

# NOVELTIES ON THE DOMAIN OF PUBLIC PRIVATE PARTNERSHIPS AND CONCESSIONS IN ALBANIA

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## **Abstract**

The legislation on concessions is amongst those that have encountered numerous changes in the last five years. Those changes that were modeled mainly in accordance with the UNCITRAL model aimed at improving the legislation in this domain, satisfying investors request for better standards and attracting foreign as well as domestic investments. Since 2007 the number of concessionary projects is increased with several hundreds. Although the law and other subordinated acts have been amended continuously, it appears that there is room for improvement. A new law, which regulates both public private partnerships and concessions, has passed in the government and is pending approval by the Parliament. The law is inspired by the EU legislation (Directive2004/18/EC) and introduces some important novelties of interest to private economic operators as well as state agencies. One of the most apparent developments is that the law regulates for the first time PPP, distinguishable from the concessions, and provides a legal definition of the scope of such instrument. It establishes that PPP can be realized as (i) as a concession on public works, (ii) concession on services, (iii) public work contract, and (iv) contract for public service. Other important developments are the new regime which is applicable, the offered of an unsolicited proposal and the increasing role of the Ministry of Finance and the unification of terms and standards with the Law on Public Procurement. The paper will present some of the structural, substantial and procedural changes that the new law will establish and their impact on the ongoing projects or proceedings.

**Keywords:** PPP, concessions, solicited and unsolicited proposals.

## **1. The concept of PPP and concession**

The definition of concession depends on the area of exchanges the legislation of a specific country includes in such a legal relation. Concessions are one of the forms of *public private partnership (PPP)*, but in various countries have been developed different legal regimes for their approach. Consequently, in some jurisdictions the term PPP is used as an umbrella term for various types of collaboration between a public entity and a private partner, including also concessionary relations, while in other countries the law clearly distinguishes the legal regime for PPP and the one for concessions. Concession in generally can be defined as an authorization granted to the concessionaire to invest in economic activity associated with the design, development, renovation, transformation, the repair, management, use and/or maintenance of infrastructure facilities, or one of these activities or provide public services and/or manage state-owned assets. In this relation the concessionaire undertakes the risk of financing and successful completion of the project. The reward received by the concessionaire consists on the incomes from the operation of the project, or incomes from the activity together with the reward paid by the public authority<sup>1</sup>. PPP as we will

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<sup>1</sup> For more Ramanauskas Liudas, "PPPs. Public and private partnerships".

discuss below, have very similar features with concessions. Among them the main differences are the ratio of risk sharing between public and private entity, which in case of PPP is divided in a more balanced way than the case of concessions, or completely fall to the side of the public entity. In some cases, PPP are different because of the fact that public entity becomes participant in the scheme of financing the project, through direct payments or providing guarantees for loans granted by financial institutions.

The legislation of the European Union is referred to the concession concept in the following way: *“The concept of the concession is defined as the same type of contract as public contracts except the fact that the reward for the performed work or the offered service consists only on the right to utilize the construction or service or in this right along with the payment”*<sup>2</sup>.

It is worth mentioning that various countries, members of the EU, under the impact of EU directives, have different legal regimes for service concessions and public works concessions. Service concessions are not usually defined in particular directives of EU. We usually find service Concessions in cases where a private entity provides services, which are then allowed to be utilized, with or without charge. In the case of service concessions the burden of risk is mainly held by the concessionary<sup>3</sup>.

## **2. General characteristics of the Albanian legal framework on concessions and novelties of the new law “On Concessions and PPP”.**

The law “On Concessions and PPP”, starting from its first provisions, states that the purpose of the law is to create a favorable and sustainable framework in order to promote, attract and create facilities for investments realized as concessions/public private partnerships. The act defines the terms, methods, criteria and procedures for granting concessions and its scope of action includes the economic sectors mentioned above. It aims to serve as a *lex specialis* also in the area of administrative contracts of the field of concessions, because has the object:

- Regulating the contracting authorities powers to enter into concession agreements/public private partnerships with private investors;
- Defining the procedures for granting such contracts and the conditions for the conclusion, change and termination of such contracts;
- Regulating matters related to financial aspects and the support of concessionary/PPP projects by the public finances;
- The definition of bodies that may set the politics for the areas where concessions/PPP can be implemented, as well as other issues related to concessions/PPP functioning<sup>4</sup>.

Also in the Article 5 of the law is provided a list of relations between private and public operators which, besides the fact that have the characteristics of concessions/public private partnerships, are not regulated by the provisions of this law.

Albanian legislation on concessions creates a good basis for the treatment of co-investment projects of public bodies and private entities, in a transparent way and meets international standards set by authoritative bodies such as UNCITRAL, OECD and EBRD. The law passed in 2006 “On Concessions” relied on the UNCITRAL model, while the new law “On concessions and PPP”, drafted with the assistance of OECD has chosen to approximate the Albanian legislation with that of the EU, namely the directive 2004/18/EC of the European Parliament and the Council<sup>5</sup>.

<sup>2</sup> Directive 93/37/EEC of 14 June 1993 of the Council, “Concerning the coordination of procedures for the award of public works contracts”.

<sup>3</sup> Directive 92/50/EEC, Directive 2004/18/EC.

<sup>4</sup> Articles 1-6, Law “On Concessions and PPP”.

<sup>5</sup> Directive 2004/18/EC of the European Parliament and the Council , 31 March 2004 “For the coordination of the procedures of procurement to announce the winning public contracts for works, supplies and services, Official Bulletin of EU, Serie L, no.134, dated on 30.4.2004, page114 – 240.

## **2.1 Reference to LPP and the enforcement of the role of Ministry of Economics**

The new law presents several significant innovations, in material and procedural aspects. One of the positive aspects of the law is the tendency to match the terms, procedures and conditions with those provided for in the law “On Public Procurement” (LPP). This is accomplished by referring in several provisions in the law “On Public Procurement”. So, for example, the exclusion from the participation of the private operator, the realization of the competition, the regulation of the privacy, the calculation of the concession/PPP investment value, is governed by the provisions of LPP<sup>6</sup>. This is a positive development because it avoids double standards in the administration of complaints about the competition and also the clash of competences of administrative bodies engaged in these processes.

It is also important the identification and the increased role of the Ministry of Finance in different moments of the procedure for granting a work or service in concession/PPP, of the conclusion of the contract, the administration and its conclusion<sup>7</sup>. We can mention for illustration, that the cases of non-payment of the concession/PPP fee now are regulated better. In such a case the Minister of Finance issues an order for the collection of the amount. This order constitutes an executive title, and is executed by bailiffs in all second level banks where the private partner has a bank account. Also, the Ministry of Finance has the competence to create and maintain the registry of concessions/PPP. It takes copies of the concession contract and also is notified and gives its opinion in cases of change, transfer and termination of the contract.

## **2.2 Definition of PPP and the new classification of PPP contracts.**

The term *public private partnership* is defined in the law and is clearly treated as an umbrella term for various forms of PPP, including concession. The law provides this definition, leaving space for other forms of collaborative schemes between public and private actors (Article 8). “*Public private partnership means a form of a long-term cooperation, regulated with a contract between the contracting authority, i.e. the public partner, and one or more economic operators, i.e. private partner where: ...the private partner undertakes the obligation to provide public services for the users of services within the area of competences of the public partner and/or the obligation to provide for the public partner the necessary prerequisites for providing public services to users of the services and/or activities within its area of competences*”.

In the same provision is determined that as above also includes the construction of public infrastructure works, as well as combination of works construction and services offering.

The law makes the categorization of PPP relations, depending on the balance of risk sharing between the private partner and the public contracting authority, in (Article 8):

- Public works concessions;
- Public services concession;
- Public works contract;
- Public service contract.

Besides the above forms of concessions, the law recognizes also the hybrid forms or *mixed concession*, as a form of concession, the object of which is undertaking works and providing services. Public works and public service contracts, mentioned above, as regards the duration, the research procedure, risk sharing and financing are public private partnership contracts and should not be confused with public works contracts governed by the law “On Public Procurement”. This is very clear from the Article 8 which states that: “*Public procurement contracts that do not meet the terms of this section are not considered public private partnership. Such terms imply, but not*

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<sup>6</sup> Articles 11, 15, 20/3, 21/1, 22/2 of the Law “ On Concessions and PPP”

<sup>7</sup> Law “On Concessions and PPP”, article 10/2,/3, article 14, article 26/7, article 27/4, article 29/2, article 31/6,/7, article 32/3,/4,/5, article 33/4, article 36/4, article 42, 44, 45. Confidentiality in the law “On Public Procurement” mentioned and governed by article 3, paragraph 27, article 25, article 35 / 7, article 48 / 4 (b), article 22 / 4. For the other aspects in which applicable LPP’s provisions will further talk in the paper.

*limited to, the duration of the contract, the transfer of the natural main risks and means of remuneration”.*

### **2.3 Introducing the concept of SPV**

The concept of creating a company, with the only object to create a concessionaire project, has been also a request of the previous legislation on concessions. In a more modern approach, the new law has harmonized the terms used for these subjects to those encountered in other legislations and literature. SPV- *special purpose vehicle* is nothing more than a new legal subject, seat in the Republic of Albania, which is created according to the request and parameters specified by the contracting authority<sup>8</sup>.

Another novelty in relation to SPV is the creation of the institutionalized public-private partnership (IPPP). The law provides that the partnership between a contracting authority and a private partner can be achieved not only through a PPP contract but also through the creation of a SPV with venture capital. Given that the most used forms for commercial companies, including SPV, are the companies of capital, which are characterized by limited liability of shareholders/owners, the law states that the partnership agreement should create the mechanisms that do not allow the private partner hiding from the responsibilities and the burden of risk he should hold in a PPP<sup>9</sup>.

### **2.4 The way of payment and the financial support**

The way of payment of the private partner is one of the most distinctive features of PPP. The law illustrates some methods of payment and their combinations, but without closing the way to other forms determined by the parties, when determines that the private partner is rewarded in accordance with the contract:

- *by giving the right to use public works and/or public service (built/offered by it), mainly with the purpose of establishing fees or payments from customers and end-users or this right along with financial support;*
- *by regular direct payments paid by or on behalf of the public partner;*
- *with other forms of financial support, including transferring of material rights and other real right;*
- *or a combination of the means described above.*

Unlike the concession regime, implemented so far by the law “On Concessions” the new law “On Concessions and PPP” regulates the possibility of the participation of the state in financing the project, financial support as “...*type of monetary or non-monetary support and/or funding provided by the public sector, including but not limited subsidies or other financial guarantees, capital contributions and property rights transfer*”. In the case of concessions, it is presumed that the state financial support and the risk that the state holds are much smaller. According to the previous law, the example of giving objects with 1 Euro concession was a sample of the state participation. But the new law allows the state’s involvement in project financing and guarantees to support the financing.

### **2.5 The temporary co-existence of two legal regimes**

A special feature of the law “On Concessions and PPP” are the provisions that regulate the transitional period of co-existence of the legal regime of the law No. 9663, dated on 18.12.2006 “On Concessions” and the new law “On Concessions and PPP”. So the new law is not applicable to public works concessions granted for construction, operation and maintenance of hydropower plants for the production and distribution of electricity, before the entry into force of this law (Article 5,

<sup>8</sup> Article 39, Law “On Public Procurement”

<sup>9</sup> Article 8, Law “On Public Procurement”

50). Also, the maximum bonus of 10% of the points of the first proponent of concession project in the energy field, which was foreseen also in the old law for unsolicited proposals, and will continue also for unsolicited proposals made after the entry into force of the new law. The dual regime has a defined timeline, it ends 4 years after the entry into force of the new law, at the time all works and services concessions or PPP will be subject of the provisions of the law “On Concessions and PPP” and sublegal acts.

## **2.6 Grandfathering clauses**

The law aims to ensure the concessionaires and other investors in PPP schemes in terms of stability of the legal regime which will be applicable to the contract over time. Assurances that the changes of the legal regime on concessions/PPP will not affect the already signed contracts are realized through several mechanisms provided by the law called the grandfathering clauses, and also through the flexibility offered to the parties which during the negotiations of the concession contract can provide other defense mechanisms. The new law on the Article 41 provides that for specific projects, the contracting authority may provide guarantees for the protection of the private partner from the negative financial consequences derived from legal acts or regulations adopted after the entry into force of the contract on this PPP project<sup>10</sup>.

Besides this the law doesn't provide standard clauses or contracts (templates), but provides the basic norms and principles for the concession/PPP contract clauses, which allows for the parties flexibility in determining the terms of the investment. This flexibility includes the application of different schemes of remuneration of the private partner as it was mentioned above.

## **2.7 Improving standards**

Continuous changes that were made to the legal framework in this area have aimed to improve standards of transparency, fairness in judgment (fairness), access to information and participation in concessions procedures of the interested parties. They came mainly as a result of the requirements of bidders and the problems that of the practice of concession treatment. For illustration, we can mention the competitive procedures and unsolicited proposals provided in the law “On Concessions” adopted in 2006. The new law “On Concessions and PPP” follows the same philosophy. In its Article 9, the law determines that the procedure for granting concessions/public private partnerships is implemented in accordance with the principles of transparency, reciprocity, non-discrimination, proportionality, efficiency, equal treatment, reciprocity and legal certainty. Particular attention is paid to transparency. The legal framework so far, has established clear legal obligations for transparent publication of the requirements for bidders from public authorities, where depending on the volume of investment, announcements are made in local or international media. The new law, despite pending annexes, pays attention to the deadlines for notices publication for the interested parties<sup>11</sup>. This obligation is applicable during the procedure of selection of the contractor, implementing the standard set in the EU legislation since *Telaustria* case<sup>12</sup>.

## **2.8 Distribution of goods and expansion of the competition spirit**

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<sup>10</sup> The previous legal framework for concessions regulated such mechanisms. Rules for concessions regulated the obligation of the contracting authority, in the case of concessions for energy work, to buy energy produced by the concessionaire if they demanded such a thing, with a price calculated according to the formula specified in this regulation. See DCM “On approval of rules for evaluation and granting of concessions”, No.27, dated on 19.01.2007, as amended, Chapter IV, Section 2. Sale price (ALL/kWh) = the average import price realized in the previous year eurocents/kWh x 1.1 coefficient of losses in the transmission x average exchange rate in EUR / ALL for the previous year.

<sup>11</sup> For example Article 22/4, and the Article 24/3 of the Law “On Concessions and PPP”.

<sup>12</sup> Decision of the European Court of Justice, “*Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria AG, and Herold Business Data AG*”, 7 December 2000.

One of the novelties of the law is the extension of the competition standard also to those subjects which are not part of the competition and the concession/PPP contract<sup>13</sup>. The lawmaker aims to promote the distribution of goods in subcontracting subjects who haven't been party of the bidding procedure, when determines that the contracting authority may require the concessionaire to provide third parties with subcontracts with a value at least 30% of the total value of the concession contract. The law in order to ensure that such a distribution of goods is real determines that the groups of companies which are formed to receive the concession or the companies connected to them<sup>14</sup> are not considered third parties in the above sense.

For subcontracting of public-private partnerships realized as public works contracts or public service, besides the fact that these are entirely private entities, are applicable the provisions of the Law "On Public Procurement", while the subcontracting of public works concessions, for an amount over 700,000,000.00 ALL, without VAT, is made according to the procedure specified in Article 35 of the law "On concessions and PPP".

### **2.9. *New approach toward unsolicited proposals***

The new law "On Concessions and PPP" has retained the same competition regime as the previous law, but has introduced an innovation which aims further strengthening of the rules of the competition, and achieving equality between the parties and better protection of the public interest. The novelty has to do with the removal of the bonus for the first bidders of unsolicited proposal. Exception from this rule, for the first four years from the entry into force of this Act, make the unsolicited proposals for concession projects in energy, which will continue to receive a bonus, which can be up to 10% of total points the contestants set for classification (Article 7). After finishing the 4-year period, the concept of bonus will not be applicable. All bidders of unsolicited proposal will be considered equal in the competition. In case the bidder who made the first unsolicited proposal does not win the competition for granting the concession/PPP contract, the contracting authority has the obligation to indemnify the costs for project identification and the supporting documentation of the unsolicited proposal, with an amount ranging from 0.5% -2% of the project value. The calculation of this amount as well as the criteria for granting bonus for the first 4-years should be determined by Decisions of the Council of Ministers, expected to be approved based on this law.

## **3. The structures responsible for concession and PPP treatment**

The law "On Concessions and PPP" doesn't contain significant changes in this regard. Same as the previous law, this act determines that the contracting authorities, bodies, which the law gives authority to undertake a procedure for granting concessions/PPP, are: Prime Ministry, The Ministries, Parliament and the local government units. The article 13 of the law uses the term Prime Ministry instead of the term Council of Ministers making this way unclear the object of the object of competences the provision transmits. The new law "On Concessions and PP" doesn't regulate exhaustively the issue of power and decision-making dependence of contracting authorities, because there is still a lack of regulations to complete this legal framework. Under the previous law "On Concessions" the contracting authority was determined case by case by the Council of Ministers, when he received the assessment proposals for identification of possible concessions. Concession contracts worth over 20 million Euros should be approved by the Council of Ministers, while those

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<sup>13</sup> Article 34 and 35, Law "On Concessions and PPP"

<sup>14</sup> Connected company means any other dealer related through ownership, joint command and control, which can be realized through the exercise of a dominant influence, directly or indirectly, to the concessionaire on society (connected), or the concessionaire company. Dominant influence by the company (which is excluded from the opportunity to be subcontracted) is presumed when, directly or indirectly, in connection with another company, it holds a majority of the subscribed capital of the concessionaire company, controls the majority of shares with voting rights, or can appoint more than half of the administrative, managerial or supervisory concession companies.

below this value entered into force upon approval by the contracting authority. The earlier law foresaw that in the case of concession contracts with duration over 35 years, the contract must be ratified by the Albanian Parliament. Given that Parliament has remained one of the decision-making bodies for the concession / PPP process, it is believed that the addressing of this issue will not change much, but the current legal framework has not yet managed to make a similar fulfillment.

### **3.1 The Unit responsible for treatment of concessions and PPPs**

The new law “On Concessions and PPP” provides the same role for the unit responsible for treatment of concessions/PPP, named Concession Treatment Agency (ATRAKO), which was created with the decision of the Council of Ministers, No.150 dated on 22.03.2007. This agency has had the sole prerogative for consultancy and assistance to contracting authorities. The Article 12 of the law stipulates that the unit is under the dependence of the minister responsible for economy and has a duty to encourage and assist contracting authorities in the preparation, evaluation and negotiation of concession/public private partnerships. The name of the unit, function and its structure, remain to be reaffirmed or amended by special acts of legislation that are expected to arise for the implementation of the new law.

### **3.2 Ministry of Finance**

The role of the Ministry of Finance is visibly resized in the new law. There were mentioned above, a series of provisions to make mandatory the commitment of the Ministry of Finance in various decisions needed during various phases of granting a concession/PPP. Besides these, other provisions emphasize the consultative and decision-making role of this ministry in decisions that have a financial impact. Some of these provisions are the Articles 27/4; 31/6/7; 32/3/4/5; 36/4 and the Article 42 of the new law.

### **3.3 Commission responsible for granting concession and PPP**

The new law is more detailed and clear about the powers of PPP<sup>15</sup>. The Commission has a number of members that can not be more than 7 and whom, regarding the professional training are lawyers, economists, technical professions and professions from other relevant fields, depending on the facility and the characteristics of the concession/PPP. The competences of this commission include all actions necessary to implement the procedure of concession/PPP, and in particular: *the design of the feasibility study for the concession/PPP determining the applicable procedure for granting concession/PPP and design documentation for tender, review and evaluation of bids received and/or requests to participate submitted by private entities concerned; formulation of proposal selection of successful bid or proposal to the decision to terminate the procurement procedure. In any case, in accordance with the standards of the law and the doctrine (Telaustria case) should motivate these decisions basing them on concrete facts.*

### **3.4 Public Procurement Agency (PPA)**

PPA has a wide spectrum of regulatory powers in the area of procurement, including the granting of concessions and/PPP through the competition<sup>16</sup>. Among the most important functions of this chain in the process of granting and implementation of concessions/PPP we can mention: *drafting and publication of the standard tender documents, following the measures for monitoring procedures after the concession contract, the imposition of fines or proposing administrative measures for administrative or private entities who violate the applicable legal provisions and the exclusion of*

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<sup>15</sup>DCM “On approval of rules for evaluation and granting of concessions”, No.27, dated on 19.01.2007, as amended, Chapter 2, Section 4. For illustration METE mentioned that for this group identification this unit is called for project proposals (GIPP), while the new law “On Concessions and PPP”, see Article 16/3 (b) and Article 18.

<sup>16</sup>The law “On Concessions/PPP” in particular Article 11 stops in powers of PPA; also a number of provisions of this Law refer to PPA powers that are exercised according to the legislation on public procurement.

*an economic operator from participating in the competition procedures for granting a concession/PPP*<sup>17</sup>.

### **3.5 Public Procurement Commission (PPC)**

Public Procurement Commission is one of the most important instances of realization of the PPP mechanism. Its primary role is to assess the appeals to the decisions about the winning bidder at the end of the competition, including the case of decisions for granting concessions/PPP. As regards the powers of the CCP we can mention that, according to the law, they include *administrative review of complaints of the bidders toward the competition procedure procedures including competitions for granting concession/PPP, or the decision to exclude from concession procedures*<sup>18</sup>. At the conclusion of the review of these complaints CCP takes administratively final and executable decisions. Parties may appeal the decisions of the Public Procurement Commission to the Court, but this action does not suspend the execution of the Commission decision.

## **4. Description of phases through which passes the concessionaire/private partner procedure.**

The selection of the private partner and the conclusion of a concession/PPP contract with it, passes a series of chains, which are strictly regulated by law. Initiating from the preparatory phase actions, selection of the applicable procedure, the type of contract and its content, and so on, contracting authorities should take numerous decisions, which must be contained in the letter of the law and be consistent with the spirit of its standards for non-discrimination, transparency, equal treatment of the subjects and their inform.

### **4.1 Preparatory actions**

The procedure for granting concession/PPP begins with preparatory actions, which include all activities carried out with the purpose of granting concessions/PPP and precede the procedure of the award of granting this contract. Among important preparatory actions the law mentions: identification of potential projects concession/PPP or review unsolicited proposals, the appointment of a commission for granting the concession/PPP, preparation of feasibility studies, the calculation of the value of the concession contract/PPP, or preparation of tender documents. These and other actions are regulated by the law “On Concessions and PPP” and the law “On Public Procurement”. Competing entities may be involved in a concession/PPP project ident only after identifying the concession/PPP project by the contracting authority - or its proposal from other entities, in the case of unsolicited proposals. In both these cases the commission of granting concessions / PPP itself or through the special bodies should draw up a *feasibility study*<sup>19</sup>.

Only after the completion of this study, and eventually to its positive results, the body responsible under the scope of activities covered, shall approve the procedures for the concession, through an order issued by the head of this body.

### **4.2 Types of procedures for granting a concession**

The law has harmonized definitions and procedures of the law “On Public Procurement” and states that the concessions/PPP are given by:

- The open procedure
- The restricted procedure

<sup>17</sup>Exclusion procedure by commercial entities such procedures based on Article 45 of the CPC.

<sup>18</sup>Article 24/1 of the Law “On Public Procurement”, No. 9643, dated on 20.11.2006. Detailed rules for the procedure for examining complaints for concessions procedures or decisions for exemptions from these procedures are adopted by the Council of Ministers

<sup>19</sup> Article 19, Law “On Concessions and PPP”

- Negotiated procedure with prior publication of the notice

The definition and characteristics of these procedures are provided for in Article 29 and following of the law “On Public Procurement”.

#### **4.2.1 The open procedure for granting concession**

The law determines that this is a preferable procedure that is applicable to all concessions, except when circumstances dictate the use of other procedures. This procedure is used for concessions/PPP value of which is above the lower threshold. With the opening of this procedure, the contracting authority makes a public announcement of the contract intended to give with concession/PPP, which provides information about the type of concession/PPP, the object, suitability criteria required to be completed by the subjects participating in the competition, criteria for awarding the contract, the term of submission of the applications, as well as other elements. The contract announcement is made on the PPA website and in the Bulletin of Public Procurement. When the concession/PPP contract is expected to have a value higher than the highest monetary limit, the notification of the contracting authority is made in the Public Procurement Bulletin and in at least one newspaper with distribution in Europe. The deadline for submission of bids for public works concessions is at least 52 days, while for other concession/PPP contracts this time can not be less than 20 days.

#### **4.2.2 Restricted Procedure**

The restricted procedure is applicable to those contracts in which it is necessary to develop competition among a group of potential private partners, selected through a pre-qualification procedure. The law considers this a necessary thing when:

*“Goods, services or works, due to its / their highly complex or unique, can be supplied, provided or performed by the economic operators, who have adequate technical, financial or professional; It is economically more advantageous for the contracting authority, first, to examine the qualifications of interested economic operators and then invite them to have certain specific minimum qualifications to submit offers (Article 31 of the law “On Public Procurement”)”.*

In this procedure the contracting authority shall publish a notice containing a description of the contract object, an indication of the selection criteria and an invitation to express interest in participating in the procedure. This procedure is realized in two phases. The first phase is the one in which, as above, the contracting authority invites the various operators to submit their bids for pre-qualification stage. After passing the time of submission of requests to participate, the authority selects pre-qualified candidates and sends an invitation asking them to submit bids.

#### **4.2.3 Negotiated procedure with prior publication of a notice**

Through this procedure, contracting authorities realize the selection of the private partner through a process of consultation and negotiation on contract terms. This form of procedure is used, when the value of the concession/PPP contract is higher than the low value thresholds, and in circumstances where:

- a) in response to two consecutive procedures, open or restricted, all bids are invalid or do not meet the requirements of national legal provisions as long as the contract does not make any fundamental change, as defined in the procurement rules public;*
- b) the nature of the works, goods or services or the risks related to them doesn't permit prior determination of the full price.*

#### **4.3 Selection of the winning bid**

Regardless the procedure, the concluding chain is the selection of the winning bid and the conclusion of a contract. The contracting authority is obligated to publish the tender documents, and include public concerns and criteria according to which the winning bid will be selected. As a rule,

these criteria are evaluated based on a rating scale system, or coefficients, which is part of the contract notice and tender documents. No doubt that the concession/PPP value has a significant role, but usually the type maintains a rating scale to assess the proportion of other criteria. If the usage of the scoring system is not possible, the contracting authority must publish the minimum criteria in descending order of importance.

## 5. REFERENCES

- **Ph. Burger, I. Hawkesworth**, *How to attain value for money: comparing PPP and traditional infrastructure public procurement*, in OECD Journal on Budgeting, 20011/1
- **M. Joachim Bonell**, *The UNIDROIT Principles of Internation Commercial Contracts and the Principles of European Contract Law: Similar Rules for the Same Purposes?* In [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu)
- **A. Maltezi**, *Koncesionet ne Shqiperi, Nga e drejta Private ne te drejten Publike*, Monografi, (Mediaprint).
- **L. Ramanauskas**, “*PPPs. Publik and private partnerships*”  
[http://www.ijmc.org/current\\_and\\_past\\_issues/Vol\\_12.4\\_files/IJMC\\_12-4.pdf](http://www.ijmc.org/current_and_past_issues/Vol_12.4_files/IJMC_12-4.pdf)
- CMS Legal Servises EEIG, PPP in Europe, august 2010
- Public Private Partnerships: The Relevance of Budgeting, OECD Journal on Budgeting, Vol. 2009/1
- UNCITAL Model Legislative Provisions on Privately Financed Infrastructure Projects, UNCITRAL 2004
- Directive 93/37/EEC of 14 June 1993 of the Council, “Concerning the coordination of procedures for the award of public works contracts”.
- Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts
- Directive 2004/18/EC of the European Parliament and the Council , 31 March 2004 “For the coordination of the procedures of procurement to announce the winning public contracts for works, supplies and services, Official Bulletin of EU, Serie L, no.134, dated on 30.4.2004, page 114 – 240.
- Green paper on public private partnerships and the community law on public contracts and concessions, 30 april 2004
- [http://www.unescap.org/ttdw/common/TPT/PPP/text/ppp\\_giudebook.pdf](http://www.unescap.org/ttdw/common/TPT/PPP/text/ppp_giudebook.pdf)
- [http://europa.eu/legislatuion\\_summaries/internal\\_market/businesses/public\\_procurement/12\\_2012\\_en.htm](http://europa.eu/legislatuion_summaries/internal_market/businesses/public_procurement/12_2012_en.htm)
- OECD Private Public Partnership for managing the risk and opportunities in <http://www.oecd.org./document/19/0,3746,en-2649-37405-50254099html>
- Law no, 125/2013 "On Concessions and Public Private Partnership"
- Law no. 9663, dated 18.12.2006 “*On Concessions*”, as amended
- Law no. 9643 dated 20.11.2006 “*On public procurement*”, as amended
- Law no. 7973, dated 26.7.1995 “*On concessions and private sector participation in public services and infrastructure*”
- Law no. 10316 dated 09.16.2010 “*On foreign investment*”
- Decision of the European Court of Justice, “*Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria AG, and Herold Business Data AG*”., 7 December 2000.