit
- g) has not, within the three years preceding the declaration or the demonstrable opening of a public contract, committed a serious breach of obligations relating to the protection of the environment, social law or labor law under special rules for which he has been legally sanctioned by the contracting authority and the contracting authority,
- h) has not, within three years from the date of the declaration or the demonstrable opening of the procurement, have committed a serious breach of professional obligations which the contracting authority and the contracting authority can prove.

Tenderer or candidate is considered to be eligible to participate in a personal status as per par. (b) and (c) where he has paid arrears or has been allowed to pay arrears in instalments.

If the applicant or tenderer is domiciled, habitually resident or habitually resident outside the territory of the Slovak Republic and the State of its registered office, place of business or habitual residence does not issue any of the documents necessary to prove compliance with the above conditions of participation and does not issue equivalent documents, it may be replaced by an affidavit the rules in force in the State of residence, place of business or habitual residence.

If the law of a candidate country or an applicant with a seat, place of business or habitual residence outside the territory of the Slovak Republic does not regulate the institute of affidavit, it may replace it by a declaration made before a court or administrative body, a notary or other professional institution or business institution, business or habitual residence of the tenderer or candidate.

Financial and economic status

Financial and economic status is generally demonstrated by the submission of:

- a) statements by a bank or a branch of a foreign bank,
- b) certificates of liability for damage caused by the pursuit of an occupation or of an insurance certificate for loss of business liability, where such insurance requires a special regulation,
- c) the balance sheet or statement of assets and liabilities, or data from them; or
- d) a general turnover report and, where appropriate, an overview of the turnover achieved in the area covered by the contract or concession, for the last three marketing years for which it is available, depending on the commencement or commencement of operations.

Tenderers or candidates may use the financial resources of another person to prove their financial and economic status, irrespective of their legal relationship. In such a case, the tenderer or tenderer must prove to the contracting authority / entity that in the course of performance of the contract or concession contract he will actually use the resources of the person whose position he uses to prove his financial and economic standing. The fact according to the second sentence is demonstrated by the candidate or tenderer by a written contract concluded with the person whose sources are meant to prove his financial and economic standing. The written agreement must indicate the person's commitment to provide performance throughout the duration of the contractual relationship. The person whose resources are to be used to demonstrate the financial and economic standing must demonstrate compliance with the terms of participation regarding personal status.

The contracting authority / entity may require that the tenderer or candidate and any other person whose resources are to be used to demonstrate the financial and economic standing are responsible for the performance of the contract or concession contract jointly.

If, for objective reasons, the candidate or tenderer cannot provide a document designated by the contracting authority or the contracting entity for the purposes of establishing the financial and economic standing, the financial and economic standing may be demonstrated by the submission of another document which the contracting authority / entity considers appropriate.

Requirements for **technical competence and professional competence** are described in 4.1.16 Requirements for the experience of the concessionaire / lessee.

The contracting authority may require

- Submitting a quality management system certificate
- Submission of a certificate issued by an independent institution certifying compliance with the requirements of the environmental management system standards.

4.1.19 Return of land, facilities and equipment after the concession/lease period

The regular termination of the contract and settlement of the parties takes place after the expiry of the period for which the contract is concluded. Upon completion, the Infrastructure Administration is returned to the Advertiser. This means that the private partner removes the assets that remain in his possession from the infrastructure, handing the "keys" to the client, copies of the project documentation, the employment agenda and the information needed to run the infrastructure and provide the services. The private partner shall deliver the infrastructure to the developer in the proper condition that meets the requirements that should be defined in the contract. It is important for the developer to be prepared for the postponement process in the sense of securing the condition foreseen in the contract, but also in the sense of assuming responsibility for the operation of the infrastructure or related issues (transfer of employees, etc.). At the agreed time before the termination of the contract (in the order of several quarters), the contracting authority should carry out inspections and rigorous inspections of the state of the infrastructure so that the conditions of the return are respected, and it is appropriate to have the right to withhold a certain percentage of the monthly payment to the private partner. This reserve fund shall be used by the contracting authority as a policy-

relevant insurance policy. Prior to the termination of the contract, the contracting authority may declare additional public procurement, in which the newly selected private partner will continue to provide the service.

4.1.20 Procedure in the case of disputes

Arbitration

The method of dispute resolution defined in the Concession Dialogue and therefore is the content of a concession agreement. Based on experience with PPP projects implemented in Slovakia, the primary means of resolving the dispute is its immediate referral to the representatives of the parties. The aim is to resolve the dispute without the need for a third party's meritorious decision. In the event of a mediation failure, the parties shall proceed according to the arbitration clause / arbitration clause contained in the concession agreement.

The General Court

By the above procedure, the jurisdiction of the General Court which is considered to be generally applicable, is under the Commercial Code excluded.

Administrative Procedure

Legislation defines, in relation to PPP, the administrative procedure, which is focused only on the pre-concession phase. It is therefore a matter of resolving a possible dispute before concluding a concession contract, not a dispute arising from it.

A tenderer, an applicant, a participant or a person whose rights or legitimate interests have been or may have been affected by the contracting authority or contracting entity may apply for remedy against

- a) notification of the intention to conclude a concession contract, a concession notice, a notice of a call for competition and a call for proposals
- b) the conditions specified in the tender documents, the concession file, the tender conditions or other documents provided by the contracting authority or the contracting authority within the time limit for the submission of tenders or proposals.

4.2 Main findings, messages and problems of PPPs in ports

Main findings and key messages:

- Little experience with PPP projects in Slovakia.
- The PPP projects that have been carried out so far only concerned the construction of motorways and road infrastructure, so practical experience of the port area is not available for the purposes of the study.
- Absence of a comprehensive code for PPP projects. Slovak legislation regulates them only marginally within the framework of the Public Procurement Act.
- Legislation of PPP projects is to a large extent general.

- The wide scope for parties involved in the PPP project provides the opportunity to adjust the mutual relations, rights and obligations by agreement so that the parties achieve the expected outcome.

Main issues, problems and obstacles:

- Lack of funding opportunities through PPP projects.
- Poor awareness of the possibilities of using PPPs.
- Land is a priority investment property of the state.
- Long-term lease of land.
- Method of determining payments.

Solution proposals:

- Increase of the time reserve for the preparation of operational programs, for PPP projects.
- Creating a comprehensive information system on PPP funding opportunities.
- Exemption of land from priority investment property.
- Termination of long-term lease agreements.
- Need to create a specific way of determining payments for individual PPPs.
- PPP landscape could benefit from introducing a positive PPP test covering all major public investment project. This measure would help identify projects where the PPP approach would yield significant benefits.

5 Hungary

5.1 Regulations and practice of the PPP schemes in ports

In case of Hungarian ports, there is no relevant PPP system, as most of them are owned and operated by private entities.

The Freeport of Budapest, the Port of Baja and the Port of Győr-Gönyü are already managed in a concession structure. As an example, the Freeport of Budapest Logistics has a 75-year concession contract with the asset manager state-owned company for the management and development of the Freeport.

Accordingly, there are three contracts, which can be used as a source of this topic. However, the mentioned contracts are classified as state secrets, so the access to the information is limited.

From the three above mentioned ports operating with concession contract, two were inclined to answer the questions listed below.

5.1.1 Laws, directives, by-laws and other acts regulating PPPs

Currently there are no existing laws, directives, by-laws, which regulate PPPs in Hungary. As mentioned above, three PPP contracts exist in Hungary. All three contracts were made for different and special situations, but in all of the three cases the law of the management of state assets must be considered.

Law of the management of state assets regulates among others that the high-value asset purchases must be organized by public procurement procedure.

5.1.2 Available and permitted PPP schemes for ports

Given that all three so-called PPP schemes in force in Hungary are unique and classified as state secrets, there are no available and permitted PPP schemes for ports yet.

5.1.3 Types of concessions and/or long-term leases in ports

In the ports of Hungary, according to the form of the ownership, mostly asset management contracts have been signed, but there are examples for concession contracts and form long-term lease contracts as well. The reason of this fact that these kinds of contracts have the potential to preserve, develop and manage properties.

Accordingly, the BOOT concession type is the closest version to the Hungarian practice. All contracts are binding on the concessionaire to carry out port activities, which is the same as the operating.

The concessionaire is committed by the contract to return all the land, property and tangible asset in accordance with their original condition after the expiry of the concession contract. This also means, that concessionaire must build and develop during the concession period.

5.1.4 Fees types and methodology for determination of concession or lease fees

All of the incomes and outcomes of the operating are charged to concessionaire. In returned for the operation, the concessionaire must pay for the rights of the operating, orderly. As an example, in Port of Baja, the concession fee is payed compared to the tons of stored goods.

5.1.5 Types of revenues and charges of a concessionaire or private partner

According to the terms of the above-mentioned contracts, both the concessionaire and private partner must organize port activities, so all the commonly charges of port services are possible types of revenues.

Examples:

- storage fee
- wharfage
- rent cost, etc.

The most important part of the three contracts is that all three ports must keep the status of a National Public Port, which means that all fees and charges must be unified for all port users.

5.1.6 Property rights transferred from the Grantor to the concessionaire/lessee

All rights of usufruct or usage of land, property and asset are transferred to the concessionaire, but the owner is still the grantor. In the case of Freeport of Budapest, the 75% of the area must be used for port activities, but the less 25% can be used without any regulation.

5.1.7 Requirements for minimum investment and performance

There was only one case, when a Grantor had requirement for investment. In the case of Freeport of Budapest, when the shares of the concessionaire company had been sold, the shareholders had to undertake a port development obligation. Since then, the company had to operate the port according to the potential of the market, keeping the National Public Port status, which is an obligation for all three ports, that have concession contract.

5.1.8 Agreements for the scope and type of port services operated

See point #5.1.6.

5.1.9 Rights and obligations towards existing personnel in ports/terminals

There were no rights and obligations towards the existing personnel in ports. For example, at Freeport of Budapest the predecessor of the concessionaire company was the original operating company, with the same existing personnel.

5.1.10 Maintenance requirements for infra and suprastructure during concession or lease

During the concession period, the lessee has the obligation to maintain the conditions of the infra and suprastructure, in accordance to the conditions before the period. While performing this, the concessionaire cannot claim any compensation and the related costs cannot be re-denominated to the grantor. During the management of the property, state property laws should be governed.

5.1.11 Early termination conditions

There are different provisions about this case. For example, the contract according to Port of Baja states that the contract can be terminated any time during the concession period by the will of the grantor.

By contrast, the contract of Freeport of Budapest says that the contract can be terminated, if the concessionaire does not fulfil the obligations listed in the contract. The denunciation is preceded by the suspension of the usufruct, in order to ensure the sustainability of the contract. The breach of contract is sanctioned by compensation. The concessionaire also has the right to quit from the agreement, if the owner of the port hinders the operating.

5.1.12 Role of port authority during the concession / lease period

The port authority has no role during the concession, aside from its usual rights and obligations.

5.1.13 Treatment of land, infrastructure and equipment during concession

The provisions about this topic of the concession contract are the same as an asset management contract. If the concessionaire builds a new building, the concessionaire will be the owner and the beneficial owner as well, but the land under the new building is still going to be the property of the port owner.

Even though the grantor has the right to purchase the mentioned real estate, the purchase is just a possibility, not an obligation. That is the reason why the grantor of the Freeport of Budapest has the right to reject the request of the concessionaire to build a new facility in the last 15 year of the concessions period.

5.1.14 Participation of a port authority or grantor in concessionaire's company

The port authority does not participate in the concessionaire's company, nor in the grantors.

5.1.15 Risk allocation and unforeseen events

All risks are allocated to the concessionaire, according to all unforeseen events are the part of the management and the operation tasks.

5.1.16 Requirements for the experience of concessionaire / lessee

None of the three existing concession contracts were a result of a public call, in each case the concessionaire was directly selected. This means, the grantor had no requirements for the experience of concessionaire.

5.1.17 Direct negotiations and unsolicited proposal

Based on the fact mentioned at point #5.1.16, there have been neither direct negotiations, nor unsolicited proposal regarding the concessions.

5.1.18 Pre-qualification requirements

Based on the fact mentioned at point #5.1.16, there have not been any pre-qualification requirements regarding the concessions.

5.1.19 Return of land, facilities and equipment after the concession/lease period

See sections #5.1.10, #5.1.11 and #5.1.13. If the concession contract is going to be extended, the conditions would not be changed.

5.1.20 Procedure in the case of disputes

According to the contracts in question, the intervention of the elected court would manage the controversial case.

5.2 Main findings, messages and problems of PPPs in ports

Main findings and key messages:

- In Hungary the existing PPP contracts (concessions) work very well in ports.
- Since the start, the ports have begun to develop rapidly.
- This is an easier way to develop

Main issues, problems and obstacles:

- There are some provisions of the concession contracts that had not been formed, such as termination conditions.

Solution proposals:

- As the project duration approaches to its end, the missing provisions of the concession contract must be prepared in a predetermined way.

6 Croatia

6.1 Regulations and practice of the PPP schemes in ports

6.1.1 Laws, directives, by-laws and other acts regulating PPPs

Following regulations deal with PPP in ports in the Republic of Croatia:

- **Law on Public Private Partnership** (“Official Gazette” no. 78/12, 152/14) – regulates procedure for proposing and approving of PPP projects, implementation monitoring of PPP projects, PPP contracts content, small value PPP projects issues and other;
- **Regulation on Public Private Partnership Implementation** (“Official Gazette” no. 88/12, 15/2015) – determines content of information for PPP project implementation, basic questions regarding preparation, documentation and implementation of small value PPP projects, criteria for PPP projects approval, fundamental changes of the contract, criteria for economic most favorable bid choosing etc;
- **Law on Concessions** (“Official Gazette” no. 69/17) – regulates concessions granting procedure, contract, concession termination rules, legal protection for concession granting procedures, concessions policy and other;
- **Law on Public Procurement** (“Official Gazette” no. 120/16) – regulates public procurement for public or sector purchaser with the purpose for entering into agreement for purchase of goods, works or services;
- **Law on Inland Navigation and Ports** (“Official Gazette” no. 109/07, 132/07, 51/13, 152/14) – regulates inland navigation in Republic of Croatia, navigation security, legal status and management of inland waterways, transport, port harbor master’s offices work and organization, supervision and other issues regarding navigation and inland ports;
- **Ordinance on Concessions Fees Criteria in Inland Ports** (“Official Gazette” 72/15) – defines criteria for concession fee and other criteria for port services concessions granting for in public and private ports.

6.1.2 Available and permitted PPP schemes for ports

Concession for public works in public ports, where concession is granted for construction of port facilities, according to the public-private partnership model – duration can be up to 30 years, and with consent of the Government of the Republic of Croatia up to 50 years. (Art. 144, par. 1 AINIP).

Extension/change of the concession contract is possible only within the public bidding procedure except in following situations which are defined by the Concession Law (Art. 62 Par. 1):

- when Croatian Parliament determines that national security and country protection, environment or public health is jeopardized,
- if the interest of the Republic of Croatia stated by the Croatian Parliament demands that,
- in other situations, defined with the special law.

Law on Inland Navigation and Inland Ports had not defined other special situations that would give the opportunity to change/prolong concessions contracts.

PPP contract is a long-term contract between public and private partner. Subject of PPP is building/reconstruction of a public building with a purpose of public service providing. (Art. 2 Law on PPP). Public body should deliver a PPP project proposal to Agency for the PPP which approves it. Before approval Ministry of Finance gives its confirmation.

6.1.3 Types of concessions and/or long-term leases in ports

Concession in inland ports can be given for:

- a) port services,
- b) for the right to exploit common good and
- c) for public works.

The period for which concession is granted in public ports and public wharfs shall be determined based on the type of concession and planning documents based on which the concession is granted, but no longer than:

1. Concessions for public services, for the performance of public services: for nautical services up to 5 years; for transport services up to 15 years.
2. Concession for the right to exploit a common good or other goods, for other economic activities performed in the port area – up to 25 years.
3. Concession for public works where concession is granted for construction of port facilities, according to the public-private partnership model – up to 30 years, and with consent of the Government of the Republic of Croatia up to 50 years. (Art. 144, par. 1 AINIP).

Port activities include port services and other economic activities carried out in a port area. Port services:

1. nautical services: mooring and unmooring of vessels, port towing service, reception and servicing of vessel at anchorage, supplying of a vessel, crew and passengers, receipting of regular waste generated on board vessel, which includes the activity of waste collection in accordance with a special regulation regulating sustainable waste management;
2. transport services: cargo loading, unloading, transshipment and stowage, storage, depositing and transport operations depending on cargo type, preparation and grouping the

cargo for transport, services for reception and conveying of passengers, forwarding services and port agency;

3. Other economic activities involving cargo distribution and logistics, processing and improving of goods, industrial activities, including production, which render possible better economic exploitation port capacities and activities of waste usage and disposal. (Article 141 AINIP).

Besides the afore mentioned, activities in ports open for public traffic other activities may be carried out as well which are usually carried out along with port activities (Art. 142 AINIP).

Port services in private ports and private wharfs are carried out based on concession for the right to exploit common good or other goods (Art. 143. Par. 2. AINIP). The Port Authority with the approval of Ministry grants concession (Art. 143. Par. 4. AINIP).

6.1.4 Fees types and methodology for determination of concession or lease fees

Concession fees are defined with Ordinance on Concessions Fees Criteria in Inland Ports.

The concession fee consists of two parts:

- a) Fixed fee – the level of the fixed fee is defined depending on the type and volume of the port activity done in the port area of the public port. Fixed part of the concession fee is payed as a one-off annual amount.

Fixed fee is calculated by the formula given in the Ordinance:

$$\text{Fix} = B \times \frac{n}{k_1 \times k_2 \times \dots \times k_n}$$

B – basis which is defined by the port authority based on the unit of the brutto size of the port area which is used for the port activity. This should be based on the economic justification study which has to be elaborated before public tendering procedure;

k – coefficient for each group of port activities (groups are defined by the Ordinance);

n - number of groups for concession activities.

- b) Variable fee – is based on the achieved business activity by the concessionaire in the accounting period and represents the percentage of the yearly income realized from the concession activities. Minimal amount of for the variable fee is defined by the Ordinance and it depends on the type of activities. It can be 0,1% for some activities and for other 0,5 %.

6.1.5 Types of revenues and charges of a concessionaire or private partner

Port operator/concessionaire provides port service at a fee the maximum amount of which shall be established within the framework of port rates for particular types of cargo and particular types of services. Port rates shall be approved and published by port authority. Port rates are an integral part of the concession contract. (Art. 154. Law on Inland Navigation and Inland Ports).

6.1.6 Property rights transferred from the Grantor to the concessionaire/lessee

Port authority has public authorities prescribed by the virtue of the Law on Inland Navigation and Inland Ports (Art. 131.) which, beside other, includes management of the real estate owned by the Republic of Croatia which are part of port area in public ports. Port authority is also in charge for granting the right of rental, lease, establishment of easement or right to construction on public water domain in a port area.

Law on concessions determines that, if the Republic of Croatia is an owner of the land where concession is being granted, one who earns the right to concession earns a right to use of the land during the concession period (Art. 11. Par. 1. Law on Concessions).

If the owner of the land where concession is being granted is not Republic of Croatia or the concession grantor, in tendering documentation it should be stated that future port operator must settle legal property issues by himself before concession contract is signed (Art. 11. Par. 7.).

6.1.7 Requirements for minimum investment and performance

In the tendering procedure, except offer for the variable fee, bidder should also prepare a business plan for the period of the concession. Business plan has content defined in Ordinance on Concessions Fees Criteria in Inland Ports. One of the obligatory contents is investment policy of the bidder. Bidder must estimate his capital investments for the concession period depending on his activities and must prepare financial business model for various development scenarios (Art. 9. Par. 7. Ordinance).

6.1.8 Agreements for the scope and type of port services operated

Port authority has a three-year and, based on it, a yearly plan for the concession granting. In accordance with that, port operators apply to public open tender procedure for concession. Port authority is in charge for public tendering procedure conducting and implementing. The procedure can last from 40-60 days. After concession award is prepared, Ministry of the Sea, Transport and Infrastructure gives its approval on it (Art. 143. Par. 4. AINIP). Based on the decision on granting a concession, the port authority enters into concession agreement with the concessionaire (Art. 144 Par. 3 AINIP).

6.1.9 Rights and obligations towards existing personnel in ports/terminals

The usual practice that concessionaire has his own personnel which comes and goes together with the operator company. One of the obligatory parts of the Business plan is also personnel policy.

6.1.10 Maintenance requirements for infra and suprastructure during concession or lease

Infrastructure maintenance in public ports is obligation of port authority. Port operator is responsible for superstructure building and maintaining. Details are defined by the concession agreement.

6.1.11 Early termination conditions

Concession agreement must contain a regulation about contract partly or completely termination by the decree of the concession grantor in cases when Croatian Parliament defines that it is necessary for the public interest (Art. 72. Law on Concessions). If the contract is terminated partly, concessionaire has the 30-day period to decide to terminate contract completely.

Law on Concessions defines situations when contract can be terminated by the unilateral decision (Art. 73. Law on Concessions).

6.1.12 Role of port authority during the concession / lease period

Port authority provides services as entering/leaving the port and it can provide services that are necessary to be existing in the public port but only if there is not economic interest from others. Towing is done by the port operator. Parking services (for trucks) is also done by the port operator. Port authority is responsible to ensure building, access and maintenance for so called "shared/common port objects" that is waterway objects, river surface, main roads, railways and switches, electronic facilities, port outdoor lightning, port water supply network, port wastewater system, telecommunication network, signal equipment.

6.1.13 Treatment of land, infrastructure and equipment during concession

For the land, if the owner is Republic of Croatia, it is considered that the port operator has the exclusive right to use the land covered by the concession contract (charged within the fixed concession fee). If the land owner is other company or private person port operator must solve property rights by himself or it can be done by the port authority if it is so defined in the tender.

Infrastructure in public ports should be the property of the State and port authority is in charge for its building and maintaining. During the concession period common infrastructure objects must be accessible and used by all port users.

Superstructure is, in principle, built by the port operator. For the existing plants, when the concession contract is over, in new tender procedure could be stated that new port operator

can buy the existing superstructure from the previous one, or it could be demanded that plant must be removed, it depends on the contract and tender for the future concession.

6.1.14 Participation of a port authority or grantor in concessionaire's company

In Croatia, port authorities cannot take shares in concessionaire's or operator's company exercising the right to operate a port.

6.1.15 Risk allocation and unforeseen events

Risk allocations are defined by the concession contract. In the case of force majeure events, extreme weather conditions, floods, uncommon low water level or other situations that could not be influenced it is considered that neither contracting party is violating the contract.

6.1.16 Requirements for the experience of concessionaire / lessee

Previous experience and expertise can be a criterion in the tendering.

Law on Concessions states that (Art. 68): during the concession period, it is allowed for the concessionaire to make sub-contract/sub-concession with third parties for:

- a) For the certain work performance, for the supply of certain, smaller amount of existing concession services;
- b) For the performance of the side activities.

Possibility for the sub-contract/sub-concession should be foreseen in the economic justification study, tender documentation and in the concession contract.

6.1.17 Direct negotiations and unsolicited proposal

In general, concession rules are very strict from the tendering procedure upon to contract changes.

Concessions must be granted in accordance with mid-term development plans, three-year and yearly concession granting plan. So, if not planned concession for some activity/work cannot be granted. Our opinion is that administrative procedures should be more flexible and adjustable to fast market changes.

6.1.18 Pre-qualification requirements

Pre-qualification requirements are defined in Ordinance on Concessions Fees Criteria in Inland Ports (Art. 9). It is said that within the offer for the concession bidder should prepare and deliver a Business plan with the following content: development strategy, operational plan, tariff models, human resources policy, investment policy, financial plan. Development strategy implies goals of the bidder, relation of the concessionaire and the other port users and the market concept. Operational plan continues general activity plan divided into phases considering different scenarios. Investment policy means the foreseen level of the capital investments for the concession period and with different financial business models for different development scenarios.

6.1.19 Return of land, facilities and equipment after the concession/lease period

Property/land using rights for the land of the Republic of Croatia terminate together with concession contract. For the private owned land, it can happen that some contracts for the land usage does not terminate parallel with concession contract. On the other side, new port operator must solve property rights before concession contract signing.

If the extension period happens, the situation regarding the land is the same as for the time when general contract was in force.

6.1.20 Procedure in the case of disputes

In case of disputes, options for settlement are in most cases judicial (Administrative Court) or could be arbitration (Art. 97 Law on Concessions).

6.2 Main findings, messages and problems of PPPs in ports

Main findings and key messages:

- Satisfying regulation for PPP
- For inland ports PPP rules should be more detailed/specified
- Granted time for concession duration – maximum 30 years (Law on Inland Navigation and Inland Ports); 40 years according the Law on PPP with possibility for longer terms if foreseen in special law

Main issues, problems and obstacles:

- Different land owners, frequent problems with private owned land
- Strict concession rules
- No concessions on demand in inland ports
- Old infrastructure
- Complicated procedure for concessions contracts changes
- Maximum PPP contract length sometimes too short for big investments (depreciation time...)

Solution proposals:

- All land in public port should be State owned to enable concession granting processes to be more efficient
- Concession granting rules should be more flexible

- Inland Navigation and Inland Ports Law should give more opportunities for concessions on demand
- Quality infrastructure should be built;
- Contract changes should be more flexible;
- Foresee longer PPP contract duration in special law

7 Serbia

7.1 Regulations and practice of the PPP schemes in ports

7.1.1 Laws, directives, by-laws and other acts regulating PPPs

In Serbia, the following regulations deal with the issue of PPP schemes, including ports:

- The Law on Public Private Partnership and Concessions (Republic of Serbia Official Gazette No. 88/2011, 15/2016 and 104/2016)
This Law sets general principles and establish specific procedures for the award of concession and of PPP project contracts by public authorities.
- Public Procurement Law (Republic of Serbia Official Gazette No. 124/2012, 14/2015 and 68/2015)
This Law sets terms and conditions, planning and execution procedures for public procurements.
- The Law on Navigation and Ports on Inland Waters (Republic of Serbia Official Gazette No. 73/2010, 121/20212, 18/2015, 96/2015-other law, 92/2016, 104/2016-other law, 113/2017-other law and 41/2018)
Articles 227-227i of this Law regulate some specific issues for the concession of ports.

7.1.2 Available and permitted PPP schemes for ports

Article 227 of the Law on Navigation and Ports on Inland Waters allows following possibilities for port concessions:

- Concession for the providing of port services
- Concession for public works, with the right for the commercial use of executed public works when the concessions are awarded for the construction of port infrastructure and superstructure.

Duration of port concessions are set, depending on the type of the awarded concession/service, as follows:

- for the providing of port services:
 - o Nautical services – up to 5 years
 - o Transport (transshipment) services – up to 15 years
- for public works, for the construction of port infrastructure and superstructure with the right for the commercial use – up to 30 years.

Port Governance Agency initiates procedure for the award of the Port Concession if the value of the concession is estimated to the amount of 5.186.000 EUR or higher.

Possibilities and conditions for extension of the port concession are not set within the Law on Navigation and Ports on Inland Waters.

At the same time, Law on Public Private Partnership and Concessions enables conclusion of the new agreement, if the same procedure for choosing the private partner, prescribed by the law, is applied.

7.1.3 Types of concessions and/or long-term leases in ports

Concessions for providing port services and concessions for works and services are described in chapter 7.1.2.

The exact model of the concession (BOT, BOOT, BOO, DBMF, ROT....) is not set within existing regulation. However, according to the Law on Navigation and Ports on Inland Waters, port land and infrastructure are the property of the Republic of Serbia and this can't be changed in the devolution or conversion processes of public goods (article 214). Also, the right to use the land for the purpose of the construction of port infrastructure/superstructure expires with the expiration of the port operation licence/port concession. Therefore, any model which include transfer of assets at the end of contract period is suitable.

Despite the existing legal framework, concession agreements were not concluded in IWT sector in Serbia yet. Actually, there is no experience in implementation of concessions in transport sector. The exception is concession agreement for the Belgrade airport Nikola Tesla, signed at the beginning of this year, but the concession is still not effective and no experience could be derived so far.

7.1.4 Fees types and methodology for determination of concession or lease fees

According to the Law on Navigation and Ports on Inland Waters, article 227ž, Concession fee for port concessions consists of fixed and variable part.

Fixed part of the concession fee is based on the yearly use of the port area, and the amount should be defined in line with the economic profitability of the port given in the feasibility study for the port concession with the EIA. Additionally, this amount is increased for the amount of the fee for the operational use of the port as a good in public use (long-term lease).

Variable part of the concession fee is based on the executed business activity of the concessioner, usually defined through the income percentage.

Fee for the operational use of the port as a good in public use (long-term lease, article 229g) is being calculated based on the market value of the land of port area, set by the Ministry of finance – Tax Administration, multiplied with the correction coefficient. This coefficient is determined taking into account the geographical position of the port, level of the connectivity of the port with other modes of transport, intended use of the port area, infrastructure investment plans of public and private partner, planned transshipment volumes etc.

7.1.5 Types of revenues and charges of a concessionaire or private partner

Concessionaire has a right and obligation to charge fees for provided port services and port dues, without discrimination to any port user.

Fees for providing of port services depend on the type of services defined in the concession agreement and purpose of the port-terminal. They can be nautical services provided to the

ship (berth, anchorage, pilotage, pusher-tugboat services, bunkering, shipchandler services etc.) or transportation services provided to the goods (loading, unloading, transshipment, storage etc.)

Port dues are set by the Law on Navigation and Ports on Inland Waters and their amount is defined by the PGA decision and approved by the Government of the Republic of Serbia.

Both revenues can be quantified by the volume and/or time spent in service provision.

7.1.6 Property rights transferred from the Grantor to the concessionaire/lessee

Concerning the property rights, article 218 of the Law on Navigation and Ports on Inland Waters sets the rule that the elected Port Operator/Concessionaire can act as Investor on the port land (area). For the contracted period, he has a right to use the port land and do all necessary actions for the construction of the port infrastructure and superstructure, in line with the concession agreement. Until the expiration of the licence/concession agreement, Port Operator/Concessionaire can have full owner rights on the constructed objects of the port infrastructure and superstructure, including the mortgage possibility.

After the completion, cancelation/termination or breaking of the agreement, all property rights on the port infrastructure and superstructure are transferred to the Republic of Serbia, free of any liens or encumbrances, without the obligation of the Republic of Serbia to compensate the market price of these assets to the Concessionaire.

7.1.7 Requirements for minimum investment and performance

In theory, some of the main outputs of the concession feasibility study should be list of requirements for the minimum investments of the concessionaire and minimum annual throughput (volumes of cargo). These requirements will then become part of the tender documentation in the public procurement procedure. The exact investments, together with deadlines for the execution and minimum annual throughput (volumes of cargo), are then considered as important part of the concession agreement.

7.1.8 Agreements for the scope and type of port services operated

Similar to the issue of requirements for minimum investment and performance, concession feasibility study should provide the answer to question what kind of port services are necessary. Then, the provision of identified services would be required in tender documentation. Consequently, Concession agreement should define the scope and type of port services to be operated by the concessionaire.

7.1.9 Rights and obligations towards existing personnel in ports/terminals

At this point, no such experience in the Republic of Serbia. The last state owned company – Port Operator is under privatisation process, thus it is not expected to have the scenario where concession agreement could be concluded in that manner that includes existing personnel.

7.1.10 Maintenance requirements for infra and suprastructure during concession or lease

Concessionaire is obligated to maintain existing and newly built infrastructure and superstructure in line with the professional standards of the construction industry, as well as with the legislation which regulates construction.

7.1.11 Early termination conditions

Public partner can initiate early termination of the contract in the following cases:

- If the private partner did not pay concession fee more than two times in the row, or continuously do not pay concession fee in due time.
- If the private partner does not execute public works or does not provide public services in line with the accepted standards, or in line with the terms of contract.
- If the private partner does not protect public goods, nature and cultural heritage.
- If the private partner has submitted untrue information on his qualification which was crucial in the election process of the successful tenderer.
- If the private partner does not start with the execution of the contract in due time.
- If the private partner does other activities not in line with the contract.
- If the private partner has transfer his rights to the other entity without the approval of public partner.
- In other cases, in line with the Concession agreement and other regulation.

Criteria for the above reasons must be specified in the agreement.

Public partner must send the letter of intention to terminate the contract to the private partner. At the same time, public partner must set the deadline for private partner to eliminate reasons for terminating the contract.

In case of the contract termination because of the fault of the private partner, public partner has the right for the damage compensation, caused by the private partner.

Private partner can initiate early termination of the contract if the public partner is acting in such way that makes contract unsustainable, or preventing private partner in execution of the contract.

Reasons for the termination, as well as the consequences must be specified in the agreement.

Early termination of the contract by the public partner is also possible in case of public security, or if the environment or the public health is endangered with actions which are part of the concession agreement.

7.1.12 Role of port authority during the concession / lease period

There is no limit in the legislation for the port authority (PGA) to provide some public services. On the other hand, considering available capacities, at the moment that is not a favourable option.

Beside its role as the public body to prepare tender documentation and Concession act which has to be adopted by the Government, Port Governance Agency has obligation to monitor performance of the concessionaire. At least once a year, concessionaire has to submit a report on activities and fulfilment of contract. More precise monitoring tools and procedures should be defined within the agreement.

7.1.13 Treatment of land, infrastructure and equipment during concession

As stated before, according to the Law on Navigation and Ports on Inland Waters, port land and infrastructure are the property of the Republic of Serbia and this can't be changed in the devolution or conversion processes of public goods (article 214). For the contracted period, concessionaire has a right to use the port land and existing infrastructure and superstructure for the purpose of providing port services, as well as to construct new infrastructure and superstructure on the port land. Depending on the terms of contract, concessionaire has owner rights on the newly built/procured assets until the expiration of the contract. Afterwards the ownership is transferred to the Republic of Serbia.

7.1.14 Participation of a port authority or grantor in concessionaire's company

In case a port authority is corporatized (can work and be organized as a company), is it allowed that such port authority takes any shares (ownership) in concessionaire's company? If so, how is the equal treatment towards other port operators (of other terminals/ports) being protected?

Serbian Port Authority (Port Governance Agency) is not corporatized and as such it cannot have any shares (ownership) in concessionaire's or operator's company. According to the Law on Navigation and Ports on Inland Waters, Port Governance Agency is established as Government regulatory body, not a company.

7.1.15 Risk allocation and unforeseen events

There is no general rule. Risks are shared between partners and they must be clearly defined in the concession agreement.

Basically, majority of risks for the project realization are transferred on the Concessionaire, who is considered more flexible partner and has a capacity for quick response to the changes of market conditions. On the other hand, higher risk usually brings higher profit.

Similarly, Concession agreement must include specific articles about Force majeure. If the fulfilment of contract obligations is endangered or affected by the occurrence of force majeure, affected partner must notify the other partner that conditions of the force majeure occurred and prevented him to execute contract obligations. In this case, the other party will not be entitled to claims in case of the contract disruption.

7.1.16 Requirements for the experience of concessionaire / lessee

No requirements of this kind are set by the Law. But the tender documentation should consider requirements in terms of experience and expertise, in order to avoid risks of concluding the agreement with unqualified Concessionaire and consequently risk failure of the whole project.

7.1.17 Direct negotiations and unsolicited proposal

According to the article 19. of the Law on Public Private Partnership and Concessions, Public body (in this case Port Governance Agency) has a right to consider and accept proposal submitted by the interested parties for the realisation of the PPP project.

Public body has 90 days to decide if there is public interest in the submitted project proposal. If public body decide to initiate procedure for the award of the concession agreement, it has obligation to state in the public call that the project was initiated by private partner.

Interested party who proposed the project has the right submit the application through the tendering procedure, if his role in preparation of project proposal does not discriminate other tenderers. Otherwise, public body has to provide other tenderers with the necessary information to neutralise such advantage of the project initiator.

7.1.18 Pre-qualification requirements

There is still no experience with the concession tendering procedure, thus there is no best practise in setting minimum pre-qualification requirements.

7.1.19 Return of land, facilities and equipment after the concession/lease period

There is no specific procedure defined by any regulation. Also, there is still no experience with this issue.

7.1.20 Procedure in the case of disputes

According to the article 60. of the Law on Public Private Partnership and Concessions, agreement can contain arbitration as an option for the settlement in case of dispute. National, or international arbitration can be agreed if private partner or his owner is foreign company or person.

If the arbitration is not contracted, all disputes are under the jurisdiction of courts of the Republic of Serbia.

7.2 Main findings, messages and problems of PPPs in ports

Main findings and key messages:

- Lack of experience with PPP projects in general.
- No port concessions implemented, yet.
- General legislation for PPP and concession projects exist, and port concession specifics are regulated within several articles in the Law on navigation and ports on inland waters.
- Clear subject of Concession (port services or public works for the construction of the port infrastructure/superstructure)
- Further elaboration of each project has to be elaborated through the Concession act.

Main issues, problems and obstacles:

- Poor awareness of the PPP projects possibilities in port sector.
- Spatial planning, port area determination and land property issues have to be solved before preparation of the Concession act.
- Maximum contract length (according to the Law on navigation and ports on inland waters) is limited to 5/30 years. Depending on the type of the services/size of investment, these periods could be too short for sustainable business development and return of the investment.
- Concession fee is increased for the amount of the fee for the operational use of the port. Depending on the implemented methodology, this could be recognized as the same (duplicated) fee.

Solution proposals:

- Promotion of Port Concession projects.
- Increase of the maximum contract length in line with PPP Law (50 years).
- Creating a clear methodology for the determination of the concession fee.

8 Romania

8.1 Regulations and practice of the PPP schemes in ports

8.1.1 Laws, directives, by-laws and other acts regulating PPPs

Romanian Government *Emergency Ordinance no. 39* from din 10 May 2018 regarding public-private partnership regulates the initiation, implementation and closing of PPP. According to the law, the PPP has the objective to accomplish or, if the case, to rehabilitate or extend an objective/s which will be part of the PPP and/or exploiting a public service.

Law no. 99 from 19 May 2016 regarding sectorial procurement which regulates the modalities in which contracting authorities will implement the sectorial procurement, the procedures for award for the sectorial contract and for organizing of the contest for solutions, the specific instruments and techniques that can be used for award of the sectorial contracts, as well as the specific elements in relation with implementing the sectorial contracts.

Law no. 101 of 19 May 2016 on remedies and appeals in respect of the award of public procurement contracts, sectoral contracts and concession contracts for works and concessions of services, as well as for the organization and functioning of the National Council for Solving Complaints.

Emergency Ordinance no. 54/2006 on the regime of concession contracts for public property.
Ordinance no. 22/1999 on the administration of the ports and waterways, the use of the public transport infrastructure of the public domain, as well as the carrying out of the activities of water transport in ports and inland waterways.

Law no. 98/2016 on public procurement.

Law no. 100/2016 on works concessions and concessions

Decision no. 357/2018 regarding the approval of the List of strategic investment projects to be prepared and awarded in a public-private partnership by the National Strategy and Forecasting Commission.

8.1.2 Available and permitted PPP schemes for ports

A very few project in the area of territorial self-government can be identified. The basic legislation for public-private partnerships is Law no. 100/2016 on works concessions and concessions.

New legal regulation *Emergency Ordinance no. 39/2018* allows for:

- a) the public-private partnership contract - the public-private partnership under a contract between the public partner, the private partner and a new company whose share capital is wholly owned by the private partner acting as a project company;
- b) the institutional public-private partnership - the public-private partnership under a contract between the public partner and the private partner, through which a new company is set up by the public partner and the private partner to act as a project company and, after becoming a member of the company register, acquires the status as a party to the respective public-private partnership contract.

8.1.3 Types of concessions and/or long-term leases in ports

The Procurement Act divide concessions to:

- Concessions of works
- Service concessions

Works contract - contract for pecuniary interest, assimilated according to the law of the administrative act, concluded in writing, by which one or more contracting entities entrusts the execution of works to one or more economic operators, where the contraption for works is represented either exclusively by the right to exploit the outcome of the works which are the object of the contract, whether that right is accompanied by a payment.

Service concession contract - contract for pecuniary interest, assimilated according to the law of the administrative act, signed in writing, by which one or more contracting entities entrusts the provision and management of services to one or more economic operators, where the consideration for services is represented either by the exclusive right to exploit the services covered by the contract or by such a right, together with a payment.

8.1.4 Fees types and methodology for determination of concession or lease fees

At this time, we have not implemented a concession contract for works or services in Constantza ports. Methodology for determination of concession or lease fees must be established by agreement of the signatory parties to the contract.

8.1.5 Types of revenues and charges of a concessionaire or private partner

The concessionaire shall not be obliged to pay any amount of money if the contract determines that the operating risk is fully taken over by the concessionaire. If the concession contract contains clauses to this effect, the concessionaire is entitled to receive a fee that can be set at a fixed level or a certain percentage of the amount of revenue received by the concessionaire from the end-users as a result of the activities carried out.

8.1.6 Property rights transferred from the Grantor to the concessionaire/lessee

The land will not be the object of the transfer of ownership. Only the assets build by the concessionaire may be subject to the transfer of ownership.

8.1.7 Requirements for minimum investment and performance

Public procurement legislation does not imply any conditions for a minimum investment, a concessionaire, or the achievement of a certain production capacity. Concession conditions are the result of prior mutual agreement between the parties, which may not be contrary to the law.

8.1.8 Agreements for the scope and type of port services operated

The basic legislation for port services is the Ordinance no. 22/1999 on the administration of the ports and waterways, the use of the public transport infrastructure of the public domain, as well as the carrying out of the activities of water transport in ports and inland waterways, with further completions and modifications. (Law no. 235/2017).

The purpose of Law no. 99/2016 on sector acquisitions is to provide the legal framework necessary to achieve the purchase of goods, services and works in terms of economic and social efficiency.

8.1.9 Rights and obligations towards existing personnel in ports/terminals

Port regulation nr. 31732/2012 lays down general provisions on labor and safety at sea in seaports.

According to the Ordinance 22/1999 the port workers operate in the port only if they are registered and have a working card. The methodology for issuing workbooks in port and registering port workers is approved by order of the Minister of Transports. The workbooks handed over are kept by the administrations.

8.1.10 Maintenance requirements for infra and suprastructure during concession or lease

According to the civil code, the user is required to make all the repairs needed to keep the asset in proper use for the duration of the contract. It is also his responsibility to make housing repairs, the necessity of which arises from the usual use of the good.

General repairs are the responsibility of the owner.

8.1.11 Early termination conditions

For exceptional reasons related to the public interest, the public partner may unilaterally modify or, as the case may be, unilaterally terminate the public-private partnership contract, subject to the following conditions:

- a) This possibility, including the categories of exceptional reasons related to the public interest, has been included in the tender documentation in a clear, precise and unambiguous way, as well as in the public-private partnership contract;
- b) the modification of the contract does not alter the generic nature of the original contract;
- c) with the prior notification of the private partner, the project company and the financing of the public-private partnership project.

Exceptional reasons relating to the public interest may be such as public health, environmental protection, safety and quality standards, availability of tariffs by service users, need to ensure unobstructed access to a particular public service.

If the amendment or unilateral termination of the contract causes damage, the private partner has the right to a fair compensation, determined according to the provisions of the awarding documentation and the public-private partnership contract.

The PPP contract should include a mechanism for adjusting payments to the private partner and the project company if the unilateral modification of the contract by the public partner is favourable to the private partner by reducing the work to be performed or in any other way.

In case of disagreement on the amount of compensation / adjustment, it shall be determined by the competent court. Disagreement will in no case allow the non-execution or improper performance of the obligations by the private partner or, as the case may be, the project company.

When the public-private partnership contract is terminated for any reason, the rights created by the public partner in favour of the private partner or the project company shall cease and the assets acquired or acquired by the project company and representing the object of the partnership contract public-private and public service needs to be transferred to the public partner shall be free of charge, in good working order and exploitable according to the standards applicable to the public service and/or similar goods, under the terms of the partnership agreement public-private partnerships.

Upon termination of the public-private partnership contract as a result of the expiration of the term for which it was concluded, the goods realized or acquired by the project company and representing the object of the public-private partnership contract, as well as those necessary for the public service, shall be transferred to the partner public, free of charge.

Upon termination of the public-private partnership contract for any reason, except for the expiry of the term for which it was concluded, the goods made or acquired by the project company and representing the object of the public-private partnership contract, as well as those necessary for the public service, including the goods for which the reception was not completed at the end of the works, shall be transferred to the public partner under the conditions stipulated in the public-private partnership agreement with the payment of a compensation calculated according to a mechanism provided by the awarding documentation and the public-private partnership contract.

If the termination of the contract was due to the fault of the private partner, the amount of the compensation owed by the public partner, determined under the public-private partnership contract, are deducted for the transfer of the goods.

If the termination of the contract was due to the fault of the public partner, the amount of compensation due by the public partner, determined under the public-private partnership contract, are added for the transfer of the goods.

Upon termination of the public-private partnership contract for any reason other than the expiration of the term of the contract, the public partner will be able to take over the shares or shares of the private partner in the project company in return for a price set in accordance with the provisions of the tender documentation and the contract of public-private partnership, observing the provisions of art. 38 from Romanian Government Emergency Ordinance no. 39 from din 10 May 2018. If the termination of the contract was due to the fault

of the private partner, any sums owed by the private partner as compensation under the public-private partnership contract shall be deducted from the value of that price.

8.1.12 Role of port authority during the concession / lease period

The Romanian ports are organized on a “landlord port” model. The port infrastructure is owned by the state and administrated by a port administration (has also the function of port authority) while port operations are carried out by private companies, which provide and maintain their own superstructure, including buildings and cargo-handling equipment at the terminals.

The Romanian state conceded the port administration of Constanta, Managalia and Midia ports to National Company “Maritime Ports Administration” Co. Constanta, which is a joint stock company (80% of shares belong to Romanian state, 20% to *Proprietatea* Fund) subordinated to the Ministry of Transport. The National Company Maritime Port Administration Co. Constanta (CN APM SA Constanta) was established by Government Decision no. 517/1998¹, with subsequent amendments and completions, by reorganizing the former Autonomous Agency of Constanta Port Administration. CN APM SA Constanta is a joint stock company, designated by the Ministry of Transport to carry out activities of national public interest, as a port administration. The company fulfils the position of port authority in the Romanian seaports of Constanta, Midia and Mangalia and in the “Tomis” marina.

The Maritime Danube Ports Administration Galati founded in 1991, reorganized in the national company by Romanian Government Decision no. 518/1998, with amendments and completions subsequently, it functions as a joint stock company (79.99% of shares belong to Romanian state, 20.01% to *Proprietatea* Fund) and carries out activities of public interest national, as a port administration.

The main regulating act in Romania, for maritime and inland ports, is the Government Ordinance no. 22/1999 *concerning the ports and inland waterways administration, the use of waterborne transport infrastructure belonging to the public domain and the carrying out of the naval transport activities in ports and on the inland waterways*, republished, with further completions and modifications.

The provisions of the Government Ordinance no. 22/1999 shall apply in ports and inland waterways to all ships and to all shipping and related activities carried out in those areas. Port regulations are drawn up in accordance with the provisions of Government Ordinance no. 22/1999 and the Annex to MTI Order no. 636/2010² for the approval of the Port Regulatory Framework. For Romanian ports the following port regulations are in force:

- Port regulation of the Romanian maritime ports under the administration of the National Company Maritime Ports Administration Co. Constanta, no. 31732 of 26/10/2012

¹ Decision no. 517/1998 on the establishment of the National Company “Constanta Maritime Ports Administration” - Co., published in Official Gazette no. 331 of 02/09/1998

² Order no. 636/2010 for the approval of the Port Regulatory Framework, published in Official Gazette no. 590 of 19/08/2010

- Port regulation of ports located on the Danube - Black Sea Canal and Poarta Alba-Midia-Navodari Channel, National Company Maritime Port Administration Co. Constanta, 2015
- Port regulation of the Romanian maritime and river ports under the administration of the National Company “Maritime Danube Port Administration” Co. Galati

The governance model is the corporate governance, defined and regulated by Government Emergency Ordinance no. 109/2011³ on Corporate Governance of Public Enterprises, with further modifications and competitions. The corporate governance of public companies consists of the set of rules governing the system of administration and control within a public undertaking, the relations between the governing body and the bodies of the public company, between the managerial board/supervisors, directors/management, shareholders and other interested persons.

The port administration is the institution designated by the Ministry of Transport to fulfil the function of port authority and has as its main object the application of the port policy developed by the Ministry, the coordination of activities taking place in ports and the implementation of port infrastructure development programs. Port and/or inland waterway administrations provide the management of inland ports and inland waterways, monitor or ensure the provision of safety services in ports and inland waterways such as: pilotage of seagoing and inland waterway vessels at the entrance into, and exits out of ports between berths of the same port and inland waterways and manoeuvre towage of seagoing and river vessels in ports, and provides for the carrying out of activities ancillary to the shipping activities, comprising: maintenance and repair of the shipping infrastructure, coastal and floating signalling for navigation, maintenance dredging for providing deep water in ports and inland waterways, assisting ships to operate dangerous goods, collecting waste and sewage from ships, picking up garbage and household waste from ships **Error! Bookmark not defined.**

The public authority seeks to satisfy a general public interest and the continuity of a service by applying the principle of financial equilibrium.

Public services such as pilotage, towage, VTS, gate/access controls or checks do not make the subject of PPP but of separate regulations. For example, the activity of pilotage is based on specific Romanian laws such as:

- OG 22/1999 (last modified on December 2017)
- Order no. 635 from 13.08.2010 for the establishment of the ports, inland waterways, zones or ports of these areas, as well as the categories of ships for which the pilotage service is mandatory, published in Official Gazette no. 590 of 19/08/2010
- Order no. 1008/2012 for the establishment of the performance of the seagoing pilotage service, published in Official Gazette no. 407 of 19/06/2012

³ Government Emergency Ordinance no. 109/2011 on corporate governance of public enterprises, published in Official Gazette no. 883 of 14/12/2011, with further modifications and completions

- Order no. 547/2014 regarding the authorization of the economic operators for carrying out the activity related to the naval transport activities - the safety service of the navigation of the ships at the entrance and the exit from the ports, between the same port and the inland waterways, published in Official Gazette no. 353 of 14/05/2014.

8.1.13 Treatment of land, infrastructure and equipment during concession

The land is public property of the state.

Only the objects built as a result of the PPP can be subject of a transfer. The transfer mode is set contractually upon termination of the concession.

8.1.14 Participation of a port authority or grantor in concessionaire's company

The new legislation allows contractual PPP- this is the PPP based on a contract signed between the public partner, the private partner and a new company owned by the private company whom will act as a project company.

8.1.15 Risk allocation and unforeseen events

The public-private partnership mechanism is characterized by the risk-sharing between the public partner and the private partner, depending on the ability of each contracting party to assess, manage and control a particular risk.

The justification study for the PPP should highlight as the main element that economically justifies the implementation of the public-private partnership project the risk-sharing structure for each alternative project implementation option. The study includes an identification of the risk categories related to project implementation, their quantification and a presentation of risk allocation alternatives between the contracting parties, depending on each party's ability to manage the risk assumed.

In the analysis of the economic efficiency of the project, a comparison of the estimated costs over the entire duration of the contract adjusted with the value of the risks is assumed in the case of the realization of the project by the public partner from public funds related to the realization of the project in public-private partnership. This comparative analysis will take into account the updated net costs of the project.

The public-private partnership agreement regulates the allocation of risks in the public-private partnership project.

8.1.16 Requirements for the experience of concessionaire / lessee

The criteria for technical and professional capacity established by the contracting entity may in particular refer to the existence of an appropriate level of experience, by reference to contracts executed in the past.

8.1.17 Direct negotiations and unsolicited proposal

Under the current legal framework, it is not allowed to initiate or implement a public-private partnership under direct negotiations and unsolicited proposals.

8.1.18 Pre-qualification requirements

The contracting entity has the obligation to indicate the qualification criteria in the concession notice.

8.1.19 Return of land, facilities and equipment after the concession/lease period

The land is public property of the state.

The equipment will be the property of the concessionaire.

The transfer mode is set contractually upon termination of the concession.

8.1.20 Procedure in the case of disputes

The competence to resolve any disputes arising from the conclusion and / or execution of public-private partnership contracts is established by Law no. 101 of 19 May 2016 on remedies and appeals in respect of the award of public procurement contracts, sectoral contracts and concession contracts for works and concessions of services, as well as for the organization and functioning of the National Council for Solving Complaints.

For the settlement of a dispute/appeal, the person who considers himself / herself to be injured may address either by administrative-judicial procedure of the National Council for Solving Complaints or by judicial means to the court.

During the initiation of a PPP, by accepting the complaint, the court can provide, as appropriate:

- a) to cancel all or part of the act of the contracting authority;
- b) obliging the contracting authority to issue an act / take the necessary measures to restore the legality, with a clear and precise indication of the operations to be performed by the contracting authority;
- c) (c) the fulfilment of an obligation by the contracting authority, including the removal of any discriminatory technical, economic or financial specifications in the contract notice, awarding documentation or other documents issued in connection with the award procedure;
- d) annulment of the award procedure, in case the remedy cannot be remedied.

8.2 Main findings, messages and problems of PPPs in ports

Main findings and key messages:

- lack of experience with PPP projects in Romania
- excessive regulation and over-tuning on certain segments, leaving other unclarified essentials segments
- The Romanian law has changed recently and provides only the framework of PPP. The guide which provides specific clarifications (and which explains the way the law should be applied) wasn't published yet.

Main issues, problems and obstacles:

- Lack of funding opportunities through PPP (reduced funds)
- poor experience in elaborating the procedures (for example: financial modelling, risks matrix) for beginning a PPP/ poor experience in implementing a PPP
- long-term lease of land

Solution proposals:

- better promotion and transparency on public – private partnership
- clarifying the segments that are not sufficiently covered in the regulation/law
- creating a clear and very well structured guide for applying the law (step by step)
- trainings on PPP funding opportunities
- creating a regional new institution responsible for tracking and assisting PPP

9 Bulgaria

9.1 Regulations and practice of the PPP schemes in ports

9.1.1 Laws, directives, by-laws and other acts regulating PPPs

1. Constitution of the Republic of Bulgaria – where the exclusive state property is identified and a possibility for establishing public-private partnership is regulated.

2. In November 2017, the National Assembly of the Republic of Bulgaria adopted an entirely new **Concessions Act** (promulgated, SG No. 96 / 1.12.2017, effective 1.01.2018), which transposed into Bulgarian law Directive 2014/23 / EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts. With the new Act, the Concessions Act (since 2006) and the Public-Private Partnership Act (since 2013) have been repealed.

The Concessions Act regulates a public-private partnership where an economic operator carries out construction or provides services for the award of a public authority through a public works concession or service concession.⁴

3. State property act – dealing with issues related to acquisition, management and disposal of real estate and movable property - state property, as well as the issue of state-owned property;

4. Municipal property act – about acquisition, management and disposal of real estate and municipal property;

5. Maritime spaces, inland waterways and ports in the Republic of Bulgaria Act – regulates the legal statute of maritime spaces, inland waterways and ports of the Republic of Bulgaria;

6. Ordinance On Monitoring, Management and Control of Concessions adopted by Council of Ministers Decree No. 177 of 20.08.2018, omb. 70 of 24.08.2018 and

7. Ordinance on the requirements for determining the financial and economic elements of concession adopted by Council of Ministers Decree No. 83 of 22.05.2018, prom. 44 of 29.05.2018, in force since 29.05.2018.

9.1.2 Available and permitted PPP schemes for ports

Art. 6. (1) of the Concessions Act states basic PPP options: The concession is awarded for a fixed period by one or more public authorities to one or more economic operators with a long-term contract, hereinafter referred to as the "concession contract".

(2) According to its object the concessions under this law are:

1. concession for construction;

2. service concession;

⁴ Source: <http://www.minfin.bg/bg/523>

3. concession for use of public state or public municipal property, hereinafter referred to as "concession for use".

(3) According to the authority which assigns them, the concessions are state or municipal.

(4) When awarded by two or more public authorities, the concession is a joint concession. The joint concession may be state - when assigned by two or more ministers, municipal - when awarded by two or more mayors of municipalities, and a joint concession with state and municipal participation - in other cases.

Ports of public transport of national importance may be granted to third parties under the procedure of the Concessions Act with a **concession for a service or concession for construction**, according to the provision of Art. 117c of the MSIWPRBA. By granting a concession for a service for which the use of port territory and / or port facilities is required, the concessionaire shall be granted access to the market of port services under Art. 117a of the MSIWPRBA. In Art. 117c, para. 3 of the MSIWPRBA is stipulated that if the concession is awarded for construction, the concession is defined as such for construction. **For both types of concessions envisaged, the port territory and infrastructure remain state-owned.**

The only form of PPP in the case of investment design of ports is the concession for construction. Duration of concessions is up to 35 years. After this period, a new concession procedure is started.

9.1.3 Types of concessions and/or long-term leases in ports

As of December 31, 2017 the current concessions in the country are 726, of which 102 are state concessions and 624 municipal concessions. No public concessions and joint concessions are granted. Concessions for services are 623 in total and occupy the largest share in existing concessions in the country (86%). The total number of granted port terminals is 13. (*source: National strategy for concession development 2018 -2027*)

Concessions Act regulates various forms of concession granting: BOT (Build-Operate-Transfer), BOO (Build-Own-Operate), BOOT (Build-Own-Operate-Transfer) . The type of concession that is performed in the field of river ports is the state concession for service provision.

9.1.4 Fees types and methodology for determination of concession or lease fees

The concession fees paid by the concessionaires in Bulgaria come under the budget of the Ministry of Finance and are redirected for different purposes. The concession is implemented with the funds provided by the concessionaire and at his own risk.

The concessionaire pays the following fees:

- **One-time payment** upon concluding of the contract - defined for each port terminal according to its scale and the financial analysis;
- **Annual concession fees** including two parts: **fixed** – dependent on the offer of the concessionaire and **variable** – usually on the basis of the increase in total net revenue versus the base net income or a fixed amount per ton multiplied by the increase in annual turnover;

The amount of the obligation to pay a concession fee shall be determined by the Grantor in each particular case depending on:

1. the fair distribution of the economic and financial benefit of the concession between the concessionaire and the grantor;
2. Achieving a socially acceptable cost of the services provided with the site of concession.

The way of determination of concession fees is described in **Ordinance on the requirements for determining the financial and economic elements of concession.**

9.1.5 Types of revenues and charges of a concessionaire or private partner

Art. 32. (1) of the Concessions act states that the revenues of the concessionaire from the exploitation of the construction or of the services shall be formed by payments from users, users and the grantor or only the grantor.

Port concessionaires have the right given by the force of the contract to determine and collect incomes from the port services they provide. The scope of services is defined in art 116 of the MSIWPRBA and include:

- Port handling services for freight, mail and passenger services.
- Marine technical services (mooring, supply of electricity, telephone and water) for which the use of port territory and / or port facilities is required.
- Accompanying activities.

9.1.6 Property rights transferred from the Grantor to the concessionaire/lessee

Main right of the concessionaire of a port include:

1. the right for exploitation of the port terminal by performing the port services and collecting revenue from them;
2. to determine the prices for port services provided and collect the incomes in his favour;
3. to obtain and use for the term of the concession the technical, financial, project (executive) and other documentation for the concession object existing until the signing of the concession contract;
4. to carry out the envisaged construction and installation works and the modernization of the facilities of the concession object according to the proposal of the concessionaire and the concession contract;

During the period of concession, the port territory and infrastructure are public state property. The grantor is the owner of all additions and improvements built on the territory of the concession site or in the aquatory adjacent to the port terminal.

9.1.7 Requirements for minimum investment and performance

There are requirements for minimum investments. For each port terminal requirements are set separately on the basis of the services provided, existing infrastructure, financial analysis, etc. The concessionaire is obliged to include in his offer when applying for concession the envisaged investments, which become obligatory upon conclusion of the concession agreement.

Upon approval by the Grantor, projects and programs become an integral part of the concession agreement and the concessionaire is required to fulfil the obligations arising from them.

In addition to the above, the concessionaire is obliged to manage and maintain the port terminal in operational suitability and to partially extend, reconstruct, rehabilitate and repair the object of the concession in accordance with the requirements of the effective legislation and under the terms and conditions established by the concession contract.

There is no explicit obligation for minimum annual cargo turnover of profit.

9.1.8 Agreements for the scope and type of port services operated

The scope of the services is preliminary set by the object of activity of the port/ port terminal. In all cases services are enlisted and are within the frames of the Maritime spaces, inland waterways and ports in the Republic of Bulgaria Act. The main subject of port concessions is the management of a service of public interest and management and maintenance of the port terminal at risk of the concessionaire against the concessionaire's right to perform the port services under Art. 116 of the MSIWPRBA. Full description of services is consisted in the tender documentation elaborated by the grantor.

9.1.9 Rights and obligations towards existing personnel in ports/terminals

The concessionaire “inherits” the personnel and the collective agreement either from the former state operator or from the previous concessionaire (if different). Conditions of change in the number and structure of the personnel are enlisted in the concession contract. The concessionaire has to ensure compliance with the healthy and safe working requirements and staff capacity.

9.1.10 Maintenance requirements for infra and suprastructure during concession or lease

As stated above in 9.1.7, the concessionaire is obliged to manage and maintain the port terminal in operational suitability and to partially extend, reconstruct, rehabilitate and repair the object of the concession in accordance with the requirements of the effective legislation and under the terms and conditions established by the concession contract.

In other words, the concessionaire has to maintain at his own expense the entire infrastructure which he operates in appropriate condition and in compliance with all legal requirements. Constant provision of port services has to be assured for the duration of the concession.

BPICo. also has responsibility to elaborate and fulfil its investment program, which is focused on the construction, reconstruction, rehabilitation and maintenance of the port infrastructure.

9.1.11 Early termination conditions

Termination of concession contracts is detailed described in Section VI. of the Concessions Act - Consequences of termination of the concession contract. The section settles regulations in

case of early termination with regard to compensation matters. The concession contract contains specific conditions negotiated with each concessionaire.

Usually the creation of obstacles and inactivity on the side of the concessionaire is considered to be a breach of the contract which may result in termination prior to its entry into force.

The Concessions act states in Article 151. (1) that when a concession contract is declared invalid, each of the parties must return to the other side everything received therefrom.

No compensation is owed when the contract is early terminated due to circumstances neither party is responsible for.

Art.153. (1) is in force both for early termination and in case of termination after the period has expired. After the termination of the concession contract, the concessionaire shall be obliged to deliver to the grantor the object of the concession which constitutes State property or, respectively, municipal property, as well as the accretions and improvements. The concessionaire shall not have the right to retain the object. The concessionaire fulfils this obligation within 30 days from the termination of the contract.

9.1.12 Role of port authority during the concession / lease period

The State Concession Policy is determined by the Council of Ministers, which approves the National Concession Development Strategy. The state concession policy is also determined by the Council of Ministers, which approves the Action Plan for State Concessions adopted by the Coordination Council. The Concessions Act stipulates that the powers of a grantor for state concessions are implemented by the Ministers, but to ensure administrative control and to ensure the protection of the public interest, the Council of Ministers is entitled to approve the basic acts related to the award and execution of state concessions - the opening and termination procedure, as well as the modification and termination of the concession contracts.

The Council of Ministers determines by decision state fees that are collected and / or received in favor of a concessionaire of state concession, as well as the terms and procedure for their collection.

With regard to port concessions, the Minister of transport, information technologies and communication monitors and controls the concession contracts he concluded and prepares annual report on the implementation of the projects included in the Action Plan which fall within his competence and on the concession contracts they have concluded. The preparation for the granting of a concession is preceded by proposal by the Executive Agency Maritime Administration (EAMA) and the BPICo. EAMA and BPICo. assist the Minister of Transport in carrying out the control over the implementation of the concession contracts, as well as the contracts concluded for provision of port services with the state-owned commercial companies with assets – public state property. Monitoring of the activity of the concessionaire is ensured by the Bulgarian legislation in force for every port – private or concessioned. The concession itself is monitored by a commission which is different for each port terminal. The commission is determined by an order of the Minister of transport and includes members from the Ministry of transport, EAMA, BPICo. BPICo. performs many of the functions and duties that are part of the port authority in most European countries and covers the definition under Regulation (EU) 2017/352 for the "managing body of the port". Although the Company

assists the Minister of Transport in exercising the control over concession contracts, BPICo, is in fact not in a position to exercise control (e.g. to take certain actions in case of failure of the obligations of the concessionaire).

Services provided by EAMA and BPICo. are not transferable to port operators (concessionaires) and have no relation to the concession contract.

9.1.13 Treatment of land, infrastructure and equipment during concession

Land and infrastructure of ports granted on concession are public state property. Nevertheless, the concessionaire has to insure the property in favour of the grantor. Newly built assets are transferred to the grantor and become public state property consequently.

The equipment such as – cranes, rich stackers, movable facilities, etc. are and remain property of the concessionaire.

There is a requirement for the concessionaire to own or rent technical equipment to ensure the quality performance of port services that will be performed with the concession object.

The concessionaire is the only one who has the right to perform port services within the territory of the granted port and has no right to transfer his rights to other party or to rent the port territory and infrastructure to other parties.

9.1.14 Participation of a port authority or grantor in concessionaire's company

No relevant practical examples for this type of concessions in Bulgaria.

9.1.15 Risk allocation and unforeseen events

Concession contracts usually include specific articles about force majeure. Having in mind that port terminals granted on concession are public state property, the State has the right, through the MTITC, EAMA and BPICo. to take appropriate measures to avoid the risks or to reduce the negative effect in case of unforeseen events. In these cases, the State does not owe compensations to the concessionaire. Due to the confidential character of the concession contracts, there is not enough data on this issue.

9.1.16 Requirements for the experience of concessionaire / lessee

Requirements include experience in the last at least 3 calendar years before the date of application and bid in activities of:

- (a) the provision of port services and / or
- (b) activities which are identical or similar to activities leading to the establishment and / or transport of goods and passengers through ports.

The concessionaire has to make registration in the register of port operators or another identical register under the law of the country in which the Participant is established during the last 3 calendar years at least prior to the date of submission of the offer.

Evidence of experience is required, at least in the last 3 calendar years, in carrying out the business activities - a list of the executed contracts containing the main elements of the contracts (type and volume of the goods and their destination, activities and / or services) and / or licenses, permits, confirmation letters or other.

9.1.17 Direct negotiations and unsolicited proposal

There are no relevant practical examples for such a procedure of direct negotiations between the port authority/ Ministry of transport and a private company. As mentioned, in Bulgaria a concession is granted by the Ministry of transport, not by BPICo. The Concessions Act regulates the competitive procedure with negotiation. Still the applicant shall submit an application and after receiving an invitation - an indicative tender proposal and a tender proposal under the award criteria. There is a commission which exclude from participation in the concessionaire designation procedure any candidate where a ground for exclusion applies or where candidate does not comply with the conditions for participation. After the invitation and exemption of the indicative tender proposals, the commission conducts the negotiations with each candidate.

9.1.18 Pre-qualification requirements

Requirements exist for certain amount of revenues for the last 3 financial years and carrying amount of the assets. The participant must present information about the registered capital of the company, type and number of the technical equipment owned or rented for the performance of the port services, and list of the technical experts responsible for execution of the concession contract.

9.1.19 Return of land, facilities and equipment after the concession/lease period

As explained in Chapter 9.1.11.

9.1.20 Procedure in the case of disputes

Art.154. (1) of the Concessions Act states that the provisions of the Commerce Act and of the Obligations and Contracts and Obligations Act shall apply to the unsettled issues related to the conclusion, implementation, modification and termination of the concession contract.

(2) The disputes concerning the conclusion, execution, modification and termination of a concession contract shall be settled by the order of the Civil Procedure Code.

9.2 Main findings, messages and problems of PPPs in ports

Main findings and key messages:

- Clear frame for PPP with regard to the ports – concessions for service;
- Change in the legislation yet has to be evaluated on practice;
- Concessions of ports are organized on high governmental level;
- Concession fees go directly to the state budget;

- EAMA and BPICo. are observation bodies and participate in commissions for monitoring and control of execution of concessionaire's obligations. The port managing body is not directly involved in the concession award process.
- Currently, concession revenue is considered to be revenue from public state property, which is why the concession fees are determined by the Minister of transport in accordance with a methodology defined by the Council of Ministers, although this public property was created as a result of an investment made by the BPICo.

Main issues, problems and obstacles:

- Issue / Problem 1: The investment in infrastructure projects does not return as revenue of BPICo. and the company does not actually have the power to exercise control over the concession contracts;
- Issue / Problem 2: Existing contracts for concession do not fully comply with the new legislation in force;
- Issue / Problem 3 BPICo. is not in position to take measures when there is failure in fulfilment of concessionaire's obligations;
- Issue / Problem 4 Outdated equipment, facilities and buildings not directly engaged in port operations remain poorly maintained or a subject of investment only in an emergency situation;
- Issue / Problem 5: There is a lack of transparency regarding the financial structure related to the management and operation of the ports, incl. as regards the concession contracts;
- Issue 6: The commercial and financial risk is bigger for the concessionaire;
- ...Issue 7: Too long period after which a force majeure condition may be claimed
- It is very difficult to correct any non-compliance in the initial conditions specified in the tender dossier.

Solution proposals:

- Solution 1: It is necessary to regulate the autonomy of BPICo. in determining the amount of the concession fees (in accordance with the adopted methodology) and the port dues. BPICo. should collect concession fees and use them for further port development.
- Solution 2: It is necessary to amend the existing concession contracts in order to transpose new legislation and to terminate contracts with state-owned port operators. All ports should be operated by private companies.
- Solution 3: BPICo. should be directly involved in the entire concession procedure.

- Solution 4: It is necessary to stimulate concessionaires to renew and maintain all the assets that are granted for operation.
- Solution 5: To observe and research the feedback from concessionaires on the concession procedures and contracts. Improvements may be introduced in that could make the concession procedure and contracting more effective.

10 Recommendations for the improvement of port PPP schemes in the Danube region

Taking into account significant legal differences between various countries in the Danube region, in spite of the fact that most legislations are, theoretically, harmonized with EU legislation, recommendations for the horizontal (region-wide) improvement of PPP schemes are extremely difficult task. In this view, the recommendations given in this Chapter should be understood as a general “cook book” or a collection of “recipes” from which each port or each national lawmakers could take “ingredients” as they see fit, in accordance to their own reform directions and scope. In addition to this, any changes into PPP schemes frequently require legal changes, at least in most of the countries.

All recommendations made in this Chapter are a compilation of proposed measures from participating countries, with an addition of general recommendations given on the basis of the overall situation in the port industry and on the basis of the opinions given in the questionnaires listed in Annexes I - VII.

Very broadly speaking, a very generic definition of a public-private partnerships (PPP) in ports can be derived as follows:

Public-private partnership (PPP) in ports is a contractual framework, or structure, where the public and private sector agree to deliver a port project and/or port service that is traditionally provided by the public sector, by means of risk transfer and risk share.

Large variety of PPP forms can exist. A common denominator for all forms are the better benefits which can be realized through leverage of private sector efficiencies and know-how and the allocation of risks to those parties that would manage them in the best possible way.

PPP models include the following:

- Service Agreements / Outsourcing
- Joint Ventures
- Concessions / Project Delivery
 - Design – Build – Transfer (DBT)
 - Design – Build – Operate – Transfer (DBOT) Structures
 - Design – Build – Finance – Transfer (DBFT) Structures
 - Build – Operate – Transfer (BOT) Structures
- Hybrid Structures (mixture of concession for rehabilitation, maintenance, design, build, finance and operation)
- Full privatization / Sales (rare and not recommended)

Before the elaboration of the proposed improvement measures, we will first have a brief overview of roles of public and private sector in ports, including both seaports and inland ports. Figure 1 represents a generic division of roles in port governance and operation between the government, public port authority and private sector which usually takes the role of commercial exploitation of port services (port operation). This division represents a theoretical distribution of roles and explains which services and activities are best managed by each sector.

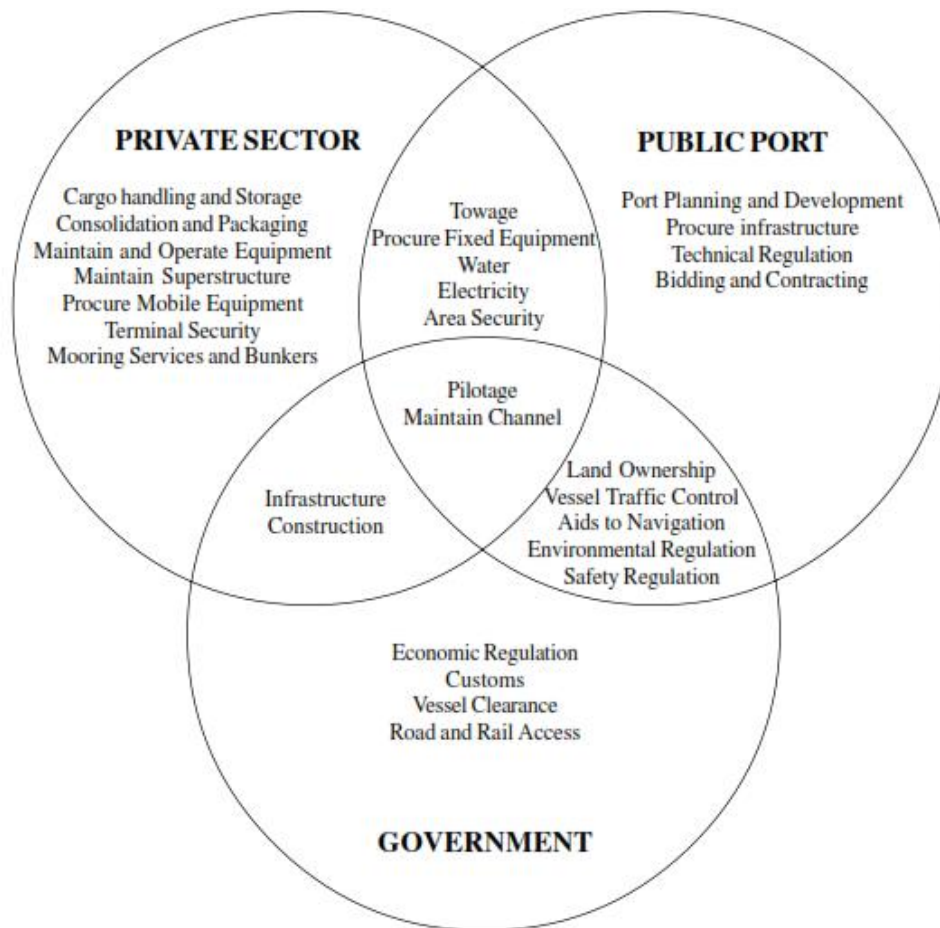


Figure 1: Best case scenario for division of roles in port governance and operation

10.1 Why PPP?

Public private partnerships have arisen for dual reason:

- Need to increase the efficiency of public port operations, and
- Access to private capital needed for construction and maintenance of infrastructure, including the provision of services.

Since ports are usually regarded as strategic objects of national transport infrastructure, whose proper functioning is of high importance for the economy of entire nations, both aforementioned reasons are equally important. Various PPP schemes can be applied in any publicly owned and governed port, regardless of the organizational form of a port authority. Naturally, an entity such as port authority (in any form) should exist in order to keep/maintain or take over the governance/administrative function of a port, while operating functions of a port should be transferred to private sector.

In many countries in the Danube region, port authorities are commercialized and/or corporatized, but in rare cases they perform port operating functions. Port governance/administration and port operation functions are clearly and properly separated and performed by different entities. Although port operating functions are usually transferred to private sector, it is not necessarily a rule. For example, port operator in the Port of Vienna is not privately owned company, but a publicly owned one. Nevertheless, it operates under a corporate (company) law and is therefore equal in all aspects to any other private operator.

In terms of the need to increase the efficiency of port operations, the private sector is rightly observed as more efficient in the following activities:

- provision of services which are efficient and cost-effective from the port users' perspective;
- response to changes in cargo-handling technologies;
- response to the very dynamic requirements of the port users;
- provision of choices of services and competition fostering;
- enforcement of labour discipline.

In addition, in terms of access to private capital, the private sector is seen as much more efficient in:

- making of timely capital investments to improve efficiency and expand capacity;
- provision of the funds needed to finance investments.

When properly combined, public and private sectors can form PPP's which should, ideally, achieve the following objectives:

- maintain and/or improve service levels with the same or higher safety and security levels;
- increase operational efficiency;
- accelerate growth of traffic;
- promote competition among ports and terminals;
- use private sector skills in project delivery through right skills, technologies and innovation;
- access to capital and cost effectiveness;
- balanced risk allocation and proper risk transfer;

- procurement based on life-cycle costs (LCC)⁵;
- promote equity ownership;
- efficient asset management;
- “value for money” principle;
- improve the quality and capacity of infrastructure;
- reduce operating subsidies;
- reduce the national deficit;
- downsize government bureaucracy;
- removal of political influence on port operations.

Objectives are achieved through:

- equity (value of an asset less the value of all liabilities on that asset);
- operations risk;
- competition;
- private sector commitment for profit making and discipline.

In a nutshell, the most important benefits of PPPs in ports are:

- increasing private sector participation through:
 - works and services contracts;
 - management and maintenance contracts;
 - operation and maintenance concessions;
 - build-operate-transfer concessions.
- integrated approach to development and operations;
- innovation:
 - financing options;
 - technology and operations re-engineering;

⁵ Life cycle costing (LCC) is defined in the International Organization for Standardization standard, Buildings and Constructed Assets, Service-life Planning, Part 5: Life-cycle Costing (ISO 15686-5) as an “economic assessment considering all agreed projected significant and relevant cost flows over a period of analysis expressed in monetary value. The projected costs are those needed to achieve defined levels of performance, including reliability, safety and availability.”

In the context of sustainable public procurement (SPP), the use of LCC is essential to demonstrate that procurement processes and decisions have to move beyond considering the purchase price of a good or service, for the purchase price does not reflect the financial and non-financial gains that are offered by environmentally and socially preferable assets as they accrue during the operations and use phases of the asset life cycle.

Typical LCC analyses are therefore based on:

- purchasing costs and all associated costs such as delivery, installation, commissioning and insurance;
- operating costs, including utility costs such as energy and water use and maintenance costs;
- end-of-life costs such as removal, recycling or refurbishment and decommissioning;
- longevity and warranty time frames of the asset.

(From: Perera, O., Morton, B. and Perfrement, T. “*Life Cycle Costing in Sustainable Public Procurement: A Question of Value*”, A white paper from International Institute for Sustainable Development (IISD), 2009)

- defined performance metrics → accountability;
- enhancement of relationships between public sponsor and private provider.

In order to prepare a successful PPP scheme, both sides (public and private sectors) need to “show their cards” and be open in their expectations. In a very general case, requirements and expectations from public and private sector are given in Figure 2.

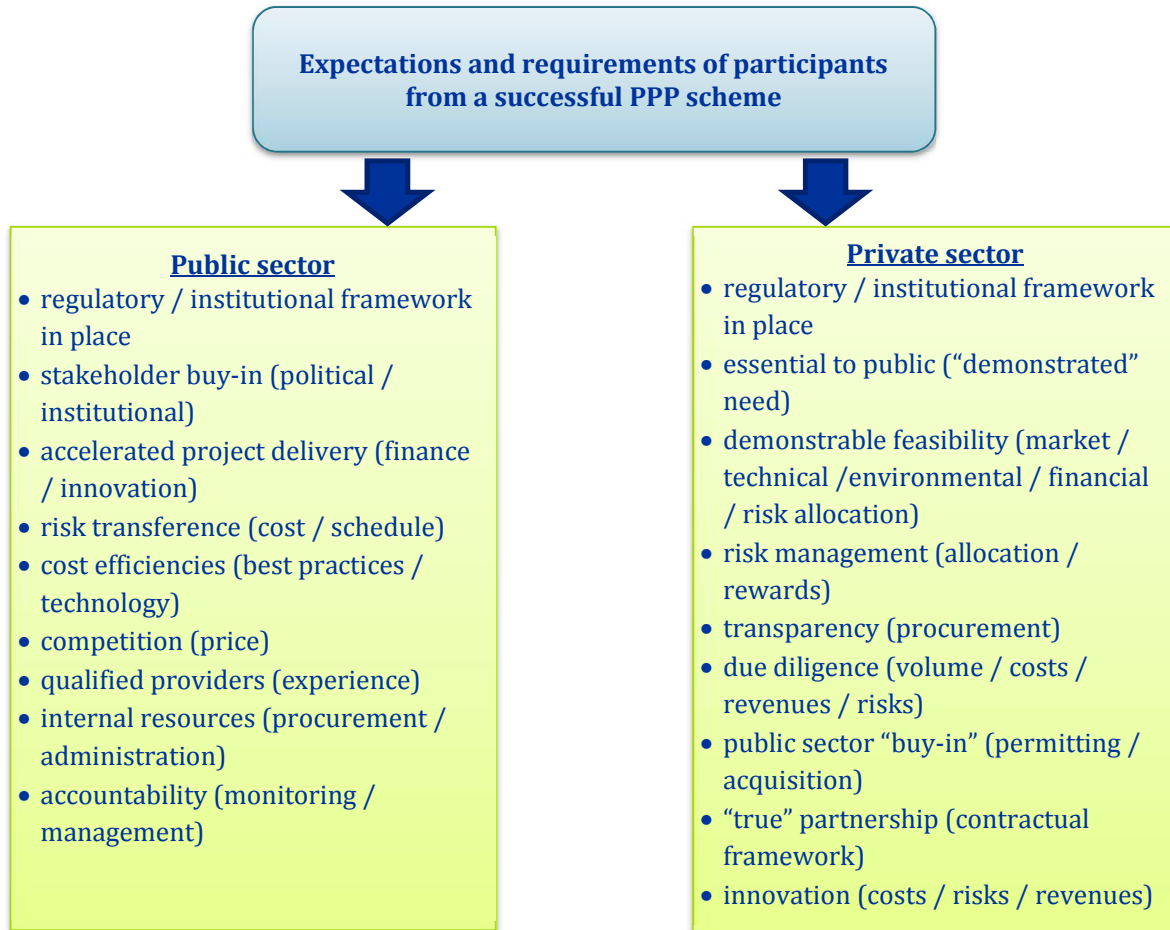


Figure 2: Requirements from public and private sector in port PPP schemes

10.2 Recommendations related to PPP models

Private sector can be involved in port management and operations in various ways. These ways can be grouped into four major categories:


- outsourcing,
- restructuring,
- partial divestiture (concessions, leases, etc.),
- full divestiture (total sale of business, unrestricted private ports, very rare).

The choice of an appropriate PPP model depends not only on the port's (government's, port authority's) objectives and the legal changes required to effect these models but also on:

- the services most in need of private sector management;
- the scale of these services and the potential for creating financially viable activities;
- the current level of private sector involvement in other port-related activities;
- the capacity of the private sector to provide skilled labour and manage large commercial operations;
- the level of commitment of the government to the reforms which must accompany these models;
- the government's capacity for technical and economic regulation;
- the extent of corruption within the port and the government;
- the competitiveness of the private sector.

Typical PPP agreements used to implement any of the 4 PPP categories are shown in Table 1.

Table 1: Typical PPP agreement types for various PPP categories

| Category | Agreements with limited port oversight | Agreements with active port involvement |
|----------------------------|--|--|
| Outsourcing | Franchises | Subcontracting labour and services Management contract Equipment leasing |
| Major restructuring | Capital leases Open competition | Wholly-owned subsidiaries |
| Partial divestiture | Concessions Long-term leases Sale of major assets (movable) | Minority equity partners Joint ventures Special purpose companies |
| Full divestiture | Sale of business Unrestricted private ports Capitalized long-term leases | Publicly traded stock company. Warning!  |

(Source: iC, based on Asian Development Bank⁶)

Outsourcing involves the transfer of specific port activities from the public sector to the private sector while permitting the port to function as an operating port. The port reduces operating costs and increases efficiency by utilizing private companies to supply labour and equipment and to perform specific services such as cargo related activities, vessel related activities, security, engineering designs, construction, dredging, maintenance, marketing, accounting, billing, data processing staffing, etc.

Four types of agreements can be used to implement this model. The first two are subcontracting and franchising. With the former, the port contracts the private sector to perform the services that the port offers to its users. With franchising, the private sector provides these services directly to the port users but under terms and conditions specified by the port.

⁶ "Developing Best Practices for Promoting Private Sector Investment in Infrastructure – Ports", Asian Development Bank, 2000.

The other two types of agreements are management contracts and equipment leases. The former allows the port to contract with the private sector to manage specific services utilizing the port's equipment and labour. The latter transfers responsibility for the maintenance, and sometimes operation, of cargo-handling equipment to the private sector. The port (port authority, or public port company) utilizes this equipment to provide services to its users.

Restructuring includes the transfer of the port's main business(es) to the private sector without transferring ownership of the port's major capital assets. The most typical arrangement is the leasing of the port's cargo-handling facilities together with the licensing of the right to provide services to private parties. The port transfers the responsibility for maintenance of the facility and for collection of cargo-handling charges. In return, the private operator pays agreed fees to the port. Under this agreement, the port no longer interacts directly with the port users but retains some regulatory authority over the quality and pricing of services. This model facilitates the strict division of port governing and operating functions. In this way of port planning and governance are performed by the public side (port authority), while the commercial (operating) functions are performed by private operators.

Alternatively, the port can form wholly-owned subsidiaries that operate as commercial enterprises. If this principle is applied, then the new port operating company must be allowed (organized) to function under the commercial (company) laws.

A third approach to restructuring is to allow open competition by private companies in the provision of the services associated with the main businesses. The public port provides the basic infrastructure, while the private companies provide suprastructure, mobile equipment and some complementary facilities.

Partial divestiture involves the transfer of assets for an extended period or joint ownership between the public sector and private investors. While few public ports have been willing, or able, to sell their land, many have entered into concession contracts of 20-40 years. Although these concessions require that the assets revert to the port, most of the investments have exceeded their technological life by the end of the agreements.

Various contractual agreements for this transfer have been established, some occurring at the beginning of the concession (build-transfer-operate agreements) and some at the end (build-operate-transfer and build-own-operate-transfer). The port retains ownership of the land and basic infrastructure throughout the period of the agreement.

Since there is little likelihood that the port will resume operations at the end of these agreements, the port management effectively limits its involvement to administering the tendering process and the contracts. Because the period between tenders often exceeds the tenure of the management staff, there is little distinction between concessions and sale of all assets, including land.

If the port wishes to be actively involved following the divestiture, it can participate in a joint

venture with the private sector. Most of these arrangements require the creation of special-purpose companies that allow the port and their private sector partners to make capital investments using project finance.

Full divestiture allows the permanent transfer of port assets along with operational responsibilities. Full privatization of a public port involves the sale of the port land. This model is very rare for a number of reasons. This model provides the public side a one-time cash injection, but the government (public partner, port authority) loses most of the influence on port business and port planning. This model usually involves a “bumpy road”, can lead to a dead end and it may be very difficult to reverse the process, when/if needed.

Some countries allow the private sector to establish private ports on their own land, but primarily to handle their own cargo. This usually refers to own dedicated terminals.

Some port privatization initiatives have involved conversion of public ports to publicly traded corporations. The government retains ownership of the land but provides a concession to the corporation to maintain, operate, and expand the port. This permits private financing of port investment.

Another arrangement, which approximates full divestiture, is a long-term capital lease (50-99 years) with the lease payments made up-front. This allows the government to fulfil its obligation with regard to ultimate ownership of the land while obtaining payment for the value of the land. Even when only part of the payment is made up-front, these leases often resemble full divestiture.

10.3 Recommendations related to risk allocation

Whatever the form of a PPP, its accompanying contractual framework (and the contract itself), where the transfer of assets and/or responsibilities from the public port to the private sector (operators) must clearly define the objectives of transaction, the duration of agreement, the payment terms, and the right and obligations of both parties to the agreement. Such contract allocates liabilities and defines the procedures for extension and termination of the contract.

Table 2 contains the most common risks associated with the transfer of public infrastructure and/or services to the private operator. In general, these risks should be allocated to the party that has the most control over the risk generating factors and/or the party that has access to methods for mitigating these risks. In real world applications, the allocation process is far more complex since both parties have determined level of involvement in the risk factors and access to different mitigation techniques. Significant part of the negotiation “package” between the port and the private sector during the tendering process belongs to the process of risk allocation. When PPP agreements involve capital investments, negotiations for risk allocation frequently include potential lenders.

Table 2: Types of risks in PPP schemes

| Commercial | Financial | Force Majeure | Technical |
|---|---|---|---|
| <ul style="list-style-type: none"> • Traffic • Pricing • Competition | <ul style="list-style-type: none"> • Inflation • Cost of Capital • Exchange rate • Convertibility, Repatriation • Continuing Availability • Change in Ownership | <ul style="list-style-type: none"> • Expropriation • Riots, law and order • Conflicts and wars • Natural disasters | <ul style="list-style-type: none"> • Design Failure • Performance and Reliability • Obsolescence • Loss of Access |
| Regulatory | Completion | Labour regulations | ----- |
| <ul style="list-style-type: none"> • Rules of the Game • Responsiveness of Regulator • New Laws and Regulations • Investment Cost Recovery • Control/Ownership of Assets | <ul style="list-style-type: none"> • Permits and Approvals • Contracting, Procurement • Construction Delays • Cost Overruns | <ul style="list-style-type: none"> • Productivity Gains • Wage Growth • Restrictive Practices • Labour Confrontation • Pension Liabilities | ----- |

(Source: iC, based on Asian Development Bank⁷)

Commercial (Market) risk encompasses risks associated with the financial feasibility of the project. These include the risks that the demand will not be sufficient or will not support a sufficient level of charges and that the capital and operating expenditures will be significantly higher than anticipated. For seaports, this risk is somewhat higher than for inland ports due to the changing patterns of international trade and maritime commerce. However, the growing competition between intermodal routes and the control of the shipping lines over the routing of vessels and cargos has added to the commercial risk for both sea and inland ports. The greater this risk, the higher the projected return that the private sector will require. Despite the growing competitiveness of the industry, the ports remain a relatively safe form of investment compared to shipping or land transport, especially in the case of mass bulk cargoes. Experience has shown that all but the smallest ports can be operated profitably. Also, ports have much less revenue volatility than the transportation companies they serve. This low level of risk has made investments in port facilities and services attractive not only for port operators but also for individual investors purchasing port debt or equity.

The port authority (or public partner in general) rarely accepts part of the commercial risk. The exception occurs where the port requires a specific set of investments according to a fixed timetable. It is important to encourage timely renewal of existing facilities, expansion of existing capacity, and the introduction of new facilities. However, fixed requirements for

⁷ “Developing Best Practices for Promoting Private Sector Investment in Infrastructure – Ports”, Asian Development Bank, 2000.

private investment in facilities merely increase the amount, which must be paid by port users for the services required.

Private sector has ability to use capital efficiently, to obtain the maximum output with the minimum investment, and to mobilize capital quickly when there is demand for investment. Where the timing of these investments is set regardless to the level of traffic, then the port will assume some of the risk, usually in the form of a lower financial offer by the private sector.

Financial risk involves changes in basic financial conditions, which can affect the feasibility of the investment into the object of port PPP. These risks include fiscal issues, such as the inflation rate, the currency exchange rate and the convertibility of the local currency (in the case of the Danube area – currencies other than Euro), as well as the terms of financing, such as the interest rates, period, loan covenants, and availability of additional funds. The level of risk decreases where there is greater diversity in the sources of funds. It is highest where financing is limited to commercial bank loans and lowest where there is an established domestic long term capital market. The private sector will assume the risks associated with the terms of financing but will look to the port to assume some of the risk associated with the fiscal policy.

Regulatory risk encompasses risks attached to the port and the government's role in regulating the activity of the private operators. Three of these risks are:

- A change in the laws affecting port operations and investments, especially those related to health, safety and environment.
- A change in the rules and procedures for regulation of pricing and performance of port services.
- Other changes in laws or policies that affect the rights of the private party or the obligations of the government.

The first has become a serious concern in nations with evolving environmental laws affecting dredging, handling of hazardous materials, and disposal of ship wastes. The second and third involve changes in policy or political initiatives and are of greatest concern in countries which lack a well-established body of corporate law. A less important risk is that the port will, knowingly or unknowingly, assume contractual obligations where it does not have the legal right to do so. While the private sector will assume the regulatory risk and rely on a continuing dialogue with government to minimize this risk. They, and particularly their lenders, will expect the government to provide some form of mitigation. In some cases, this may be a formal government guarantee to protect against changes in the regulatory rules or a guarantee from an MDB (any Multilateral Development Bank), for example, the Multilateral Investment Guarantee Agency, backed by an agreement between the MDB and the government.

Technical and completion risks refer primarily to the capital investments. They include the risks that the equipment and civil works will not meet the technical and performance standards and that the permitting/procurement/installation process will delay the start-up of a project. These risks are assumed by the private party, except for those activities that

require government participation. The latter include securing land, providing basic infrastructure and obtaining environmental approvals. The private party will expect these to be completed prior to starting the project or for the port to assume all risks associated with the delay of these activities.

Labour risks can be considerable. The private sector requires an efficient labour force and good labour relations in order to provide good quality services and control the costs for providing these services. The private sector will assume the risks associated with labour relations, pension liabilities, and other obligations related to the provision of future port services. Usually the government assumes the risk for prior commitments to labour. At the time of transfer, the port and its labour should have reached an agreement with regard to the possibility for future employment with the port and the private sector, and the government's obligations related to outstanding pensions and retrenchment payments. The private sector should have reached agreement related to the terms and conditions for future employment. The port and the private sector should each assume responsibility for future problems arising from these agreements.

Force majeure risks are related to natural disasters, riots, conflicts, wars, etc. They should be covered under standard force majeure clauses. These would limit the obligations of the private sector under these circumstances and provide for adequate compensation in the event that these cannot be overcome. The assignment of risk and the setting of levels of compensation are developed during contract negotiation but should reflect common practice. The port, for its part, will require the private sector to provide insurance to cover part of the risk and will maintain insurance to cover other parts of the risk.

Typical risks and mitigation measures are given in Table 3.

Table 3: Typical risks and mitigation measures

| Risk category | Risk source | Allocation | Mitigation measure |
|----------------------|--|-----------------|---|
| Technical | Effectiveness of Facilities and Equipment meeting the objectives | Port | Provide basic site data and operational information for preliminary design. |
| | | Private partner | Undertake detailed engineering design, design review. |
| Commercial | Profitability and commercial sustainability which depends on the traffic growth and competition levels | Port | Introduce commercial prices prior to transfer, construct and finance basic infrastructure and facilities, provide limited protection from competition, use performance-based contracts. |
| | | Private partner | Thorough marketing studies, subcontracting activities, obtain user commitments. |
| Completion | Time to develop and construct facilities | Government | Provide complementary infrastructure prior to start of project. |
| | | Port | Obtain basic environmental and regulatory approvals prior to start of construction. |
| | | Private partner | Careful planning and scheduling, turnkey construction with fixed deadlines. |
| Financial | Changes in cost of debt service or ability to meet debt service and effect on cash flow | Government | Provide guarantees for repatriation of earnings. |
| | | Port | Recover costs through royalties rather than rents, allow foreign-exchange denominated tariffs. |
| | | Private partner | Use of equity rather than debt to finance investments, use of long-term capital markets, and foreign exchange hedges. |
| Regulatory | Consistency of government to applying regulatory framework and in keeping the “rules of the game” | Lender | Fixed interest rates on commercial loans, adequate “step-in” provisions, compensation for early termination, repayment guarantees. |
| | | Government | Sovereign guarantees, minimum regulatory framework. |
| | | Port | Non-punitive exit provisions in the agreement. |
| | | Private partner | Careful legal review of all areas including environment, labour, health and safety laws. |
| Labour | Overstaffing and inefficient work practices, contentious labour relations | Government | Multilateral Investment Guarantee Agency (MIGA) and other multinational guarantees. |
| | | Government | Establishing “Open Shop”, break up union monopolies, introduce effective retrenchment schemes. |
| | | Port | Absorb excess labour, reassign labour. |
| Force Majeure | Natural disasters or civil unrest | Private partner | Negotiate with labour prior to the agreement. |
| | | Port | Coverage of Force Majeure clauses in agreement. |
| | | Private partner | Adequate insurance coverage. |
| | | Lender | Requirement for specific forms of insurance. |

(Source: iC, based on Asian Development Bank⁸)

⁸ “Developing Best Practices for Promoting Private Sector Investment in Infrastructure – Ports”, Asian Development Bank, 2000.

Another example of risk sharing, per risk categories is given in Table 4.

Table 4: Example of typical risk sharing in port PPP schemes

| RISK | PUBLIC | PRIVATE |
|--|--|--|
| Legislative (existing and future) | Major responsibility | Sharing within defined parameters |
| Acquisition and Environmental | Major responsibility | Sharing within defined parameters, with public sector assistance |
| Permitting and Planning | Major responsibility | Sharing within defined parameters |
| Design and Construction | | Major responsibility |
| Operation and Maintenance | Sharing within defined parameters | Major responsibility |
| Financing | | Major responsibility |
| Termination | | Major responsibility, unless demonstrably caused by public |
| Insurance | Sharing based on availability of commercial rates | Major responsibility |
| Force Majeure | Sharing based on event and availability of insurance | Sharing based on event and availability of insurance |

(Source: iC)

10.4 Recommendations based on lessons learned

“One size fits all” recommendations are not possible, due to significant market and legal differences in riparian countries, especially from the point of view of the following:

- regulatory / institutional frameworks;
- available funding options through capital markets;
- local market & commercial opportunities for private partners;
- local requirements / considerations;
- public perceptions.

Having this limitation in mind, this section contains the recommendations for improved introduction of PPP in the Danube region ports, based on practical experience gained in PPP implementation in the Danube riparian countries.

Table 5: Recommendations based on lessons learned

| Recommendation/Guideline | Relation to specific issue or problem | Recommended by: | Additional remarks |
|--|--|-----------------|---|
| Port authorities should be corporatized so as to be allowed to work under company law, thus simplifying the B2B contracting procedures. | | AT | |
| Port authorities should be allowed more autonomy in decision making on PPP processes. | | AT | |
| PPP processes should be as simple as possible and flexible, and to include non-discriminatory features, public announcement, public procurement. | | AT | |
| PPP should be regulated by a clear and comprehensive laws. | Very generic legislation on PPP schemes. | SK | |
| For PPP projects, the time reserved for preparation of operational programmes should be sufficiently long. | | SK | |
| PPP projects should be accompanied by comprehensive information system on PPP funding opportunities. | | SK | |
| Individual PPPs should have a specific way of determining payments | | SK | |
| Exemption of land from priority investment property. | | SK | Land owned by Public ports, jsc. has been defined as priority investment property. This means it cannot be the subject of any kind of pledge. This fact significantly limits eventual investment activities of the company. |
| PPP “success stories” and its knowledge sharing should be boosted from the top level. | | SK | |

| Recommendation/Guideline | Relation to specific issue or problem | Recommended by: | Additional remarks |
|--|---|-----------------|---|
| PPP schemes, including legislation and/or contracts must specify or set clear instructions on how the fees are paid, who pays what and who charges what from users | | SK | |
| Property rights (from Grantor to concessionaire, and back) should be flexible and transfer of (temporary) ownership should be made possible | Currently, no property rights on objects of concession can be transferred to the concessionaire | SK | |
| Termination conditions, including early termination, of PPP contracts should be set well in advance. | | HU | |
| Concessions on demand should be clearly regulated and facilitate in the legislation. | | HR | |
| Concession agreements should be made more flexible, allowing the easier respond to market dynamics. | | HR | |
| PPP agreements should last long enough so as to enable return of investment and reasonable profit. | | HR, RS | |
| Land ownership issues should be solved before entering any PPP ventures. | | HR, RS | Expropriation funds must be secured well before entering any PPP agreement. |
| Concession fees and the type of fees should be clearly specified in the legislation. | | HR, RS | Not the amount, but to explain or direct what types of fees will be paid and how they are determined. |
| Spatial planning issues, port area delimitation and property issues must be solved before the preparation of Concession act for each port. | | RS | |
| PPP relate regulation should be clear and precise, but not excessive. | Certain elements of PPP schemes are "over-tuned" while other crucial elements are left unregulated or poorly regulated. | RO | |

| Recommendation/Guideline | Relation to specific issue or problem | Recommended by: | Additional remarks |
|---|---|-----------------|--|
| PPP schemes should be accompanied with guidelines on financial modelling, risk matrices. | Lack of experience in PPP implementation. | RO | A guideline/textbook should exist. |
| Training should be provided for PPP. | Lack of experience in PPP implementation | RO | Full training should be provided, including the basics, financial modelling, risk allocation and sharing, economics behind the fees, fees determination, legal issues, etc. |
| Creation of an regional institution for tracking and assisting PPP | Lack of experience in PPP implementation, low awareness of opportunities and benefits. | RO | |
| Transparency on PPP agreements and procedures should be maximized and compulsory. | | RO | |
| Port governing bodies (port authorities and similar) should be entitled to determine the concession fees and port charges and to collect revenues from concession fees and other fees payable to the port authority. In addition, port authorities should be directly involved (if not leading it) in the concession process from the very beginning. | The investment in infrastructure projects does not return as revenue of port authority. and the company does not actually have the power to exercise control over the concession contracts. | BG | Currently, concession revenue is considered to be revenue from public state property, which is why the concession fees are determined by the Minister of transport in accordance with a methodology defined by the Council of Ministers, although this public property was created as a result of an investment made by the BPICo. (port authority). |
| Concession contracts must be fully in line with the existing regulation and control mechanisms should be made for that purpose | | BG | |
| Concessionaires should be stimulated to renew and maintain all assets granted for operation. | | BG | |
| | | | |
| Concessions or any other PPP schemes should have control and monitoring mechanisms, such as performance | | iC | |

| Recommendation/Guideline | Relation to specific issue or problem | Recommended by: | Additional remarks |
|--|---------------------------------------|-----------------|---|
| metrics, so as to allow proper and timely reaction in case of problems. | | | |
| When new ports or terminals are constructed under BOT concessions, the Grantor can consider giving the operator the exclusivity right for up to 5 years. | | iC | This enables the concessionaire (operator) to build up its business without being directly confronted by a competing nearby facility. Caution should be exerted here so as to not disturb the market in an unwanted way (freedom of competition). |
| PPP agreements should always involve lenders, so as to increase the quality of the agreement | | iC | |
| | | | |

(Source: iC, based on inputs from project partners)

11 Conclusions

In the relatively recent past, many ports in the Danube region have been owned, managed and operated by public sector. No typical port authorities (with governing / management / administering functions) existed. Ports were managed and operated by a single company, usually state owned. These traditional methods of managing and operating ports have been abandoned in the last decade(s) and ports are largely operated as commercial entities, where governing and operating functions are strictly separated, keeping the governing and owning function (in most of the cases) for the public sector and transferring the operating function of ports to the private sector. Port operations are peculiar business and as such should be managed to achieve optimum utilization of capital. Ports are areas where significant value added is created, especially in terms of ports being nodes of the transport and supply chains. In this view, it is of extreme importance for national, regional and even global economy that the ports are operated efficiently, with their infrastructure being well developed and services adapted to the dynamic market demand.

Nowadays, in many ports the public sector has a role of planner, facilitator and regulator, while the private sector acts as operator, service provider and, in many cases, as a developer. Nevertheless, this does not mean that all activities in port industry are suitable for privatisation, nor that the private sector is a suitable partner for provision of all services, particularly those related to the public interest. In many countries, public goods are inherently non-divisible and non-consumable, such as land and infrastructure. Private sector's prime goal is making profit. For that reason, port services, being divisible and consumable goods creating value added and therefore revenues, are very attractive for private sector.

In the Danube region, port privatisation has seen its ups and downs. In some cases, privatization of port companies was done as if in a hurry, leaving lots of room for mistakes and problems in the future, requiring considerable efforts to mitigate the consequences and correct what could be corrected. This report aims at facilitating of knowledge sharing, experience sharing and some recommendations which can be applied where necessary.

Following a thorough analysis of all PPP models in riparian countries, it can be concluded that the best option for promoting private sector involvement in public port operations and investment is the landlord port model. This model provides a broad framework in which the private sector can replace the public sector in the provision of services to the vessel and its cargo. It allows the public sector to remain the owner of the land and infrastructure and to continue regulating their use, while sharing responsibility for capital investment.

Whatever the PPP model is applied in ports, it is of extreme importance that risks are assigned according to which party has the greater capacity to mitigate the risk. Since the objective of the move towards PPP is to introduce commercial behaviour and access to the private capital, the commercial risk should be transferred primarily to the private sector. The public sector would keep the governance and regulatory risk.

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Annexes

Annex I – Questionnaires Austria

Questionnaire on the PPP obstacles in Austrian ports

Fragebogen: Hindernisse/Einschränkungen bei PPP in Häfen

Country: Austria Project Partner: **via donau** Respondent: Hans-Peter Hasenbichler

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to:</p> <p>Sehen Sie irgendwelche Hindernisse bei der Einführung von PPP-Modellen oder deren erhöhte Effizienz in Bezug auf:</p> | no | |
| <p>1. The entity who is the lessor or concession grantor or contractor for the operating authorization?</p> <p>die juristische Person als Vermieter/Verpächter bzw. als kontrahierende Behörde?</p> | no | *.....for all questions - see general remarks at the end of the questionnaire |
| <p>2. Current legal setup of PPP in you port or country?</p> <p>den laufenden gesetzlichen Rahmen für PPP in ihrem Hafen oder Land?</p> | no | |
| <p>3. Available forms of PPP in your port/country?</p> <p>verfügbare Arten bzw. Formen von PPP in Ihrem Hafen/Land?</p> | no | |
| <p>4. Concession/lease fees types?</p> <p>Gebührenmodelle für die Konzession oder Pacht?</p> | no | |
| <p>5. Amount of concession/lease fees?</p> <p>die Höhe der Konzession-/Pachtgebühr?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>6. Revenues made from concession performance or lease?</p> <p>Einnahmen aus Konzession oder Pacht?</p> | no | |
| <p>7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts?</p> <p>zusätzliche Gebühren oder Steuern für den Konzessionsinhaber / Pächter während der Laufzeit von Konzession/Pacht?</p> | no | |
| <p>8. Property rights that can be granted by Grantor to concessionaire?</p> <p>Eigentumsrechte, die vom Konzessionsgeber an den Konzessionsinhaber gegeben werden können?</p> | no | |
| <p>9. Ways of fees/rates determination?</p> <p>die Festlegung von Gebühren / Tarifen?</p> | no | |
| <p>10. The land, facilities, and equipment included in the concession, their distinction and treatment?</p> <p>das Grundstück, die Anlagen und das Equipment, die in der Konzession enthalten sind, ihre Zuordnung und Handhabung?</p> | no | |
| <p>11. Procedures and risk allocation in case of Force Majeure?</p> <p>die Abläufe und Risikoverteilung bei höherer Gewalt?</p> | no | |
| <p>12. Termination conditions and clauses?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Konditionen und Klauseln bei Beendigung? | | |
| 13. Insurance issues? Versicherungsfragen? | no | |
| 14. Minimum investments required? die Mindesthöhe bei Investitionen? | no | |
| 15. Performance requirements? Leistungsanforderungen? | no | |
| 16. Expropriation issues? Enteignungsthemen/Angelegenheiten? | no | |
| 17. Contract suspension or early termination clauses? Vertragsaufhebung oder Klauseln bei vorzeitiger Kündigung ? | no | |
| 18. Requirements for existing and/or new personnel? Anforderungen an bestehendes oder neues Personal? | no | G |
| 19. Port services agreements? Abkommen zu Hafenservices? | no | |
| 20. Legal form of lessee or concessionaire? die Rechtsform des Pächters oder Konzessionsinhabers? | no | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? die Rolle der Hafenbehörde oder | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| anderen öffentlicher Einrichtungen bei Kontrolle der Vertragserfüllung? | | |
| <p>22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation?</p> <p>Finanzierungsvereinbarungen oder Fördermittel für die Errichtung, Modernisierung oder Sanierung von Infrastruktur?</p> | no | |
| <p>23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)?</p> <p>Beteiligung der Hafenbehörde an Unternehmen des Pächters/Operators?</p> | no | |
| <p>24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets?</p> <p>Richtlinien und Verträge zwischen dem Pächter/Operator bezüglich Planungsvorgaben für neue Infrastrukturanlagen ?</p> | no | |
| <p>25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones?</p> <p>Das Funktionsanforderungen des Hafens und/oder Terminals, die Designvorschläge für Anlagen, das Ausbauprogramm und Zeitplan inkl. Milestones?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program?</p> <p>Rechte und Verpflichtungen des Pächters und des Verpächters hinsichtlich der Erfüllung des Investitionsprogramms?</p> | no | |
| <p>27. Activities permitted to be carried out in the concession area?</p> <p>zulässige Tätigkeiten im Konzessionsareal durchzuführen ??</p> | no | |
| <p>28. Equal access to common areas in the port?</p> <p>den neutralen Zugang zu Allgemeinflächen im Hafen</p> | no | |
| <p>29. Return of land, facilities and equipment after the concession/lease period has expired?</p> <p>die Rücknahme von Grundstücken, Einrichtungen und Ausstattung nach Ablauf der Konzessions- oder Pachtdauer?</p> | no | |
| <p>30. Concession/lease award options?</p> <p>die Zuschlags-/Vergabeoptionen von Konzession oder Pacht?</p> | no | |
| <p>31. Direct negotiations and unsolicited proposals (for concessions and leases)?</p> <p>die direkte Verhandlung/Übertragung und Übernahmeangebote (für Konzession und Pachtverträge) ?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 32. Operator's experience requirements? Anforderungen an die Erfahrung des Betreibers? | no | |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? Vorqualifikations-Kriterien (technisch und finanziell, Bonitätsprüfung?) | no | |
| 34. Technical part of the proposal (during the bidding process)? technischen Teil des Angebots (während des Ausschreibungsprozesses)? | no | |
| 35. Financial part of the proposal (during the bidding process)? finanzieller Teil des Angebots (während des Ausschreibungsprozesses)? | no | |
| 36. Negotiations phase (following the technical and financial proposal phases)? die Verhandlungsphase (im Anschluss an die techn/finanzielle Angebotsphase)? | no | |
| 37. Sealed vs. open bids? geschlossene bzw. offene Ausschreibungen? | no | |
| 38. Transparency issues during the bids? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Transparenzprobleme während der Ausschreibung? | | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? mögliche Optionen zur Konfliktlösung (gesetzlich, administrative, Schiedsgericht, unverbindliche alternative Konfliktresolutions, ..)? | no | |
| 40. Information about possibilities of establishing PPP Informationen über Möglichkeiten zur Einführung von PPP? | no | |
| 41. Distribution of risks associated with the preparation and operation of the PPP project die Risikoverteilung in Verbindung mit der Vorbereitung und dem Betrieb von PPP Projekten? | no | |
| 42. Granted time for concession duration? die zugesagte Laufzeit der Pachtdauer? | no | |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | nothing to do actually – go ahead with today’s business |
| | | |
| C) What is the best concession type, according to your opinion? | | like Ennshafen in Austria |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| in port development in your port/country? | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | no | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | no | |

General explanations, remarks, comments and suggestions for all the questions

In Austria the legal structure of ports is according to public right in the form of “GmbH”; therefor the ports are free in establishing contracts as business partners. The most essential thing is to give ports the change to be an own legal entity and then there will be no real problems or obstacles for PPP-development.

The fact that ports are own legal entities is very important for both parties, especially for the private partner because he gets “legal certainty” for his business.

Public owned entities (ports) in Austria have got a lot of internal regulations, bylaws, in order to get the internal permission of the owners (supervisory board, ...) for signing contracts and have to fulfil the relevant general laws for public owned companies (e.g. Bundesvergabegesetz, EU-regulations for buying/selling assets (“pari passu”,) – therefore no problem for PPP-processes, when you fulfil this framework

Landlord ports und tool ports are best suited for PPP-developments; it is recommended to make in advance public offers for e.g. renting land (newspapers,) and everybody from the private sector can take part of the bidding process (base line should be a minimum price level according to expertise and afterward in the contract a operating obligation should be fixed).

PPP-schemes are the best basis for the public sector to really operate port business with outside capital / borrowed capital / debt capital, this is very important for the future development of port business and IWW-business.

Questionnaire on the PPP obstacles in Austrian ports

Fragebogen: Hindernisse/Einschränkungen bei PPP in Häfen

Country: Austria Project Partner: **Austrian ministry** Respondent: Vera Hofbauer

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to:</p> <p>Sehen Sie irgendwelche Hindernisse bei der Einführung von PPP-Modellen oder deren erhöhte Effizienz in Bezug auf:</p> | no | |
| <p>1. The entity who is the lessor or concession grantor or contractor for the operating authorization?</p> <p>die juristische Person als Vermieter/Verpächter bzw. als kontrahierende Behörde?</p> | no | *.....for all questions - see general remarks at the end of the questionnaire |
| <p>2. Current legal setup of PPP in you port or country?</p> <p>den laufenden gesetzlichen Rahmen für PPP in ihrem Hafen oder Land?</p> | no | |
| <p>3. Available forms of PPP in your port/country?</p> <p>verfügbare Arten bzw. Formen von PPP in Ihrem Hafen/Land?</p> | no | |
| <p>4. Concession/lease fees types?</p> <p>Gebührenmodelle für die Konzession oder Pacht?</p> | no | |
| <p>5. Amount of concession/lease fees?</p> <p>die Höhe der Konzession-/Pachtgebühr?</p> | no | |
| <p>6. Revenues made from concession performance or lease?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Einnahmen aus Konzession oder Pacht? | | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? zusätzliche Gebühren oder Steuern für den Konzessionsinhaber / Pächter während der Laufzeit von Konzession/Pacht? | no | |
| 8. Property rights that can be granted by Grantor to concessionaire? Eigentumsrechte, die vom Konzessionsgeber an den Konzessionsinhaber gegeben werden können? | no | |
| 9. Ways of fees/rates determination? die Festlegung von Gebühren / Tarifen? | no | |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? das Grundstück, die Anlagen und das Equipment, die in der Konzession enthalten sind, ihre Zuordnung und Handhabung? | no | |
| 11. Procedures and risk allocation in case of Force Majeure? die Abläufe und Risikoverteilung bei höherer Gewalt? | no | |
| 12. Termination conditions and clauses? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Konditionen und Klauseln bei Beendigung? | | |
| 13. Insurance issues? Versicherungsfragen? | no | |
| 14. Minimum investments required? die Mindesthöhe bei Investitionen? | no | |
| 15. Performance requirements? Leistungsanforderungen? | no | |
| 16. Expropriation issues? Enteignungsthemen/Angelegenheiten? | no | |
| 17. Contract suspension or early termination clauses? Vertragsaufhebung oder Klauseln bei vorzeitiger Kündigung ? | no | |
| 18. Requirements for existing and/or new personnel? Anforderungen an bestehendes oder neues Personal? | no | G |
| 19. Port services agreements? Abkommen zu Hafenservices? | no | |
| 20. Legal form of lessee or concessionaire? die Rechtsform des Pächters oder Konzessionsinhabers? | no | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? die Rolle der Hafenbehörde oder | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| anderen öffentlicher Einrichtungen bei Kontrolle der Vertragserfüllung? | | |
| <p>22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation?</p> <p>Finanzierungsvereinbarungen oder Fördermittel für die Errichtung, Modernisierung oder Sanierung von Infrastruktur?</p> | no | |
| <p>23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)?</p> <p>Beteiligung der Hafenbehörde an Unternehmen des Pächters/Operators?</p> | no | |
| <p>24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets?</p> <p>Richtlinien und Verträge zwischen dem Pächter/Operator bezüglich Planungsvorgaben für neue Infrastrukturanlagen ?</p> | no | |
| <p>25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones?</p> <p>Das Funktionsanforderungen des Hafens und/oder Terminals, die Designvorschläge für Anlagen, das Ausbauprogramm und Zeitplan inkl. Milestones?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program?</p> <p>Rechte und Verpflichtungen des Pächters und des Verpächters hinsichtlich der Erfüllung des Investitionsprogramms?</p> | no | |
| <p>27. Activities permitted to be carried out in the concession area?</p> <p>zulässige Tätigkeiten im Konzessionsareal durchzuführen ??</p> | no | |
| <p>28. Equal access to common areas in the port?</p> <p>den neutralen Zugang zu Allgemeinflächen im Hafen</p> | no | |
| <p>29. Return of land, facilities and equipment after the concession/lease period has expired?</p> <p>die Rücknahme von Grundstücken, Einrichtungen und Ausstattung nach Ablauf der Konzessions- oder Pachtdauer?</p> | no | |
| <p>30. Concession/lease award options?</p> <p>die Zuschlags-/Vergabeoptionen von Konzession oder Pacht?</p> | no | |
| <p>31. Direct negotiations and unsolicited proposals (for concessions and leases)?</p> <p>die direkte Verhandlung/Übertragung und Übernahmeangebote (für Konzession und Pachtverträge) ?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 32. Operator's experience requirements? Anforderungen an die Erfahrung des Betreibers? | no | |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? Vorqualifikations-Kriterien (technisch und finanziell, Bonitätsprüfung?) | no | |
| 34. Technical part of the proposal (during the bidding process)? technischen Teil des Angebots (während des Ausschreibungsprozesses)? | no | |
| 35. Financial part of the proposal (during the bidding process)? finanzieller Teil des Angebots (während des Ausschreibungsprozesses)? | no | |
| 36. Negotiations phase (following the technical and financial proposal phases)? die Verhandlungsphase (im Anschluss an die techn/finanzielle Angebotsphase)? | no | |
| 37. Sealed vs. open bids? geschlossene bzw. offene Ausschreibungen? | no | |
| 38. Transparency issues during the bids? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Transparenzprobleme während der Ausschreibung? | | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? mögliche Optionen zur Konfliktlösung (gesetzlich, administrative, Schiedsgericht, unverbindliche alternative Konfliktresolutionsen, ..)? | no | |
| 40. Information about possibilities of establishing PPP Informationen über Möglichkeiten zur Einführung von PPP? | no | |
| 41. Distribution of risks associated with the preparation and operation of the PPP project die Risikoverteilung in Verbindung mit der Vorbereitung und dem Betrieb von PPP Projekten? | no | |
| 42. Granted time for concession duration? die zugesagte Laufzeit der Pachtdauer? | no | |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | Ministry will make a feed back with Austrian ports (IGÖD) after having the results of project DAPhNE, if there are some recommendations coming up for future improvement of the processes, frameworks, ... |
| | | |
| C) What is the best concession type, according to your opinion? | | Austrian systems seems to be best and works quite well |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement | no | It depends on the owner (public body) how deep they will go into the process |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| in port development in your port/country? | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | no | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | no | No, actually both partners can apply for funding |

General explanations, remarks, comments and suggestions for all the questions

Austrian law is a good basis for acting in PPP-processes; first: the public owner (state, federal state, city, ...) has to decide to put all the assets into a body governed by private law (GmbH), afterwards everything can be done, if you just respect the framework of transparency, non-discriminatory and all the other items of laws specially made for entities of public owned bodies – this is a must fulfil these items, all other things can be done according to contracts, ... business rules,

In Austria public owned bodies have to respect “Bundesvergabegesetz” and relevant non-discriminatory regulations of EU (e.g. when selling a ground to publish it in advance or working according to expert appraisals; Ennshafen has shown how to do it regarding the container terminal tender process

Questionnaire on the PPP obstacles in ports

Fragebogen: Hindernisse/Einschränkungen bei PPP in Häfen

Country: Austria Project Partner: **Hafen Krems** / provider Respondent: Gerhard Gussmag

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to:</p> <p>Sehen Sie irgendwelche Hindernisse bei der Einführung von PPP-Modellen oder deren erhöhte Effizienz in Bezug auf:</p> | no | |
| <p>1. The entity who is the lessor or concession grantor or contractor for the operating authorization?</p> <p>die juristische Person als Vermieter/Verpächter bzw. als kontrahierende Behörde?</p> | no | *.....for all questions - see general remarks at the end of the questionnaire |
| <p>2. Current legal setup of PPP in you port or country?</p> <p>den laufenden gesetzlichen Rahmen für PPP in ihrem Hafen oder Land?</p> | no | |
| <p>3. Available forms of PPP in your port/country?</p> <p>verfügbare Arten bzw. Formen von PPP in Ihrem Hafen/Land?</p> | no | |
| <p>4. Concession/lease fees types?</p> <p>Gebührenmodelle für die Konzession oder Pacht?</p> | no | |
| <p>5. Amount of concession/lease fees?</p> <p>die Höhe der Konzession-/Pachtgebühr?</p> | no | |
| <p>6. Revenues made from concession performance or lease?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Einnahmen aus Konzession oder Pacht? | | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? zusätzliche Gebühren oder Steuern für den Konzessionsinhaber / Pächter während der Laufzeit von Konzession/Pacht? | no | |
| 8. Property rights that can be granted by Grantor to concessionaire? Eigentumsrechte, die vom Konzessionsgeber an den Konzessionsinhaber gegeben werden können? | no | |
| 9. Ways of fees/rates determination? die Festlegung von Gebühren / Tarifen? | no | |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? das Grundstück, die Anlagen und das Equipment, die in der Konzession enthalten sind, ihre Zuordnung und Handhabung? | no | |
| 11. Procedures and risk allocation in case of Force Majeure? die Abläufe und Risikoverteilung bei höherer Gewalt? | no | |
| 12. Termination conditions and clauses? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Konditionen und Klauseln bei Beendigung? | | |
| 13. Insurance issues? Versicherungsfragen? | no | |
| 14. Minimum investments required? die Mindesthöhe bei Investitionen? | no | |
| 15. Performance requirements? Leistungsanforderungen? | no | |
| 16. Expropriation issues? Enteignungsthemen/Angelegenheiten? | no | |
| 17. Contract suspension or early termination clauses? Vertragsaufhebung oder Klauseln bei vorzeitiger Kündigung ? | no | |
| 18. Requirements for existing and/or new personnel? Anforderungen an bestehendes oder neues Personal? | no | |
| 19. Port services agreements? Abkommen zu Hafenservices? | no | |
| 20. Legal form of lessee or concessionaire? die Rechtsform des Pächters oder Konzessionsinhabers? | no | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? die Rolle der Hafenbehörde oder | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| anderen öffentlicher Einrichtungen bei Kontrolle der Vertragserfüllung? | | |
| <p>22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation?</p> <p>Finanzierungsvereinbarungen oder Fördermittel für die Errichtung, Modernisierung oder Sanierung von Infrastruktur?</p> | no | |
| <p>23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)?</p> <p>Beteiligung der Hafenbehörde an Unternehmen des Pächters/Operators?</p> | no | |
| <p>24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets?</p> <p>Richtlinien und Verträge zwischen dem Pächter/Operator bezüglich Planungsvorgaben für neue Infrastrukturanlagen ?</p> | no | |
| <p>25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones?</p> <p>Das Funktionsanforderungen des Hafens und/oder Terminals, die Designvorschläge für Anlagen, das Ausbauprogramm und Zeitplan inkl. Milestones?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program?</p> <p>Rechte und Verpflichtungen des Pächters und des Verpächters hinsichtlich der Erfüllung des Investitionsprogramms?</p> | no | |
| <p>27. Activities permitted to be carried out in the concession area?</p> <p>zulässige Tätigkeiten im Konzessionsareal durchzuführen ??</p> | no | |
| <p>28. Equal access to common areas in the port?</p> <p>den neutralen Zugang zu Allgemeinflächen im Hafen</p> | no | |
| <p>29. Return of land, facilities and equipment after the concession/lease period has expired?</p> <p>die Rücknahme von Grundstücken, Einrichtungen und Ausstattung nach Ablauf der Konzessions- oder Pachtdauer?</p> | no | |
| <p>30. Concession/lease award options?</p> <p>die Zuschlags-/Vergabeoptionen von Konzession oder Pacht?</p> | no | |
| <p>31. Direct negotiations and unsolicited proposals (for concessions and leases)?</p> <p>die direkte Verhandlung/Übertragung und Übernahmeangebote (für Konzession und Pachtverträge) ?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 32. Operator's experience requirements? Anforderungen an die Erfahrung des Betreibers? | no | |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? Vorqualifikations-Kriterien (technisch und finanziell, Bonitätsprüfung?) | no | |
| 34. Technical part of the proposal (during the bidding process)? technischen Teil des Angebots (während des Ausschreibungsprozesses)? | no | |
| 35. Financial part of the proposal (during the bidding process)? finanzieller Teil des Angebots (während des Ausschreibungsprozesses)? | no | |
| 36. Negotiations phase (following the technical and financial proposal phases)? die Verhandlungsphase (im Anschluss an die techn/finanzielle Angebotsphase)? | no | |
| 37. Sealed vs. open bids? geschlossene bzw. offene Ausschreibungen? | no | |
| 38. Transparency issues during the bids? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Transparenzprobleme während der Ausschreibung? | | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? mögliche Optionen zur Konfliktlösung (gesetzlich, administrative, Schiedsgericht, unverbindliche alternative Konfliktresolutions, ..)? | no | |
| 40. Information about possibilities of establishing PPP Informationen über Möglichkeiten zur Einführung von PPP? | no | |
| 41. Distribution of risks associated with the preparation and operation of the PPP project die Risikoverteilung in Verbindung mit der Vorbereitung und dem Betrieb von PPP Projekten? | no | |
| 42. Granted time for concession duration? die zugesagte Laufzeit der Pachtdauer? | no | |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | continue with the actual procedure between city of Krems (as port owner and infrastructure owner) and Rhenus; actually in negotiations for some precisions about the contracts which run until 2062 |
| | | |
| C) What is the best concession type, according to your opinion? | | long term renting and contracts, but no selling of ground of the infrastructure elements by the city (port owner) and combine this contracts with own land of Rhenus |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| in port development in your port/country? | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | no | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | no | Good example in Krems; city (port) has invested cranes in the past and Rhenus pays usage fees (toolport-elements) |

General explanations, remarks, comments and suggestions for all the questions

In Austria entities work according to private law have been formed (but with public owners of this legal entities); these legal entities can work on general legal framework of Austrian business laws according to all options and regulations of business rules, making contracts, working according to balance sheet procedures,

Monthly meetings between the partners (private and public) for good management of running business

These entities can make contracts with other entities of private law (privately owned) and are free on constructing their contracts and make business according to good business practice principles.

in Austria there are no possibilities for really great tenders, more or less everything is developed; procedures of tendering and contracting are practically to topic in Austria; the last bigger project in this sense has been the tender of Ennshafen container terminal; Rhenus is looking for similar greater tender projects for developing business in eastern part, but needs clear procedures for possible tenders (like in Austria)

Questionnaire on the PPP obstacles in Austrian ports

Fragebogen: Hindernisse/Einschränkungen bei PPP in Häfen

Country: Austria Project Partner: **Port of Vienna** Respondent: Lehr Friedrich

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to:</p> <p>Sehen Sie irgendwelche Hindernisse bei der Einführung von PPP-Modellen oder deren erhöhte Effizienz in Bezug auf:</p> | no | |
| <p>1. The entity who is the lessor or concession grantor or contractor for the operating authorization?</p> <p>die juristische Person als Vermieter/Verpächter bzw. als kontrahierende Behörde?</p> | no | *.....for all questions - see general remarks at the end of the questionnaire |
| <p>2. Current legal setup of PPP in you port or country?</p> <p>den laufenden gesetzlichen Rahmen für PPP in ihrem Hafen oder Land?</p> | no | |
| <p>3. Available forms of PPP in your port/country?</p> <p>verfügbare Arten bzw. Formen von PPP in Ihrem Hafen/Land?</p> | no | |
| <p>4. Concession/lease fees types?</p> <p>Gebührenmodelle für die Konzession oder Pacht?</p> | no | |
| <p>5. Amount of concession/lease fees?</p> <p>die Höhe der Konzession-/Pachtgebühr?</p> | no | |
| <p>6. Revenues made from concession performance or lease?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Einnahmen aus Konzession oder Pacht? | | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? zusätzliche Gebühren oder Steuern für den Konzessionsinhaber / Pächter während der Laufzeit von Konzession/Pacht? | no | |
| 8. Property rights that can be granted by Grantor to concessionaire? Eigentumsrechte, die vom Konzessionsgeber an den Konzessionsinhaber gegeben werden können? | no | |
| 9. Ways of fees/rates determination? die Festlegung von Gebühren / Tarifen? | no | |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? das Grundstück, die Anlagen und das Equipment, die in der Konzession enthalten sind, ihre Zuordnung und Handhabung? | no | |
| 11. Procedures and risk allocation in case of Force Majeure? die Abläufe und Risikoverteilung bei höherer Gewalt? | no | |
| 12. Termination conditions and clauses? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Konditionen und Klauseln bei Beendigung? | | |
| 13. Insurance issues? Versicherungsfragen? | no | |
| 14. Minimum investments required? die Mindesthöhe bei Investitionen? | no | |
| 15. Performance requirements? Leistungsanforderungen? | no | |
| 16. Expropriation issues? Enteignungsthemen/Angelegenheiten? | no | |
| 17. Contract suspension or early termination clauses? Vertragsaufhebung oder Klauseln bei vorzeitiger Kündigung ? | no | |
| 18. Requirements for existing and/or new personnel? Anforderungen an bestehendes oder neues Personal? | no | G |
| 19. Port services agreements? Abkommen zu Hafenservices? | no | |
| 20. Legal form of lessee or concessionaire? die Rechtsform des Pächters oder Konzessionsinhabers? | no | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? die Rolle der Hafenbehörde oder | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| anderen öffentlicher Einrichtungen bei Kontrolle der Vertragserfüllung? | | |
| <p>22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation?</p> <p>Finanzierungsvereinbarungen oder Fördermittel für die Errichtung, Modernisierung oder Sanierung von Infrastruktur?</p> | no | |
| <p>23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)?</p> <p>Beteiligung der Hafenbehörde an Unternehmen des Pächters/Operators?</p> | no | |
| <p>24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets?</p> <p>Richtlinien und Verträge zwischen dem Pächter/Operator bezüglich Planungsvorgaben für neue Infrastrukturanlagen ?</p> | no | |
| <p>25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones?</p> <p>Das Funktionsanforderungen des Hafens und/oder Terminals, die Designvorschläge für Anlagen, das Ausbauprogramm und Zeitplan inkl. Milestones?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program?</p> <p>Rechte und Verpflichtungen des Pächters und des Verpächters hinsichtlich der Erfüllung des Investitionsprogramms?</p> | no | |
| <p>27. Activities permitted to be carried out in the concession area?</p> <p>zulässige Tätigkeiten im Konzessionsareal durchzuführen ??</p> | no | |
| <p>28. Equal access to common areas in the port?</p> <p>den neutralen Zugang zu Allgemeinflächen im Hafen</p> | no | |
| <p>29. Return of land, facilities and equipment after the concession/lease period has expired?</p> <p>die Rücknahme von Grundstücken, Einrichtungen und Ausstattung nach Ablauf der Konzessions- oder Pachtdauer?</p> | no | |
| <p>30. Concession/lease award options?</p> <p>die Zuschlags-/Vergabeoptionen von Konzession oder Pacht?</p> | no | |
| <p>31. Direct negotiations and unsolicited proposals (for concessions and leases)?</p> <p>die direkte Verhandlung/Übertragung und Übernahmeangebote (für Konzession und Pachtverträge) ?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>32. Operator's experience requirements?</p> <p>Anforderungen an die Erfahrung des Betreibers?</p> | no | |
| <p>33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)?</p> <p>Vorqualifikations-Kriterien (technisch und finanziell, Bonitätsprüfung?)</p> | no | |
| <p>34. Technical part of the proposal (during the bidding process)?</p> <p>technischen Teil des Angebots (während des Ausschreibungsprozesses)?</p> | no | |
| <p>35. Financial part of the proposal (during the bidding process)?</p> <p>finanzieller Teil des Angebots (während des Ausschreibungsprozesses)?</p> | no | |
| <p>36. Negotiations phase (following the technical and financial proposal phases)?</p> <p>die Verhandlungsphase (im Anschluss an die techn/finanzielle Angebotsphase)?</p> | no | |
| <p>37. Sealed vs. open bids?</p> <p>geschlossene bzw. offene Ausschreibungen?</p> | no | |
| <p>38. Transparency issues during the bids?</p> | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Transparenzprobleme während der Ausschreibung? | | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? mögliche Optionen zur Konfliktlösung (gesetzlich, administrative, Schiedsgericht, unverbindliche alternative Konfliktresolutionsen, ..)? | no | |
| 40. Information about possibilities of establishing PPP Informationen über Möglichkeiten zur Einführung von PPP? | no | |
| 41. Distribution of risks associated with the preparation and operation of the PPP project die Risikoverteilung in Verbindung mit der Vorbereitung und dem Betrieb von PPP Projekten? | no | |
| 42. Granted time for concession duration? die zugesagte Laufzeit der Pachtdauer? | no | |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | entities according to private law (GmbH, AG), operating according to commercial basics with the possibility to be part of business processes (supplier of general port services like cranes, ...) – still done in Austria |
| | | |
| C) What is the best concession type, according to your opinion? | | long term renting and contracts, but no selling of ground |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| in port development in your port/country? | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | no | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | no | |

General explanations, remarks, comments and suggestions for all the questions

In Austria the structure in the ports has been erected years ago and works quite well; basic of this is that entities according to private law have been formed (but with public owners of this legal entities); these legal entities can work on general legal framework of Austrian business laws according to all options and regulations of business rules, making contracts, working according to balance sheet procedures,

These entities can make contracts with other entities of private law (privately owned) and are free on constructing their contracts and make business according to good business practice principles.

Public owned entities (ports) in Austria have got a lot of internal regulations, bylaws, in order to get the internal permission of the owners (supervisory board, ...) for signing contracts and have to fulfill the relevant general laws for public owned companies (e.g. Bundesvergabegesetz, EU-regulations for buying/selling assets ("pari passu",) – therefore no problem for PPP-processes, when you fulfill this framework

Recommendation: port entities shall be free to make business (as entity) in ordinary client-supplier-processes like other companies (which are private owned) – if you don't work market based or market orientated you will not make business in today's business world in Austria

Due to the more or less full "finally developed situation" in Austria there are no possibilities for really great tenders (e.g. like Antwerp – developing hundreds of hectares of new free

space and a lot of companies will settle there) – so the procedures of tendering and contracting are practically to topic in Austria; the last bigger project in this sense has been the tender of Ennshafen container terminal (lease contract for 20 years) – it has shown that there are really no problems with PPP when fulfilling the whole legal framework of ordinary business laws of Austria/EU (incl. all special regulations for public owned bodies); since there are no more “really great greenfield developments for ports” there is no relevance about obstacles for PPP right now in Austria

Questionnaire on the PPP obstacles in Austrian ports

Fragebogen: Hindernisse/Einschränkungen bei PPP in Häfen

Country: Austria

Project Partner: EHOÖ

Respondent: Auer Werner

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to:</p> <p>Sehen Sie irgendwelche Hindernisse bei der Einführung von PPP-Modellen oder deren erhöhte Effizienz in Bezug auf:</p> | | |
| <p>1. The entity who is the lessor or concession grantor or contractor for the operating authorization?</p> <p>die juristische Person als Vermieter/Verpächter bzw. als kontrahierende Behörde?</p> | no | is a company of private law (GmbH – wide possibilities of private law |
| <p>2. Current legal setup of PPP in you port or country?</p> <p>den laufenden gesetzlichen Rahmen für PPP in ihrem Hafen oder Land?</p> | no | possibilities of private law are wide; public law elements have no problematic restrictions |
| <p>3. Available forms of PPP in your port/country?</p> <p>verfügbare Arten bzw. Formen von PPP in Ihrem Hafen/Land?</p> | no | no special restrictions |
| <p>4. Concession/lease fees types?</p> <p>Gebührenmodelle für die Konzession oder Pacht?</p> | No | no difference between PPP or not-PPP (market competition will make the calibration) |
| <p>5. Amount of concession/lease fees?</p> <p>die Höhe der Konzession-/Pachtgebühr?</p> | No | no difference between PPP or not-PPP (market competition will make the calibration) |
| <p>6. Revenues made from concession performance or lease?</p> | No | longterm business cases are in behind; payback time of basic infrastructure investments are very long; some difficulties to manage quick changes |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Einnahmen aus Konzession oder Pacht? | | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? zusätzliche Gebühren oder Steuern für den Konzessionsinhaber / Pächter während der Laufzeit von Konzession/Pacht? | No | good and comprehensive contracts are necessary |
| 8. Property rights that can be granted by Grantor to concessionaire? Eigentumsrechte, die vom Konzessionsgeber an den Konzessionsinhaber gegeben werden können? | No | Austrian law is quite open (Superädifikate, Baurechte) |
| 9. Ways of fees/rates determination? die Festlegung von Gebühren / Tarifen? | yes | old and inflexible system (minimum transshipment figures – penalties) / should be made more market-orientated |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? das Grundstück, die Anlagen und das Equipment, die in der Konzession enthalten sind, ihre Zuordnung und Handhabung? | no | good and comprehensive contracts are necessary |
| 11. Procedures and risk allocation in case of Force Majeure? die Abläufe und Risikoverteilung bei höherer Gewalt? | no | will make no difference between PPP or not-PPP |
| 12. Termination conditions and clauses? | no | good and comprehensive contracts are necessary |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Konditionen und Klauseln bei Beendigung? | | |
| 13. Insurance issues? Versicherungsfragen? | no | no difference in insurance system / can be managed with contracts |
| 14. Minimum investments required? die Mindesthöhe bei Investitionen? | no | no relevant item for PPP in our case |
| 15. Performance requirements? Leistungsanforderungen? | yes | old and inflexible system / should be made more market-orientated (issue "minimum transshipment amount per length of kai" - penalties) |
| 16. Expropriation issues? Enteignungsthemen/Angelegenheiten? | no | no relevant item in our port |
| 17. Contract suspension or early termination clauses? Vertragsaufhebung oder Klauseln bei vorzeitiger Kündigung ? | no | good and comprehensive contracts are necessary |
| 18. Requirements for existing and/or new personnel? Anforderungen an bestehendes oder neues Personal? | no | no influence for PPP models in our case clear law in Austria: AVRAG |
| 19. Port services agreements? Abkommen zu Hafenservices? | no | non-discriminatory as principle in the systems |
| 20. Legal form of lessee or concessionaire? die Rechtsform des Pächters oder Konzessionsinhabers? | no | defined in contract / practically only a topic for bodies of public law („GmbH“) |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? die Rolle der Hafenbehörde oder | no | non-discriminatory as principle in the systems |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| anderen öffentlicher Einrichtungen bei Kontrolle der Vertragserfüllung? | | |
| <p>22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation?</p> <p>Finanzierungsvereinbarungen oder Fördermittel für die Errichtung, Modernisierung oder Sanierung von Infrastruktur?</p> | no | regularly no problem, there are no (great) differences between public or private owner in the relevant systems |
| <p>23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)?</p> <p>Beteiligung der Hafenbehörde an Unternehmen des Pächters/Operators?</p> | no | not relevant in our port, because we do not apply this construction (general decision of owners) |
| <p>24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets?</p> <p>Richtlinien und Verträge zwischen dem Pächter/Operator bezüglich Planungsvorgaben für neue Infrastrukturanlagen ?</p> | no | <p>clear items in the contracts / what must be checked by the port and what is free for the operator</p> <p>regularly technical standards which have to be fulfilled (ÖNORM,)</p> |
| <p>25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones?</p> <p>Das Funktionsanforderungen des Hafens und/oder Terminals, die Designvorschläge für Anlagen, das Ausbauprogramm und Zeitplan inkl. Milestones?</p> | no | <p>clear items in the contracts / what must be checked by the port and what is free for the operator</p> <p>regularly technical standards which have to be fulfilled (ÖNORM,)</p> |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program?</p> <p>Rechte und Verpflichtungen des Pächters und des Verpächters hinsichtlich der Erfüllung des Investitionsprogramms?</p> | no | clear items in the contracts / what must be checked by the port and what is free for the operator |
| <p>27. Activities permitted to be carried out in the concession area?</p> <p>zulässige Tätigkeiten im Konzessionsareal durchzuführen ??</p> | no | clear items in the contracts |
| <p>28. Equal access to common areas in the port?</p> <p>den neutralen Zugang zu Allgemeinflächen im Hafen</p> | no | no problem, has to be organized by the port |
| <p>29. Return of land, facilities and equipment after the concession/lease period has expired?</p> <p>die Rücknahme von Grundstücken, Einrichtungen und Ausstattung nach Ablauf der Konzessions- oder Pachtdauer?</p> | no | clear items must be fixed in the contract from the very beginning |
| <p>30. Concession/lease award options?</p> <p>die Zuschlags-/Vergabeoptionen von Konzession oder Pacht?</p> | no | either to make a tender (if more partners a interested) or to make a b2b-contract (taylormade) |
| <p>31. Direct negotiations and unsolicited proposals (for concessions and leases)?</p> <p>die direkte Verhandlung/Übertragung und Übernahmeangebote (für Konzession und Pachtverträge) ?</p> | no | all activities fullfill the basic threshold of the PPP-schema or will be discussed with owners of the port in order to make taylormade contracts |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| <p>32. Operator's experience requirements?</p> <p>Anforderungen an die Erfahrung des Betreibers?</p> | no | pratically only experienced partners go into the contractcs (rough due diligencc of the partners quality is done in the beginning) |
| <p>33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)?</p> <p>Vorqualifikations-Kriterien (technisch und finanziell, Bonitätsprüfung?)</p> | no | <p>pratically only experienced partners go into the contractcs (rough due diligencc of the partners quality is done in the beginning)</p> <p>if the partner is unknown for us then special bank guarantees are foreseen in the contract</p> |
| <p>34. Technical part of the proposal (during the bidding process)?</p> <p>technischen Teil des Angebots (während des Ausschreibungsprozesses)?</p> | no | can be exactly described (but needs some effort if a more sophisticated topic is proceeded) |
| <p>35. Financial part of the proposal (during the bidding process)?</p> <p>finanzieller Teil des Angebots (während des Ausschreibungsprozesses)?</p> | no | can be exactly described (but needs some effort if a more sophisticated topic is proceeded) |
| <p>36. Negotiations phase (following the technical and financial proposal phases)?</p> <p>die Verhandlungsphase (im Anschluss an die techn/finanzielle Angebotsphase)?</p> | no | Ordinary business negotiations – no specific problems for PPP but: the process design must be fixed in advance ! |
| <p>37. Sealed vs. open bids?</p> <p>geschlossene bzw. offene Ausschreibungen?</p> | no | it depends on the topic |
| <p>38. Transparency issues during the bids?</p> | no | the process design must be fixed in advance ! |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| Transparenzprobleme während der Ausschreibung? | | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? mögliche Optionen zur Konfliktlösung (gesetzlich, administrative, Schiedsgericht, unverbindliche alternative Konfliktresolutionsen, ..)? | no | general laws of business are available and the process design must be fixed in advance (and published) |
| 40. Information about possibilities of establishing PPP Informationen über Möglichkeiten zur Einführung von PPP? | no | publishing process in newspapers, regularly the requirements are fixed in national laws |
| 41. Distribution of risks associated with the preparation and operation of the PPP project die Risikoverteilung in Verbindung mit der Vorbereitung und dem Betrieb von PPP Projekten? | no | must be fixed in the contract at the beginning |
| 42. Granted time for concession duration? die zugesagte Laufzeit der Pachtdauer? | no | regularly long time contracts (more than 5 years up to very long time runs) |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | we run PPP processes since the beginning of the port business and will go ahead with this strategy |
| | | |
| C) What is the best concession type, according to your opinion? | | combination between land rent and transshipment contract but: the public part must be careful about his "own ground in the core infrastructure regions" – never sell this ground, only renting contracts! Ennshafen has got very good experience in terms of PPP since we processed a great tender regarding the |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| | | container terminal (greatest PP-project in ports within the last years in Austria) |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | no | business processes have to be organized in open form, logistic lines must be free of access |
| | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | no | no problems actually known which cannot be solved |
| | | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | no | PPP is sometimes a good way to get projects into these systems |

Annex II – Questionnaires Slovakia

Questionnaire on the PPP obstacles in Slovak ports

Country: Slovakia

Project Partner: Public ports, jsc.

Respondent: **Ministry of transport and construction, PPP department**

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | | From the point of view of the existing PPP projects (PPP project for the expressway R1 Nitra - Tekovské Nemce and Banská Bystrica - the northern bypass and the PPP project D4 Jarovce - Ra a and the expressway R7 Prievoz - Holic) SPV are created (special purpose vehicle), representing a concessionaire, who subsequently establishes a subcontractor for construction and a subcontractor for operation. |
| 2. Current legal setup of PPP in your port or country? | | Procedures for PPP projects are set by the methodological documents of the Ministry of Finance of the SR, http://www.finance.gov.sk/Default.aspx?CatID=6676 |
| 3. Available forms of PPP in your port/country? | | At present, two PPP projects are being implemented by the DBFOM model (design, build, finance, operate, maintain) and other models of PPP projects are not excluded, which needs to be assessed individually, considering the SR legislation. |
| 4. Concession/lease fees types? | | At present, 2 PPP projects are being implemented with payments for availability |
| 5. Amount of concession/lease fees? | | For PPP R1, there is a payment for availability about 120 mil. EUR as BASE AVP and for the D4R7 PPP project payment for availability of approx. 52 mil. EUR as BASE AVP |
| 6. Revenues made from concession performance or lease? | | PPP R1 is allowed to lease part of the project road traffic, with the proceeds from this lease being shared between the concessionaire and the contracting authority in a ratio of 50:50. With PPP D4R7 this is not the case. |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, | | See answer 6 |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| lease or operating authorization contracts? | | |
| 8. Property rights that can be granted by Grantor to concessionaire? | | The owner of motorways and express roads is exclusively SR |
| 9. Ways of fees/rates determination? | | See answer 4 |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? | | The owner of motorways and express roads is exclusively SR. The land under them is owned by NDS (National highway company) or SR. |
| 11. Procedures and risk allocation in case of Force Majeure? | | Article 29 of the PPP R1 and D4R7 Concession Agreements |
| 12. Termination conditions and clauses? | | Article 37 and 38 of the PPP R1 and D4R7 Concession Agreements |
| 13. Insurance issues? | | Article 34 of the PPP R1 and D4R7 Concession Agreements |
| 14. Minimum investments required? | | X |
| 15. Performance requirements? | | Annex no. 7 of the PPP R1 Concession Contract and Annex no. 9 of PPP D4R7 Concession Agreement |
| 16. Expropriation issues? | | In accordance with the legislation of the Slovak Republic. |
| 17. Contract suspension or early termination clauses? | | See answer 12 |
| 18. Requirements for existing and/or new personnel? | | X |
| 19. Port services agreements? | | X |
| 20. Legal form of lessee or concessionaire? | | X |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | | The contracting authority and the Independent oversight on a daily basis oversee compliance with the concession contract and performance standards. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | | X |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | | X |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | | The contracting authority and the Independent oversight on a daily basis oversee compliance with the concession contract and performance standards. |
| 25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | | X |
| 26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | | The rights and obligations of the concessionaire are defined in the relevant concession agreements |
| 27. Activities permitted to be carried out in the concession area? | | The subject of public procurement to the concessionaire resulting in the final concession contract and the regulated activity |
| 28. Equal access to common areas in the port? | | Yes |
| 29. Return of land, facilities and equipment after the concession/lease period has expired? | | Annex no. 15 to the Concession Agreement R1 and Annex no. 17 to the D4R7 Concession Agreement |
| 30. Concession/lease award options? | | X |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 31. Direct negotiations and unsolicited proposals (for concessions and leases)? | | X |
| 32. Operator's experience requirements? | | The subject of public procurement to the concessionaire, Annex no. 7 of the PPP R1 Concession Contract and Annex no. 9 of PPP D4R7 Concession Agreement |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | | The subject of public procurement to the concessionaire |
| 34. Technical part of the proposal (during the bidding process)? | | The subject of public procurement to the concessionaire |
| 35. Financial part of the proposal (during the bidding process)? | | The subject of public procurement to the concessionaire |
| 36. Negotiations phase (following the technical and financial proposal phases)? | | The subject of public procurement to the concessionaire |
| 37. Sealed vs. open bids? | | The subject of public procurement to the concessionaire |
| 38. Transparency issues during the bids? | | X |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | | Article 56 of the Concession Agreement R1 and D4R7 |
| 40. Information about possibilities of establishing PPP | | See answer 2 |
| 41. Distribution of risks associated with the preparation and operation of the PPP project | | The subject of public procurement to the concessionaire, by type of concession |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 42. Granted time for concession duration? | | For the PPP project R1 and D4R7, a 30-year concession deadline is set to begin in the month following the first legal authorization for early use, in case that the conditions in the concession contract are met. |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | X | |
| C) What is the best concession type, according to your opinion? | | Selecting the concession type depends on the particular project |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | X | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | X | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | X | |

Questionnaire on the PPP obstacles in Slovak ports

Country: Slovakia Project Partner: Public ports, jsc. Respondent: **Public ports, jsc.**

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | Yes | <p>Founder of Public Ports, jsc. is the State and the Ministry is acting on its behalf. Priority investment assets include land and facilities (and infrastructure) in public ports bordered by the territorial districts of ports approved by the Ministry. The company is entitled to conclude the concession contract only with the approving by the Government of the Slovak Republic if the value of the concession in the concession contract is equal to or exceeds 5 mil. €. The company may not transfer the concession property to the ownership of other persons. Company Public ports, jsc. own land at the port whilst port infrastructure and facilities are owned by the private company Slovenská plavba a prístavy. In the case of a concession, it is not possible to modernize the Infrastructure and facilities to which the Public Ports, jsc. does not have ownership.</p> |
| 2. Current legal setup of PPP in you port or country? | No | Public ports, jsc may leave the concessionaire the right to use the Company's Priority investment assets during the concession period specified in the concession contract, under the terms agreed in the concession agreement and in accordance with Act 338/2000 or another applicable law. |
| 3. Available forms of PPP in your port/country? | Yes | <ul style="list-style-type: none"> • Lack of funding opportunities through PPP projects. • Weak awareness of PPP. <p><u>Types of concessions in Slovakia:</u></p> <ul style="list-style-type: none"> • PPP on demand basis • PPP based on availability • Joint venture |
| 4. Concession/lease fees types? | No | |
| 5. Amount of concession/lease fees? | No | |
| 6. Revenues made from concession performance or lease? | Yes | Collecting of payments for the use of public ports is in the § 5 par. 15 of the Inland Shipping Act entrusted to Public ports, jsc., with the revenue from the reimbursement being its income. Consequently, the concessionaire would not be able to charge such payments to the users of public ports. |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| or operating authorization contracts? | | |
| 8. Property rights that can be granted by Grantor to concessionaire? | Yes | Company Public ports, jsc. may not transfer the concession property to the ownership of other persons. |
| 9. Ways of fees/rates determination? | No | |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? | No | |
| 11. Procedures and risk allocation in case of Force Majeure? | No | |
| 12. Termination conditions and clauses? | No | As with all other beneficiaries, Ministry is obliged to ensure that the investment in the infrastructure is maintained within five years of the end of the investment. The rights to land and the facilities concerned must be legally and materially protected for the time being. |
| 13. Insurance issues? | No | |
| 14. Minimum investments required? | No | |
| 15. Performance requirements? | No | |
| 16. Expropriation issues? | Yes | <p>If the proposer does not own or have any other right to the land, it is possible in by the § 38 of the Building Act to issue a territorial decision on the location of the building without the consent of the owner, only if it is possible to expropriate the land for the proposed purpose.</p> <p>Expropriation can only take place</p> <ul style="list-style-type: none"> (a) to the necessary extent, (b) in the public interest for the purpose laid down by law, and the public interest in expropriation must be demonstrated in the expropriation proceedings, (c) for adequate compensation, and (d) where the purpose of the expropriation can not be achieved by agreement or otherwise. <p>At present, the Public Ports, jsc. does not have any ownership rights to infrastructure and facilities in port. In the case of expropriation, this infrastructure and facilities would have to be expropriated for adequate</p> |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| | | compensation, while the company have no financial resources. The question of expropriation would also have to be addressed at the political level first. |
| 17. Contract suspension or early termination clauses? | No | |
| 18. Requirements for existing and/or new personnel? | No | |
| 19. Port services agreements? | No | |
| 20. Legal form of lessee or concessionaire? | No | The basic legal framework for the provision of guarantees that may occur during the implementation of PPP projects is the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees. In its most common form, the guarantees are associated with a loan or other financial obligation, which is determined by a specific contract between the debtor and the creditor. Guarantees can be provided as individual guarantees or guarantees under guarantee schemes. The Commission also sees better credit conditions as aid in the form of a guarantee for companies whose legal form excludes insolvency proceedings or other insolvency procedures, or when a state guarantee or a cover for losses is provided by the State. |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | No | |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | Yes | Grant is not a legal claim - the investor basically comes to a certain risk that the public entity will not eventually acquire Grant, it is common for a private investor to require the public entity to provide the necessary contractual guarantee that if the Grant is not granted, the public entity must to secure the gap from other sources. |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | No | |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | No | |
| 25. The functional requirements of the port and/or terminal, the proposed design solution for any | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| construction, the construction program and time schedule, including milestones? | | |
| 26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | No | |
| 27. Activities permitted to be carried out in the concession area? | | Priority Property is not subject to enforcement, execution, is not part of the bankruptcy estate or subject to liquidation. If a joint venture has been declared bankrupt, the priority property is transferred to the Public ports, jsc. for the compensation specified in the concession contract, at the most at the price determined by the expert's opinion, on the effective date of the bankruptcy decision. |
| 28. Equal access to common areas in the port? | No | |
| 29. Return of land, facilities and equipment after the concession/lease period has expired? | Yes | If a beneficiary Public ports, jsc. will built up a new infrastructure (facility) from sources of Grant, it will be necessary to assess by Ministry of transport and construction of Slovak republic whether such infrastructure will be Priority investment property. Otherwise, i.e., if the new infrastructure will not be Priority investment property, and will be built by Public ports, jsc from Grant funds, the acquisition of such infrastructure by Public ports, jsc will need to be assessed in the sense of State aid rules. |
| 30. Concession/lease award options? | No | |
| 31. Direct negotiations and unsolicited proposals (for concessions and leases)? | No | |
| 32. Operator's experience requirements? | No | |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | No | |
| 34. Technical part of the proposal (during the bidding process)? | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 35. Financial part of the proposal (during the bidding process)? | No | |
| 36. Negotiations phase (following the technical and financial proposal phases)? | No | |
| 37. Sealed vs. open bids? | No | |
| 38. Transparency issues during the bids? | No | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | No | |
| 40. Information about possibilities of establishing PPP | Yes | Few available and up-to-date information on PPP implementation options. |
| 41. Distribution of risks associated with the preparation and operation of the PPP project | No | |
| 42. Granted time for concession duration? | Yes | In the case of a PPP project through EU resources, it is necessary to bring together the sustainability of the project along with the duration of the concession. |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | |
| | | |
| C) What is the best concession type, according to your opinion? | | Concession |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | No | |
| | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | Yes | Existing long-term lease agreements for land owned by Public Ports, jsc. which are currently agreed with third parties, are an obstacle to using the Grant in the programming period. If these lands will be subject of the modernization, Public ports, jsc. as the beneficiary will have to demonstrate to |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| | | the Ministry of the transport and construction of the Slovak republic the ownership rights for the purposes of the Grant application. |
| | | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | | The Grant calls by the Connecting Europe Facility (CEF) do not allow Public Ports, a.s. submit a grant application for the planned projects. Challenges must be developed based on Member States' needs. |

Questionnaire on the PPP obstacles in Slovak ports

Country: Slovakia

Project Partner: VPAS

Respondent: Ministry of Finance

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | No | Depending on the nature of the concession grantor, there might be specific requirements within the adoption process of the concession: - ESA2010 public sector entities, with the exception of local government, are required to submit concession contracts (PPPs) with a value exceeding approx. 5 million euros for Government approval. -local government concessions/PPPs are subject to evaluation by the Ministry of Finance. Local governments are allowed to close concession contracts/PPPs only if the local government's public debt limit is not exceeded due to the project at question. |
| 2. Current legal setup of PPP in you port or country? | No | As PPP projects are rather large projects and have significant impact on public budget, in addition to regulation of PPP projects preparation Ministry of Finance has the role to assist public authorities in preparation of PPP projects according to the best market practice. The PPP framework sets out several milestones in the PPP approval process and specifies the requirements imposed on the project's feasibility study. This methodology has been adopted using government resolutions, and is binding for institutions of the central government There is room for improvement both to the form and the content of the PPP framework in force. The possibility of adopting a dedicated PPP legislation (i.e. Act on PPPs) might be investigated further. The overwhelming majority of PPPs are procured as concessions under the Slovak public procurement law. The scope of activities concessionaires are permitted to carry out on state property during the concession is limited by the provision of the Act on State Property. |
| 3. Available forms of PPP in your port/country? | No | There are no sectoral restrictions for PPP projects. However, there are certain conditions that need to be met so that the project is considered PPP in the first place and, if it is a PPP project, it can proceed only if delivery using PPP yields higher Value for Money. The legal framework allows both user-pay and availability-payment based PPPs. Definition of PPP: • a private partner will provide public infrastructure, public services or use public assets during the lifetime of the contract |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| | | <ul style="list-style-type: none"> • a private partner provides the design, construction, financing and operation of the infrastructure, in return for receiving either a stream of payments from the government or user charges levied directly on the end users, or both • PPP are long-term, often up to 25 or even 30 years. • Both the private partner and the public sector shares out the individual risks linked to the construction and operation of the infrastructure. This is done on the basis that the risk is handled by whichever side is best able to manage the risk. |
| 4. Concession/lease fees types? | No | |
| 5. Amount of concession/lease fees? | No | |
| 6. Revenues made from concession performance or lease? | No | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | No | |
| 8. Property rights that can be granted by Grantor to concessionaire? | No | Grantors may give property rights to the concessionaire during the concession period, although this approach is uncommon. Most grantors prefer to remain owners of the infrastructure throughout the concession, otherwise they wouldn't be able to prevent the granting of liens by the concessionaire over this property, even if this is not permitted under the State Property Act. |
| 9. Ways of fees/rates determination? | No | |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? | No | |
| 11. Procedures and risk allocation in case of Force Majeure? | No | In general, no party shall be entitled to bring a claim for a breach of obligations under PPP contract by the other party to the extent that a Force Majeure Event occurs (The Parties shall be relieved from the liability for partial or complete non-performance of their obligations hereunder if such non-performance is caused by Force Majeure) |
| 12. Termination conditions and clauses? | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 13. Insurance issues? | No | In general, concessionaire shall take out and maintain or procure to take out and maintain the insurances and shall provide the proposed terms of the insurances to the public authority. |
| 14. Minimum investments required? | No | Within the regulative function, the Ministry of Finance (in cooperation with the Slovak Statistical Office) issues statements on the drafts of PPP contracts. In these statements Ministry evaluates impacts of PPP contracts on the debt of public sector and secures correct recording of these impacts on the public sector deficit and debt in compliance with the ESA 2010 methodology. Within the organizational structure of the Ministry of Finance, these competencies are performed by the Section of Budgetary Policy and the Section of State Accounts Reporting. Moreover, The Ministry of Finance is obligated to prepare and publish assessment of the investment project funded from public sources of the general government with costs above EUR 40 mil., or above EUR 10 mil. in IT – these competences are performed by the Value for Money unit. |
| 15. Performance requirements? | No | |
| 16. Expropriation issues? | No | |
| 17. Contract suspension or early termination clauses? | No | |
| 18. Requirements for existing and/or new personnel? | No | |
| 19. Port services agreements? | No | |
| 20. Legal form of lessee or concessionaire? | No | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | No | |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | No | While this has not yet led to difficulties for PPPs, the State is allowed to issue debt guarantees to a very limited extent only. The volume of new debt guarantees issued in a fiscal year must not exceed the volume of state-guaranteed debt redeemed in the same fiscal year. |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | No | |
| 24. Control of designs and design contracts between the | / | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | | |
| 25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | / | |
| 26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | No | |
| 27. Activities permitted to be carried out in the concession area? | No | |
| 28. Equal access to common areas in the port? | No | |
| 29. Return of land, facilities and equipment after the concession/lease period has expired? | No | |
| 30. Concession/lease award options? | No | |
| 31. Direct negotiations and unsolicited proposals (for concessions and leases)? | Yes | Slovak regulation doesn't allow unsolicited PPP proposals. |
| 32. Operator's experience requirements? | No | |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 34. Technical part of the proposal (during the bidding process)? | No | Competitive dialogue appears to deliver its best results on issues such as fostering innovation and facilitating a constructive dialogue between the contracting authority and the bidders. |
| 35. Financial part of the proposal (during the bidding process)? | No | Competitive dialogue appears to deliver its best results on issues such as fostering innovation and facilitating a constructive dialogue between the contracting authority and the bidders. |
| 36. Negotiations phase (following the technical and financial proposal phases)? | No | Competitive dialogue is intended to provide a procurement method which is both transparent and sufficiently flexible to fit complex projects like PPPs. |
| 37. Sealed vs. open bids? | No | |
| 38. Transparency issues during the bids? | No | Public procurement for each contract above a certain value (case of PPP and concessions) is transparently administrate on the website of the Public Procurement Office (Detail of the contract, Documents of the contract, Contract notices) |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | No | Dispute resolution is fully within the competence of the public authority and concessionaire. It depends on what the parties agree on (e.g. Dispute shall initially be referred to the Independent Engineer, third party, Arbitration or Slovak courts shall have jurisdiction to render a final decision). |
| 40. Information about possibilities of establishing PPP | No | As PPP projects are rather large projects and have significant impact on public budget, in addition to regulation of PPP projects preparation Ministry of Finance has the role to assist public authorities in preparation of PPP projects according to the best market practice. |
| 41. Distribution of risks associated with the preparation and operation of the PPP project | No | Sharing of construction and operation risks between the private and public partner and a long contractual period are essential features of PPP. In practice, grantors are expected to design PPP contracts in which gross fixed capital formation will not be recorded on the balance sheet of the public sector during the concession period. This has an impact on the way risk is distributed among the grantor and the concessionaire. |
| 42. Granted time for concession duration? | No | PPP projects are long-term contractual relations, often up to 25 or even 30 years. |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | / | There is room for improvement both to the form and the content of the PPP framework in force. E.g. the possibility of adopting a dedicated PPP legislation. Moreover, the PPP landscape could also benefit from introducing a positive PPP test covering all major public investment project. This measure would help identify projects where the PPP approach would yield significant benefits. |
| | | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| C) What is the best concession type, according to your opinion? | / | The most basic and essential condition in order to implement any investment through PPP is that it should provide increased effectiveness for the public sector when compared to standard public procurement, this concept is known as 'value for money'. It is not possible to identify a 'best' concession type. |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | / | / |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | / | / |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | No | Slovakia is a shareholder of the EIB and is fully eligible for EFSI support investments (however, individual projects must comply with EFSI Regulation). Moreover, all regions (except Bratislava) may apply for a Cohesion Fund contribution. With regard to the CEF, the resources allocated to the Slovakia can only be used to finance the expenditure related to the construction of the core TEN-T network (CEF is a key EU funding instrument, and thus project must comply with the European Commission Regulation). |

Annex III – Questionnaires Hungary

Questionnaire on the PPP obstacles in Hungarian ports

Country: Hungary

Project Partner: HFIP

Respondent: HFIP

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | Yes/No | In most of the Hungarian ports, any PPP system is irrelevant as they are owned and also operated by private entities. The Freeport of Budapest is already managed in a concession structure, where the Freeport of Budapest Logistics has a 75-year concession contract with the asset manager state-owned company for the management and development of the Freeport. |
| 2. Current legal setup of PPP in you port or country? | Yes | There is no specific Hungarian regulation regarding public-private partnerships for port investment projects. Furthermore, there is no other uniform regulation regarding public-private partnerships for investment projects in general. The applicable rules are placed in several legal acts and can be deducted from the provisions of the act on public procurement, act on public finances, laws for concession, and the civil code. Determination of the conditions of such investments shall be set by the government on a case by case basis. |
| 3. Available forms of PPP in your port/country? | Yes | There is no such available form. |
| 4. Concession/lease fees types? | No | Concession agreement is already existing in the Freeport of Budapest |
| 5. Amount of concession/lease fees? | No | It is not likely to be an obstacle. The contract with a private entity to manage/ operate a state-owned port shall be made followed by a transparent, open procurement call |
| 6. Revenues made from concession performance or lease? | No | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | No | |
| 8. Property rights that can be granted by Grantor to concessionaire? | No | It is a key issue but can be handled by means of a well detailed contract and shall not be an obstacle. |
| 9. Ways of fees/rates determination? | No | |
| 10. The treatment or distinction between moveable versus immoveable property? | No | See 8. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 11. Procedures and risk allocation in case of Force Majeure? | No | See 8. |
| 12. Termination conditions and clauses? | No | See 8. |
| 13. Insurance issues? | No | See 8. |
| 14. Minimum investments required? | Yes | This requirement is one of the main aspect of such concession contracts but it not easy to set the right level (the expected volume of investment) An important aspect of the requirement: only own contribution take into account or gained public subsidies as well? |
| 15. Performance requirements? | No | |
| 16. Expropriation issues? | Yes | If expropriation occurs, it can be taken as a potential obstacle. |
| 17. Contract suspension or early termination clauses? | No | |
| 18. Requirements for existing and/or new personnel? | Yes | There is no requirement related to the personnel but it is desirable to have expectations in this regard. Nevertheless, the training system should be tailored also to meet such expectations. |
| 19. Port services agreements? | No | |
| 20. Legal form of lessee or concessionaire? | No | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | Yes | The definition of "port authority" has to be clarified first, since officially the only port authority in Hungary is in the Ministry of National Development. Presently, public body, really monitoring the contracts performance does not exist.. |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | No | Depends on the provisions of the contract. |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | Yes | There is no example for that in Hungary. |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | No | |
| 25. The land, facilities, and equipment included in the concession? | No | Depends on the provisions of the contract. |
| 26. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 27. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | No | Depends on the provisions of the contract. |
| 28. Activities permitted to be carried out in the concession area? | No | Depends on the provisions of the contract. |
| 29. Equal access to common areas in the port? | No | |
| 30. Return of land, facilities and equipment after the concession/lease period has expired? | No | Depends on the provisions of the contract. |
| 31. Concession/lease award options? | No | |
| 32. Direct negotiations and unsolicited proposals (for concessions and leases)? | No | |
| 33. Operator's experience requirements? | No | This requirement is also desirable. |
| 34. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | No | These requirements are also desirable. |
| 35. Technical part of the proposal (during the bidding process)? | No | |
| 36. Financial part of the proposal (during the bidding process)? | No | |
| 37. Negotiations phase (following the technical and financial proposal phases)? | No | |
| 38. Sealed vs. open bids? | No | |
| 39. Transparency issues during the bids? | No | |
| 40. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | No | |
| (add more if necessary) | | |
| | | |
| What would you do in order to make the best possible PPP scheme in your country/port? | | Provide legal background for PPP systems. <ul style="list-style-type: none"> - harmonization with related legislation where necessary (who is the port authority, responsibilities, technical and professional requirements of the partners, etc) |
| (add more if necessary) | | |
| (add more if necessary) | | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| What is the best concession type, according to your opinion? | | There is one existing example only: concession contract. |
| Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | | No, it depends on the strategy of the national asset management |
| Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | | |
| (add more if necessary) | | |
| (add more if necessary) | | |
| (add more if necessary) | | |
| (add more if necessary) | | |

Annex IV – Questionnaires Croatia

Questionnaire on the PPP obstacles in Croatian ports

Country: Croatia

Project Partner: PAV

Respondent: PAV

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | N | |
| 2. Current legal setup of PPP in you port or country? | Y | Concession granting rules should be more flexible, Inland Navigation and Inland Ports Law should give more opportunities for concessions on demand... |
| 3. Available forms of PPP in your port/country? | N | Concessions for works and services |
| 4. Concession/lease fees types? | Y | Concession fees types should be more specified |
| 5. Amount of concession/lease fees? | Y | Necessary to divide supply with groceries from fuel supply... |
| 6. Revenues made from concession performance or lease? | N | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | N | |
| 8. Property rights that can be granted by Grantor to concessionaire? | Y | All port land (within public ports) should be owned by the State |
| 9. Ways of fees/rates determination? | Y | See 5. |
| 10. The treatment or distinction between moveable versus immoveable property? | N | |
| 11. Procedures and risk allocation in case of Force Majeure? | N | |
| 12. Termination conditions and clauses? | N | |
| 13. Insurance issues? | N | |
| 14. Minimum investments required? | Y | Minimum investments are not a pre-condition for concession contract gaining. Investments should be elaborated more detailed in the operator's business plan. In practice, most of the times investment plans are not being realized to the full, and it does not affect on concession contract due to economic situation/economic surroundings. |
| 15. Performance requirements? | N | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 16. Expropriation issues? | Y | Length of the process is the main issue together with the financial issues (State should ensure money for the expropriation in advance) |
| 17. Contract suspension or early termination clauses? | N | |
| 18. Requirements for existing and/or new personnel? | N | |
| 19. Port services agreements? | Y | No long-term agreements between port operator and users. |
| 20. Legal form of lessee or concessionaire? | N | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | N | |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | Y | See 14. |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | N | |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | N | |
| 25. The land, facilities, and equipment included in the concession? | Y | Different land owners, frequent problems with private owned land, old facilities |
| 26. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | N | |
| 27. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | N | |
| 28. Activities permitted to be carried out in the concession area? | N | |
| 29. Equal access to common areas in the port? | N | |
| 30. Return of land, facilities and equipment after the concession/lease period has expired? | Y | Sometimes contracts for the land use between private owners last longer than concession contracts. |
| 31. Concession/lease award options? | N | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 32. Direct negotiations and unsolicited proposals (for concessions and leases)? | N | |
| 33. Operator's experience requirements? | N | |
| 34. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | N | |
| 35. Technical part of the proposal (during the bidding process)? | N | |
| 36. Financial part of the proposal (during the bidding process)? | N | |
| 37. Negotiations phase (following the technical and financial proposal phases)? | N | |
| 38. Sealed vs. open bids? | N | |
| 39. Transparency issues during the bids? | N | |
| 40. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | N | |
| 41. Granted time for concession duration? | Y | <p>Concession for public works where concession is granted for construction of port facilities, according to the public-private partnership model – up to 30 years, and with consent of the Government of the Republic of Croatia up to 50 years (Law on Inland Navigation and Inland Ports).</p> <p>Maximum length of the PPP contract is 40 years according to Law on PPP, but by the special law length of the contract can be longer.</p> |
| What would you do in order to make the best possible PPP scheme in your country/port? | | <ul style="list-style-type: none"> • All port land should be owned by the State; • Quality infrastructure should be built; • Contract changes should be more flexible; • Special law should foresee concessions on demand |
| What is the best concession type, according to your opinion? | | |
| Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | Y | <ul style="list-style-type: none"> • During past privatization processes some of the port land become privately owned; • All land in public port should be State owned to enable concession granting processes to be more efficient |
| Do you see any other problems with existing or planned PPP schemes in your port/country? | Y | <ul style="list-style-type: none"> • Missing of development plans from the State level (Mid-term Development Plan outdated from 2016); • No updated master plans, feasibility study etc. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| (Please list such problems below and comment them) | | <ul style="list-style-type: none"> • Railway – electrification project ongoing through port – port area decreased for 5,5 ha |
| Do you see any problems with access to EU development of infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | N | |

Annex V – Questionnaires Serbia

Questionnaire on the PPP obstacles in Serbian ports

Country: Serbia

Project Partner: PGA

Respondent: PGA

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | No | PGA is responsible for preparation of concession/tender documentation, but the Government is approving and signing the final agreement. |
| 2. Current legal setup of PPP in you port or country? | No | There is still no experience with port concessions. In theory legal set up is good, but first implemented concession will show if there is anything to improve or to change. |
| 3. Available forms of PPP in your port/country? | No | Concession for port services and Concession for works with the right for commercial exploitation of constructed infrastructure/superstructure |
| 4. Concession/lease fees types? | Yes/No | Concessionaire pays fixed and variable part of the concession fee |
| 5. Amount of concession/lease fees? | No | Determined for each concession separately, in line with the applied methodology. |
| 6. Revenues made from concession performance or lease? | No | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | Yes | According to the Law on navigation and ports on inland waters, on top of the fixed part of concession fee which he pays to the Government (budget), concessionaire should pay fee for the use of port to the PGA. Unless fixed part of concession fee contains this fee, this could be considered as double cost. |
| 8. Property rights that can be granted by Grantor to concessionaire? | No | |
| 9. Ways of fees/rates determination? | No | |
| 10. The treatment or distinction between moveable versus immovable property? | No | |
| 11. Procedures and risk allocation in case of Force Majeure? | No | |
| 12. Termination conditions and clauses? | No | |
| 13. Insurance issues? | No | |
| 14. Minimum investments required? | No | Depending on the scope of the project |
| 15. Performance requirements? | No | |
| 16. Expropriation issues? | No | At the moment of the tender launching, land must be owned by the Republic of Serbia (public property), |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| | | meaning that expropriation issues must be solved prior to the initiation of the Concession procedure. |
| 17. Contract suspension or early termination clauses? | No | |
| 18. Requirements for existing and/or new personnel? | Yes/No | Depends on the form of PPP. |
| 19. Port services agreements? | No | |
| 20. Legal form of lessee or concessionaire? | No | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | No | PGA has a role in preparation of concession documentations and tendering procedures. Consultancy services can be outsourced in the phase of the preparation of concession, but PGA needs additional human resources and capacity building for the follow up of the contract performance. PGA has a monitoring role in port operations (under lease, concession or any other PPP) through periodical reports containing physical performance indicators and financial indicators. |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | No | |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | Yes/No | Not applicable, PGA is in the form of the Government Agency (regulatory body) |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | No | |
| 25. The land, facilities, and equipment included in the concession? | No | |
| 26. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | No | |
| 27. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | No | |
| 28. Activities permitted to be carried out in the concession area? | No | |
| 29. Equal access to common areas in the port? | No | |
| 30. Return of land, facilities and equipment after the | No | After the expiration of the concession period, land and facilities are the property of the Republic of Serbia |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| concession/lease period has expired? | | |
| 31. Concession/lease award options? | No | |
| 32. Direct negotiations and unsolicited proposals (for concessions and leases)? | No | |
| 33. Operator's experience requirements? | No | Set by the tendering documentation. Depending on the scope of the project, the requirements are set for the tonnage throughput and financial credibility of the company in previous years, as well as for minimum of technical capabilities. |
| 34. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | No | Same as with q33 |
| 35. Technical part of the proposal (during the bidding process)? | No | |
| 36. Financial part of the proposal (during the bidding process)? | No | |
| 37. Negotiations phase (following the technical and financial proposal phases)? | No | |
| 38. Sealed vs. open bids? | No | |
| 39. Transparency issues during the bids? | No | |
| 40. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | No | |
| (add more if necessary) | | |
| | | |
| What would you do in order to make the best possible PPP scheme in your country/port? | / | |
| (add more if necessary) | | |
| (add more if necessary) | | |
| What is the best concession type, according to your opinion? | / | |
| Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | Yes | Until the adoption of the Law on navigation and ports on inland waters (2010), privatization of ports was done improperly, without the reform of the port sector. Not only that port companies are sold together with the right to use the land, but also with port infrastructure. Thus no land lease/concessions are possible in these ports. Fortunately, the land is still the property of the Republic of Serbia. Concessions are possible in case of extension of existing port areas, or in case of development of new ports. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | No | Maximum concession periods could be extended in line with the limits of the PPP law, having in mind the size of the possible investment in port projects |
| Do you see any problems with access to EU development of infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | Yes | There is not enough information in the Port community (even in the public sector) about possibilities and access to EU infrastructure development funds. |

Annex VI – Questionnaires Romania

Questionnaire on the PPP obstacles in Romanian ports

Country: Romania Project Partner: MPAC, MT, APDM, PDI RO, ILR

Respondent: **MPAC & APDM**

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | Yes | <p>The initiative of a PPP is made by the public partner.</p> <p>We identified the risk of not assuming the responsibility regarding the results of the financial modelling or of the risks matrix. The financial modelling and the risk matrix are part of the study that is being conceived before the initiating the project.</p> |
| 2. Current legal setup of PPP in you port or country? | No | <p>The mechanism of PPP is characterised by the following main elements:</p> <ul style="list-style-type: none"> a. The cooperation between the public partner and the private one for implementing a public project b. the relatively long period of the contract (over 5 years) that allows the private partner to recover the investment and achieve a reasonable profit c. financing the project mainly from private funds and, as the case may be, by pooling private funds with public funds d. achieving the goal/target pursued by the public or the private partner e. risk distribution between the private and the public partner based on each part capacity of evaluating, managing and controlling a certain risk |
| 3. Available forms of PPP in your port/country? | no | <p>The forms of PPP available in Romania are:</p> <ul style="list-style-type: none"> a. contractual PPP– this is the PPP based on a contract signed between the public partner, the private partner and a new company owned by the private company whom will act as a project company b. b) Public-private institutional partnership – private-public partnership based on a contract concluded/signed between the public partner and the private partner, through the two entities will form a new company, which will act as a project company. After the legal registration of the new company, it will became one of the contracting parties. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 4. Concession/lease fees types? | no | <p>The subject of the privat-public partnership is the realization, or, as the case, the rehabilitation and/or operation of a public service, according with the present government decision.</p> <p>Public-private partnership contracts can be perfected also to perform a relevant activity in the public sectors according to the Romanian Law nr. 99/2016</p> |
| 5. Amount of concession/lease fees? | no | We identified the risk of not assuming the responsibility regarding the results of the financial modelling or of the risks matrix. |
| 6. Revenues made from concession performance or lease? | yes | <p>Through the PPP, the pubic partner will have the possibility to establish, in favour of project society, the right to collect or use fees, for the development of the project, from the beneficiary of the goods/services that are being stipulated by the PPP. The types and amount will be established in accordance with the law.</p> <p>The following risks can occur:</p> <ul style="list-style-type: none"> - risk of not being eligible for a bank loan for obtaining financial funds for the project - risk of not generating revenues from financial modelling in accordance with a moderate application of risks matrix. |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | No | <p>Additional fees were not identified.</p> <p>The costs of study made before the project assignment, are being incurred by the public partner or by the National Strategy and Forecast Company</p> |
| 8. Property rights that can be granted by Grantor to concessionaire? | No | <p>The public partner can constitute (without having to run through a distinct assignment procedure as compared to the one foreseen by the law) in service of the project society, concerning the goods intended for the purpose of carrying out the project, goods on which it can make dispositions of:</p> <ol style="list-style-type: none"> a. concession rights on goods of public property or rights resulting from renting public property goods b. superficie, servitude, using rights on public property goods. |
| 9. Ways of fees/rates determination? | no | The fees will be established as to result in reasonable and tolerable prices for the services that constitute the project's object, prices that are going to be paid by the beneficiaries of services, taking into consideration the contract's duration. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 10. The treatment or distinction between moveable versus immoveable property? | no | <p>The PPP contract has to refer to the goods or category of goods that, during the course of the contract or upon termination of the contract, are destined to enter public property, namely the project's society property inclusively:</p> <ul style="list-style-type: none"> a. the goods materialized during the course of the project, as a result of the investments implemented by the private partner or the project's society; b. the goods that the project's society has to transfer over to the public partner, upon the termination of the PPP contract by whatever reason; c. the goods that the public partner has the option of buying upon the termination of the PPP contract by whatever reason; d. the goods that remain in the property of the project's society upon the termination of the PPP contract by whatever reason. |
| 11. Procedures and risk allocation in case of Force Majeure? | yes | <p>The study made by the public partner before assigning the project, includes identification and quantification of risk categories in connection with the implementation of the project, and also a presentation of alternative ways of relocating risk between the contracting parties, depending on the capacity of each party to manage assumed risk.</p> <p>Risks that can occur: Difficulties in appreciating and distributing correctly and adequately the risks matrix, including the cases of "force majeure".</p> |
| 12. Termination conditions and clauses? | no | <p>Upon termination of PPP contract by whatever reason, the rights constituted by the public partner in favour of the private partner or the project's society, will cease and the goods achieved or acquired by the project's society (representing the object of PPP contract) and also the goods necessary for the performance of the public service that will be transferred to the public partner, all these goods have to be unoccupied, free of tasks, free of any mortgages, in good working conditions and exploitable in accordance with standards applicable for public service and/or similar goods, in the terms of the PPP contract.</p> <p>(2) Upon termination of the PPP contract as a result of reaching its expiry date, the goods achieved or acquired by the project's society representing the object of PPP contract and also the goods necessary for the performance of the public service, will be transferred, cost free, to the public partner.</p> <p>(3) Upon termination of PPP contract by whatever reason, with the exception of reaching its expiry date, the goods achieved or acquired by the project's society representing the object of PPP contract and also the goods necessary for the performance of the public service, including goods that</p> |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| | | <p>have not been finalized, will be transferred to the public partner, in the terms of the PPP contract, by paying a compensation established in accordance with the specifications of the assignment documentation and the PPP contract.</p> <p>(4) If the termination of the contract is due to the private partner's fault, then out of the value of the compensation owed by the public partner for the transferred goods (made in accordance with the law), there will be deductions equal to any amount that the private partner pays as compensation, established in accordance with the PPP contract.</p> <p>(5) If the termination of the contract is due to the public partner's fault on the value of the compensation owed by the public partner for the transferred goods (in accordance with the law), there will be added the amounts owed by the public partner as compensation, established in accordance with the PPP contract.</p> |
| 13. Insurance issues? | no | The study which is made before initiating the project, has to emphasise the risk distribution structure for each alternative option of project. implementation |
| 14. Minimum investments required? | yes | <p>Where the object of the PPP contract consists in intervention works and/or extension of a certain good, the works have to represent over 50% of the good's value at the moment of investment completion.</p> <p>Risks that can occur:</p> <p>Difficulties in taking responsibility regarding the investment's costs and also the structure of time distribution by reference to form and content of financial modelling.</p> |
| 15. Performance requirements? | no | The characteristics and performance objectives of the good(s) to be achieved within the project, as well as the performance indicators of the public service that constitutes the subject of the project, are established through the contract. |
| 16. Expropriation issues? | yes | <p>Risks that can occur:</p> <p>Difficulties in determining the value of expropriation within the costs of financial modeling by reference to the fact that the national legislation on expropriations is not correlated with the specifics of works concessions or the specifics of public private projects.</p> |
| 17. Contract suspension or early termination clauses? | no | The PPP contract can be modified only in the cases and under the conditions stated by the law that governs the assignment procedure. |
| 18. Requirements for existing and/or new personnel? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 19. Port services agreements? | no | <p>Mol 3 and 4 from the southern part of Constanta Harbor are part of the list of strategic investment projects to be prepared and attributed in the PPP by the National Strategy and Forecast Commission, approved by the Government Decision no. 357/2018.</p> <p>Expanding the port of Constanta by creating additional operating docks / terminals, which is included in the Transport Master plan, can become an important attraction for investors.</p> <p>Also, because of grate depths of waters from the new built quays (Mol 3 and 4) there is the opportunity to create premises for operating big capacity ships, and also the possibility of building new specialized terminals.</p> <p>Achieving the investment's objective will translate in increasing shipping capacity for passengers and merchandise, and also increasing the volume of trade, implicitly, increasing the revenues of the company that implements the investment from exploiting and managing the new built infrastructure.</p> <p>Moreover, by increasing maritime transport (and not other ways of transport), there will be significant reduction of negative impact on the environment.</p> <p>Developing port infrastructure will also translate in creating new jobs. Recovery of the investment may be possible by charging for a period of approximately 20 years the fees set for this objective by the private operator.</p> <p>The legislative changes regarding the PPP occurred in 2018, and the above presented project was included on the strategic projects list in august 2018, but it is not yet implemented at current date.</p> |
| 20. Legal form of lessee or concessionaire? | no | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | no | |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | yes | <p>Risks that can occur:</p> <p>If the financial modelling and the risk matrix have a negative result , the public partner must pay to private partner the necessary amount. This generates a great responsibility and is hardly assumed by public institutions.</p> |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | no | |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | no | |
| 25. The land, facilities, and equipment included in the concession? | no | |
| 26. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | yes | We identified that there is a risk of not assuming the responsibility regarding the results of the financial modelling or of the risks matrix. |
| 27. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | yes | Possible risk: - lack of experience regarding PPP, including the lack of experience for creating adequate and bank eligible risk matrix |
| 28. Activities permitted to be carried out in the concession area? | no | |
| 29. Equal access to common areas in the port? | no | |
| 30. Return of land, facilities and equipment after the concession/lease period has expired? | no | |
| 31. Concession/lease award options? | no | |
| 32. Direct negotiations and unsolicited proposals (for concessions and leases)? | no | |
| 33. Operator's experience requirements? | no | |
| 34. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | no | |
| 35. Technical part of the proposal (during the bidding process)? | yes | Risk of not making the project because of bank eligibility |
| 36. Financial part of the proposal (during the bidding process)? | yes | |
| 37. Negotiations phase (following the technical and financial proposal phases)? | yes | |
| 38. Sealed vs. open bids? | no | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 39. Transparency issues during the bids? | no | |
| 40. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | no | |
| (add more if necessary) | | |
| | | |
| What would you do in order to make the best possible PPP scheme in your country/port? | | Romania has a new legislation in this matter. Because of our lack of experience we cannot identify improvements on PPP. |
| (add more if necessary) | | |
| (add more if necessary) | | |
| What is the best concession type, according to your opinion? | | Because of our lack of experience we cannot identify which is the best concession type. |
| Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | | |
| Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | | Because we have a new legislation and also because of our lack of experience we cannot identify problems. |
| Do you see any problems with access to EU development of infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | | The new stance on treating ESI funds as state aid substantially slows the sustainable development of ports in less developed European states. |
| (add more if necessary) | | |
| (add more if necessary) | | |
| (add more if necessary) | | |
| (add more if necessary) | | |

Questionnaire on the PPP obstacles in Romanian ports

Country: Romania

Project Partner: MPAC, MT, APDM, PDI RO, ILR

Respondent: **FRIAL**

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | NO | As long as the port authorities are not under political influence |
| 2. Current legal setup of PPP in you port or country? | YES | Because now there is no legal setup |
| 3. Available forms of PPP in your port/country? | YES | Because of the political influence |
| 4. Concession/lease fees types? | NO | As long as the fees will be established on non-discriminatory bases |
| 5. Amount of concession/lease fees? | NO | As long as the fees will be established on non-discriminatory bases |
| 6. Revenues made from concession performance or lease? | NO | As long as the fees will be established on non-discriminatory bases |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | YES | The taxes and fees must be well known before starting an activity, must be long term established and not often increased |
| 8. Property rights that can be granted by Grantor to concessionaire? | NO | |
| 9. Ways of fees/rates determination? | NO | The taxes and fees must be set for long term and on non-discriminatory bases |
| 10. The treatment or distinction between moveable versus immoveable property? | YES | Investments in infrastructure and buildings must be encouraged and supported by the authorities in the first place |
| 11. Procedures and risk allocation in case of Force Majeure? | NO | |
| 12. Termination conditions and clauses? | NO | |
| 13. Insurance issues? | NO | |
| 14. Minimum investments required? | NO | |
| 15. Performance requirements? | YES | Must be taking into account the specifics of each company when the performance requirements are set |
| 16. Expropriation issues? | YES | |
| 17. Contract suspension or early termination clauses? | YES | |
| 18. Requirements for existing and/or new personnel? | NO | |
| 19. Port services agreements? | NO | |
| 20. Legal form of lessee or concessionaire? | NO | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | NO | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | YES | Investments in infrastructure and buildings must be encouraged and supported by the authorities |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | YES | The majority of shareholdings must be of the Romanian Government |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | YES | |
| 25. The land, facilities, and equipment included in the concession? | NO | |
| 26. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | NO | |
| 27. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | NO | |
| 28. Activities permitted to be carried out in the concession area? | NO | The activities permitted must be established from the beginning of the activity thru an agreement between companies and port authorities |
| 29. Equal access to common areas in the port? | NO | |
| 30. Return of land, facilities and equipment after the concession/lease period has expired? | NO | As long as an indemnity is granted |
| 31. Concession/lease award options? | NO | |
| 32. Direct negotiations and unsolicited proposals (for concessions and leases)? | YES | |
| 33. Operator's experience requirements? | NO | |
| 34. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | NO | |
| 35. Technical part of the proposal (during the bidding process)? | NO | |
| 36. Financial part of the proposal (during the bidding process)? | NO | |
| 37. Negotiations phase (following the technical and financial proposal phases)? | NO | |
| 38. Sealed vs. open bids? | NO | |
| 39. Transparency issues during the bids? | NO | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, clarifications, comments and suggestions |
| 40. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | NO | |
| | | |
| What would you do in order to make the best possible PPP scheme in your country/port? | | |
| What is the best concession type, according to your opinion? | | Long term renting with long terms fees |
| Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | NO | |
| Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | YES | There is no planned PPP schemes in Port of Constanta |
| Do you see any problems with access to EU development of infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | YES | |

Annex VII – Questionnaires Bulgaria

Questionnaire on the PPP obstacles in Bulgarian ports

Country: Bulgaria

Project Partner: BPICo

Respondent: BPICo

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | Bulgarian legislation regulating the port sector significantly differs from the principles of port management applicable in most European countries. |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | Yes | Contracts for the award of a concession are concluded by the Minister of Transport, in his capacity as concession grantor. Although BPICo. currently performs many of the functions and duties of a port authority (in most European countries, the concession is granted by legal entities such as BPICo.), the Company is not directly involved in the concession process. At the same time, BPICo. manages, maintains and invests in the port infrastructure, ie. in public ownership that is granted on concession, but in fact, the investment does not return as revenue of BPICo. and the company does not actually have the power to exercise control over the concession contracts. |
| 2. Current legal setup of PPP in your port or country? | Yes | Part of the port terminals are operated by the so-called state port operators. The way of operation of assets by these legal entities can be categorized as unauthorized State aid. For an effective mechanism to establish PPPs, all terminals / ports should only be operated by private companies (concessionaires) on the basis of a construction / service concession. As the BPICo. builds the port terminal infrastructure, respectively the granting of the right for its operation, ie. the concession must be awarded by the Company. Thus, against the investments made in the concession object, BPICo. will receive the due concession fee. |
| 3. Available forms of PPP in your port/country? | Yes | With the Concessions Act (CA), adopted in 2017, PPP forms are regulated as a concession for construction / concession for services. There is also a concession for the use of public state or public municipal property. The act transposes the requirements of Directive 2014/23 / EU. In view of the fact that all current concession contracts at port terminals remain in force and are being implemented in accordance with the conditions agreed previously, they are not in full compliance with the applicable regulations. To this end, and in order to increase their effectiveness, contracts should be revised, amended accordingly (including as regards |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| | | their duration), in accordance with the applicable European legislation and the current CA. |
| 4. Concession/lease fees types? | - | At present, these issues do not concern BPICo. as the Company is not directly involved in the concession award process. |
| 5. Amount of concession/lease fees? | - | |
| 6. Revenues made from concession performance or lease? | Yes | <p>Revenues from concessions are transferred directly to the state budget - to the Ministry of Finance. The revenues of BPIC, incl. the state budget subsidies, are collected in a single pool of funds, which excludes concession fees. At the same time, BPICo. is entrusted with the construction, reconstruction, rehabilitation and maintenance of the ports, the management of their infrastructure, incl. and investment design to build a new or expand existing port infrastructure. In practice, the investment that should be paid over time do not generate revenue for the investor (in this case BPICo.), as the fees paid by concessionaires for the use of the same port infrastructure are not revenue of the BPICo. but of the republican budget.</p> <p>When granting concessions (for construction / service) and when concluding lease contracts, the concession fee and lease income should be an income to the BPICo. budget.</p> |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | - | |
| 8. Property rights that can be granted by Grantor to concessionaire? | No | In all cases, the property rights on real estate which are established or occur in favor of the concessionaire are with duration till termination of the concession contract. |
| 9. Ways of fees/rates determination? | Yes | <p>Currently, concession revenue is considered to be revenue from public state property, which is why the concession fees are determined by the Minister of transport in accordance with a methodology defined by the Council of Ministers.</p> <p>In fact, this public property was created as a result of an investment made by the BPICo., where the Company is deprived of its revenue in the part concession fees.</p> <p>The amount of port charges (canal dues, tonnage dues, light dues, line dues) is also the responsibility of the Council of Ministers.</p> <p>It is necessary to regulate the autonomy of BPICo. in determining the amount of the concession fees (in accordance with the adopted methodology) and the port dues, while keeping the following:</p> <ul style="list-style-type: none"> - contribute to the maintenance and development of infrastructure and service facilities and to transparent provision of services; - are defined in an independent manner for each port in accordance with the commercial strategy and the |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| | | investment plans for its development, in compliance with the competition rules. |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? | No | |
| 11. Procedures and risk allocation in case of Force Majeure? | No | |
| 12. Termination conditions and clauses? | - | |
| 13. Insurance issues? | No | |
| 14. Minimum investments required? | - | |
| 15. Performance requirements? | - | |
| 16. Expropriation issues? | - | |
| 17. Contract suspension or early termination clauses? | - | |
| 18. Requirements for existing and/or new personnel? | No | |
| 19. Port services agreements? | - | |
| 20. Legal form of lessee or concessionaire? | Yes | Contracts with state port operators should be discontinued and the operation of ports and the provision of services should only be carried out by the following entities: - Private economic operators; - A public-private partnership established for the purpose of concluding a concession contract in which the members / shareholders are the participant (concessionaire) - a private partner, and the state / municipality / public undertaking - a public partner. - Established project partnership: when a condition is placed by the Grantor if the participant designated as Concessionaire is a group of economic operators. |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | Yes | BPICo. performs many of the functions and duties that are part of the port authority in most European countries and covers the definition under Regulation (EU) 2017/352 for the "managing body of the port". The Company assists the Minister of Transport in exercising control over concession contracts, but BPICo, as the managing body of the port, is in fact not in a position to exercise control (e.g. to take certain actions in case of failure of the obligations of the concessionaire). |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | Yes | See answer to question 6. |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | - | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | - | |
| 25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | - | |
| 26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | Yes | <p>Before concluding the concession contract, concessionaires develop a long-term investment program, on the basis of which they draw up their annual programs. To some extent, this is an obstacle, as the economic conditions in the country, and in particular for economic operators, are changing over the years, and development priorities are shifting.</p> <p>The main feature of almost all concessions is that they are handed over to exploitation of old buildings, equipment, facilities. The concessionaire has no incentive and interest in investing resources in the upgrading and modernizing of all operated assets. He plans and invests in what would bring him more revenue - equipment, mechanization, silos. Outdated equipment, facilities and buildings not directly engaged in port operations remain poorly maintained or a subject of investment only in an emergency situation.</p> <p>On the other hand, there is a lack of large financial resources to renew the overall infrastructure of ports.</p> |
| 27. Activities permitted to be carried out in the concession area? | No | |
| 28. Equal access to common areas in the port? | No | |
| 29. Return of land, facilities and equipment after the concession/lease period has expired? | No | |
| 30. Concession/lease award options? | Yes | <p>National legislation allows construction / service to be awarded by concession or public procurement. If provided that the legal status of BPICo. as the managing body of the port is clearly regulated, the assessment of the appropriate procedure (concession or public procurement) will be made depending on the site, according to the available financial means and the possibilities for transferring the operational risk to the economic operator.</p> |
| 31. Direct negotiations and unsolicited proposals (for concessions and leases)? | - | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 32. Operator's experience requirements? | Yes | They must be defined by the managing body of the port – BPICo., through a set of conditions aimed to achieve a high quality of port services and to ensure compliance with the competition rules on the market. |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | Yes | They must be defined by the managing body – BPICo., in order to evaluate the ability of port service providers to serve a given number of vessels by providing the necessary staff and equipment. The managing body has to determine the conditions in order to comply with labour regulations and relevant collective agreements, as well as to meet the quality requirements of the port concerned. |
| 34. Technical part of the proposal (during the bidding process)? | - | |
| 35. Financial part of the proposal (during the bidding process)? | - | |
| 36. Negotiations phase (following the technical and financial proposal phases)? | - | |
| 37. Sealed vs. open bids? | - | |
| 38. Transparency issues during the bids? | - | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | No | |
| 40. Information about possibilities of establishing PPP | Yes | It is necessary to consult stakeholders / users on issues related to port development and policy, opportunities to attract investment and to develop joint projects in order to prepare and conduct transparent, non-discriminatory procedures for the establishment of PPPs in the form of contracts for concessions. |
| 41. Distribution of risks associated with the preparation and operation of the PPP project | - | |
| 42. Granted time for concession duration? | Yes | Although Directive 2014/23 / EU does not require a maximum duration, the Concessions Act introduces terms for the duration of contracts - up to 25 years for service concessions and up to 35 years for construction concessions. The time limit for awarding a concession should be set, respectively limited for each particular contract until the time when the concessionaire can expect to regain the investment and receive income from the capital invested under normal operating conditions. |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | In view of the requirements of the Bulgarian Constitution and Regulation 2017/352, we consider it necessary to draft an amendment to the existing legislation and to restructure the functions within the port sector. There is no independent port authority in Bulgaria, although BPICo. fulfils a large part of the |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| | | responsibilities of this authority, while the tasks and powers related to the ports are distributed among different public and private entities in a somewhat random way. There is a lack of transparency regarding the financial structure related to the management and operation of the ports, while capital transfers to port-related entities, in the sense of the EU regulations, constitute partially unlawful State aid. This is a violation of a number of EU regulations. |
| C) What is the best concession type, according to your opinion? | | With the adoption of Regulation 2017/352, the EU imposes a unified model for port facility management and, as regards the Bulgarian legislation, the existence of such an EU legal act is beneficial. A change is forthcoming in the regulatory framework for ports in Bulgaria in order to comply with the requirements of European legislation. We expect this change to be positive in terms of the financial independence of the managing body of the ports - BPICo. Although the Regulation applies to seaports, the forthcoming changes to the legal framework would have to change the established Bulgarian port model for both sea and river by introducing clear powers for the management body, namely the economic function, i.e. the administration, maintenance and management of port infrastructure, as well as the coordination, organization and control of operators' activities, including the granting of concessions and renting. |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | - | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | | As explained, BPICo. is not directly involved in the concession award process. At the same time, it manages, maintains and develops the port infrastructure, but has no real powers in exercising control over concession contracts for this infrastructure. Investments made by BPICo. in public property, which is granted on concession, do not generate revenue for the Company; it is deprived of the income that belongs to it at the expense of the republican budget because the remuneration that the concessionaires pay for the use of the port infrastructure is not revenue of BPICo. but of the state budget. There is currently a very unproductive financial and economic model. The current scheme of organization of port activities in our country has no analogue in the world practice. |
| | | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | | In the first programming period, European money was mainly given as grants. One of the most important trends in the new programs is the reduction of the grant at the expense of the introduction of financial instruments. This means that the future use of EU funds will be less focused to funding through grants, and funding will be provided more through financial instruments in the form of long-term low-interest loans and equity participations. The European funds will be operational beyond 2020, but funding will be different from the previous grant schemes, going more and more to financial engineering where European money is used to help attract private capital rather than grant funding. The post-2020 activity of BPICo. related to the implementation of projects will focus on mastering these new financing trends from public and private sources. |

Questionnaire on the PPP obstacles in Bulgarian ports

Country: Bulgaria Project Partner: BPICo. Respondent: **Port Invest Ltd. (Port terminal Lom), Bulgarian River Shipping JSCo. (Ferryboat terminal Nikopol, Port terminal Vidin-north and Ferryboat complex Vidin)** – answered by one expert, with observation for all mentioned port terminals

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | No | |
| 2. Current legal setup of PPP in your port or country? | | There is no specific definition of PPP in the legislative framework. |
| 3. Available forms of PPP in your port/country? | | The only form is a concession. There is no legal possibility for the state to participate with some percentage in the concession. |
| 4. Concession/lease fees types? | No | |
| 5. Amount of concession/lease fees? | No | |
| 6. Revenues made from concession performance or lease? | | Related to commercial risks. The ferryboat complex Vidin does not really work after the commissioning of Danube Bridge 2 and the concession payment is not changed. The terminal brings losses to the concessionaire. |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | No | |
| 8. Property rights that can be granted by Grantor to concessionaire? | | Currently no such property rights are granted. |
| 9. Ways of fees/rates determination? | No | They are defined in the concession procedure. |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? | No | |
| 11. Procedures and risk allocation in case of Force Majeure? | | Too long period after which a force majeure condition may be claimed (30 days duration) |
| 12. Termination conditions and clauses? | No | |
| 13. Insurance issues? | No | |
| 14. Minimum investments required? | No | |
| 15. Performance requirements? | No | |
| 16. Expropriation issues? | No | The Concessionaire has no relation on these issues. When granting a concession, these procedures are over. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 17. Contract suspension or early termination clauses? | No | |
| 18. Requirements for existing and/or new personnel? | No | It is hard to find qualified personnel. |
| 19. Port services agreements? | No | Only the concessionaire can perform the port services under the specific concession contract. |
| 20. Legal form of lessee or concessionaire? | No | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | No | |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | No | There is no subsidy to the concessionaire regarding the implementation of its investment program. |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | No | No such participation in practice until now. |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | No | |
| 25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | No | |
| 26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | No | |
| 27. Activities permitted to be carried out in the concession area? | No | They are fixed by the concession contract. |
| 28. Equal access to common areas in the port? | No | Terminals targeted in this questionnaire have no common areas. |
| 29. Return of land, facilities and equipment after the concession/lease period has expired? | No | No observations. |
| 30. Concession/lease award options? | No | The decision is taken by the Grantor. |
| 31. Direct negotiations and unsolicited proposals (for concessions and leases)? | No | There is no such procedure till now. |
| 32. Operator's experience requirements? | No | They are detailed in the concession procedure. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|--|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | No | |
| 34. Technical part of the proposal (during the bidding process)? | No | |
| 35. Financial part of the proposal (during the bidding process)? | No | |
| 36. Negotiations phase (following the technical and financial proposal phases)? | No | It is very difficult to correct any non-compliance in the initial conditions specified in the tender dossier. |
| 37. Sealed vs. open bids? | No | It is always sealed procedure. |
| 38. Transparency issues during the bids? | No | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | No | |
| 40. Information about possibilities of establishing PPP | No | No information available for us. |
| 41. Distribution of risks associated with the preparation and operation of the PPP project | No | The bigger risk stays for the concessionaire. |
| 42. Granted time for concession duration? | No | |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | |
| | | |
| C) What is the best concession type, according to your opinion? | | Concession for service. |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | No | No such process currently. |
| | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | No | |
| | | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments | | Under current concessions, we have not had such funding. Typically, the infrastructure owner should evaluate access and funding under such schemes / projects. |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| (EFSI), Connecting Europe Facility (CEF) funds or similar? | | |

Questionnaire on the PPP obstacles in Bulgarian ports

Country: Bulgaria Project Partner: BPICo. Respondent: **MTITC, Concessions and Control of the Activity of the Trade Associations and Government Enterprises Directorate**

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| A) Do you see any obstacles for establishing PPP schemes or for their increased efficiency, related to: | | |
| 1. The entity who is the lessor or concession grantor or contractor for the operating authorization? | No | |
| 2. Current legal setup of PPP in you port or country? | No | |
| 3. Available forms of PPP in your port/country? | No | |
| 4. Concession/lease fees types? | No | |
| 5. Amount of concession/lease fees? | No | |
| 6. Revenues made from concession performance or lease? | No | |
| 7. Any additional fees or taxes payable by the concessionaire/lessee during the duration of the concession, lease or operating authorization contracts? | No | |
| 8. Property rights that can be granted by Grantor to concessionaire? | No | |
| 9. Ways of fees/rates determination? | No | |
| 10. The land, facilities, and equipment included in the concession, their distinction and treatment? | No | |
| 11. Procedures and risk allocation in case of Force Majeure? | No | |
| 12. Termination conditions and clauses? | No | |
| 13. Insurance issues? | No | |
| 14. Minimum investments required? | No | |
| 15. Performance requirements? | No | |
| 16. Expropriation issues? | No | |
| 17. Contract suspension or early termination clauses? | No | |
| 18. Requirements for existing and/or new personnel? | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|---|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 19. Port services agreements? | No | |
| 20. Legal form of lessee or concessionaire? | No | |
| 21. Role of the Port Authority or other public bodies in monitoring of the contract performance? | No | |
| 22. Financial agreements or subsidies for infrastructure construction, modernization or rehabilitation? | No | |
| 23. Participation (shareholding) of corporatized port authority in the concessionaire's company (operator)? | No | |
| 24. Control of designs and design contracts between the concessionaire (lessee/operator) and design bureau doing the design for new infrastructure assets? | No | |
| 25. The functional requirements of the port and/or terminal, the proposed design solution for any construction, the construction program and time schedule, including milestones? | No | |
| 26. Rights and responsibilities of the concessionaire and concession grantor with respect to the completion of the construction program? | No | |
| 27. Activities permitted to be carried out in the concession area? | No | |
| 28. Equal access to common areas in the port? | No | |
| 29. Return of land, facilities and equipment after the concession/lease period has expired? | No | |
| 30. Concession/lease award options? | No | |
| 31. Direct negotiations and unsolicited proposals (for concessions and leases)? | No | |
| 32. Operator's experience requirements? | No | |
| 33. Prequalification criteria (technical & financial capacity, minimum operating revenues from comparable services, minimum required equity, etc.)? | No | |

| Topics | Answers (simple (Y/N) and/or complex) | |
|--|---------------------------------------|---|
| | Yes/No | Explanations, remarks, comments and suggestions |
| 34. Technical part of the proposal (during the bidding process)? | No | |
| 35. Financial part of the proposal (during the bidding process)? | No | |
| 36. Negotiations phase (following the technical and financial proposal phases)? | No | |
| 37. Sealed vs. open bids? | No | |
| 38. Transparency issues during the bids? | No | |
| 39. Available dispute settlement options (judicial, administrative, arbitration, non-binding alternative dispute resolution, etc.)? | No | |
| 40. Information about possibilities of establishing PPP | No | |
| 41. Distribution of risks associated with the preparation and operation of the PPP project | No | |
| 42. Granted time for concession duration? | No | |
| | | |
| B) What would you do in order to make the best possible PPP scheme in your country/port? | | Creation of conditions for concession granting while respecting the principles of publicity, transparency, proportionality, equal treatment and non-discrimination. |
| | | |
| C) What is the best concession type, according to your opinion? | | Depending on the specific object of concession , the type of concession is also determined |
| | | |
| D) Do you see any problems with full or partial privatization processes, or any other form of private involvement in port development in your port/country? | No | |
| | | |
| E) Do you see any other problems with existing or planned PPP schemes in your port/country? (Please list such problems below and comment them) | No | |
| | | |
| F) Do you see any problems with access to EU development or infrastructure funds, like European Fund for Strategic Investments (EFSI), Connecting Europe Facility (CEF) funds or similar? | No | |

