



THIRD CYCLE OF STUDIES

Doctoral dissertation topic:

**“Public private partnerships policy, legal and institutional framework in
developed vs. developing countries**

**(Cases of Great Britain, Republic of Croatia with special emphasis on Republic of
Macedonia)”**

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Abstract

Public private partnerships in developed countries have been present since 1980 ties. My goal is to address the legal and institutional aspects that are important in order for a public private partnership to be successfully implemented. This thesis is mainly qualitative research of desk work on the public private partnerships policies and the legal and institutional framework in developed and developing countries on the cases of the United Kingdom, Republic of Croatia and with particular emphasis on Republic of Macedonia. What can Republic of Macedonia learn from developed and other developing countries? Which areas need to be straightening in order for the implementation of public private partnerships to be enhanced?

Key words: Public private partnership developed, developing countries, Macedonia, United Kingdom, Croatia.

PREFACE

The idea of a public-private partnership is quite simple: instead of the state, the private sector finances and builds the project, with the right to manage it for a certain period of time to regain its investment.

Public private partnerships in many countries are considered a key tool for realization of priority infrastructure projects. The actuality of this form of investment stems from the usual public opinion that countries unnecessarily borrow with high interest rates, and in fact through public private partnerships can provide a lot more rational and simpler way of implementing major infrastructure projects. The idea, in fact, is as old as the old Rome, and has developed completely in capitalist market economies. Important projects realized through public private partnership (concession) are the tunnel under the Channel La Manche, the Suez Canal, the Panama Canal, the network of highways throughout Spain, etc. Public private partnerships have gained in importance for the past twenty years, which are explained by several factors: overcoming the problem of insufficient budget funds for realization of major projects; striving to achieve greater benefit based on the use of know-how and the methods of work of the private sector; and the change of the role of the public sector from a direct participant in an entity appearing as an organizer, controller and regulator.

Basically, the public private partnerships idea is very simple: instead of the state, the private sector finances and builds the project, with the right to manage it within a certain period of time to get it regained the investment. At the end of that period, the project is being transferred to the property of the state. If the idea is so simple, one wonders why countries with weak infrastructure do not solve their problems on this way? The answer is clear: public private partnerships are neither simple nor easy and quite a risky way for realization of investment projects, especially in developing countries like Republic of Macedonia.

Aim

The aim of this thesis is to determine the importance of the legal and institutional frame in the execution of public private partnerships in developed and in developing countries, highlighting the cases of United Kingdom, Republic of Croatia and Republic of Macedonia.

Objective

The objective of the thesis is to provide comprehensive analysis on the recent theoretical and empirical findings on public private partnerships, to conduct an overview of the legal and institutional framework on public private partnerships in developed vs. developing countries, to determine the level of progress in public private partnerships legal and institutional framework. And finally, to provide policy recommendations for future researches on how Republic of Macedonia can improve the legal and institutional framework for public private partnerships.

Research question

What can Republic of Macedonia learn from the developed countries and other developing countries about the importance of the legal and institutional framework in order to improve the quality of public private partnerships?

Research hypothesis

It is hypothesized that firm cohesion between the legal and institutional framework is one of the basis pillars for completing successful public private partnerships projects in developed and developing countries, with special underlining on Republic of Macedonia.

Research contribution to the community

This doctoral dissertation will contribute to the community for better comprehension of the importance of solid legal and institutional framework when considering public private partnerships execution. Figuratively, a law on public private partnerships must go hand in hand with the institutional framework. Good Law on public private partnerships does not necessarily imply good institutional framework, for example in Republic of Macedonia the law on concessions and public private partnerships is good from general point of view, but the institutions don't have enough qualified employees to implement it. According to the European Union reports, the administration in Republic of Macedonia has overemployment. However, whenever one addresses to public institutions in Republic of Macedonia, one is always at the impression that there is a lack of employees that can address the particular matter. Therefore, the logical conclusion about the public institutions would be that there is an overemployment of people but underemployment of qualified workers. In order for the working process to run smoothly, institutions need qualified employees. That being said, there is also a need to make some additions within the Macedonian legislation, providing a new Law on foundation of agency for public private partnerships or law on the foundation on agency for public procurements and public private partnerships. With the introduction of the Law on public procurements in year 2007, a foundation was prepared for bigger control on public procurements that are usually a target for corruption in Republic of Macedonia. The Law on public procurements was amended 18teen times and on February 1st 2019 a new Law on public procurements was published in the official gazette of Republic of Macedonia No. 24 that will be implemented since April 1 year 2019. That shows how the previous and today's Governments of Republic of Macedonia want to have bigger control on public procurements and avoid the irregularities of the tender procedures. But as I previously mentioned, a good law is just the first step and a serious implementation of the law must be the second step otherwise the law would be a piece of paper that does not produce real consequence.

In my opinion an agency for public procurements and public private partnerships should be founded, with seriously educated administrative workers. The agency would have a vertical

jurisdiction over the parties within public private partnership contracts and parties within public procurement contracts, what is more important the agency would respond directly to the Government of Republic of Macedonia. This way, the government would have bigger control over the Agency for public procurements and public private partnerships and the Agency would have control over the public and the private partners in public private partnerships contracts and contracting authorities and economic operator in public procurements contracts.

To summarize, the contribution of my doctoral dissertation Public private partnerships policy, legal and institutional framework in developed Vs. developing countries (Cases of United Kingdom, Republic of Croatia with special emphasis on Republic of Macedonia) will be in the sense of stressing out the importance of the cohesion between the legal and the institutional frameworks in Republic of Macedonia. Furthermore, the formation of Agency that would directly regulate and control public private partnerships in Republic of Macedonia.

Methodology

The methodology of my doctoral dissertation is based mainly on qualitative research as a method to collect data. There are three main qualitative research methods used: interview, content analysis and case studies research. The nature of my research is exploratory and open ended, small number of people are interviewed. Two parts of the thesis (chapter III and V) are case studies as type of qualitative research from secondary sources that is focused on providing a detailed account of particular cases of public private partnership legal and institutional frames in Great Britain and Republic of Croatia. Chapter number seven is the most significant part of the doctoral dissertation i.e. the case study of public private partnerships in Republic of Macedonia. This chapter was researched via one on one interview, email correspondence as primary data sources, case study research and deskwork analysis.

Structure of the doctoral dissertation

The doctoral thesis is structured in seven chapters. Chapter number one gives the introduction to public private partnerships, the notion and history of public private partnerships along with the characteristics and types of public private partnerships and the basic aspects of public private partnerships. There is also an explanation about the advantages and disadvantages of public private partnerships, forms, design, process of preparation and execution of public private partnerships. Furthermore, there is a determination of the requirements for public private partnerships, the process of market selection, the procedure for awarding public private forms of implementation of public private partnerships.

In chapter number two is described public private partnerships in developed vs. developing countries. There is a thorough analysis of public private partnerships in developing countries that was conducted by the European bank for reconstruction and development that helped me during my research process. At the end of these chapter there is a short conclusion on public private partnerships in developed and in developing countries.

Chapter number three addresses the public private partnerships in United Kingdom. The legal framework and the institutional frameworks for public private partnerships, the public private partnerships stakeholders. The concept of public finance initiative that in the past few years has been a subject to critiques is analyzed. To simplify, chapter number three is a view of the accomplishment in executing public private partnerships by the United Kingdom.

In chapter number four are described public private partnerships in other European countries, like the concession motorway Greece and other popular public private partnership awards in Europe.

Chapter number five, public private partnerships in Republic of Croatia explains the legal framework and policy in republic of Croatia. The institutional framework, the foundation of public private partnerships agency that later on merged with agency for foreign investments. The pioneering public private partnership venture, the public private partnerships in energy sector,

the market in Croatia and the public private partnership case study: Gymnasium Fran Galovic and sports hall in Koprivnica.

Chapter number six, and the most important chapter refers to the public private partnerships in Republic of Macedonia. The legal framework, with carefully analyzed development of the law on public private partnerships and the importance of the law on public procurements. Public private partnerships authorities, public private partnerships and the local community, the interest of private sector to participate in public private partnership. One part is reserved for the development of public private partnerships in Republic of Macedonia (2007-2018), areas of public private partnerships implementation, current public private partnerships activities and started but not finished tenders. One significant part is the section on corruption in public private partnerships, the role of the state auditing office and the conducted reports. Finally, there is a short conclusion on the role of importance of the legal and institutional framework in Republic of Macedonia.

Chapter number seven is the complete summarization of previous chapters. After careful analyses of the public private partnerships in developing and in developed countries, using primary and secondary data the research question is answered and the research hypothesis is confirmed. The research question about what can Republic of Macedonia learn from the developed countries and other developing countries about the importance of the legal and institutional framework in order to improve the quality of public private partnerships is answered. The firm cohesion between the legal and institutional framework is one of the basis pillars for execution public private partnerships projects in developed and developing countries, with special underlining on Republic of Macedonia.

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Chapter I

1. Introduction

According to the Green paper on public-private partnerships and Community Law on public contracts and concessions (European Union Commission, 2004) the term public-private partnership is not defined at Community level. In general, the term refers to forms of cooperation between public authorities and the world of business which aims to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service.

According to the former Minister of finance in Republic of Macedonia Mr. Zofran Stavrevski the public private partnership in many countries is a key instrument for the implementation of priority infrastructure projects. The actuality of this form of investment stems from the usual public opinion that countries are unnecessarily borrowing with high interest rates, and in fact through a public private partnership, a much more rational and simpler way of delivering large infrastructure projects can be provided. The idea of public private partnerships has developed completely in capitalist market economies. The financial and strategic most important projects implemented through a public-private partnership (concession) are the tunnel under the La Mancha, Suez Canal, Panama Canal, Motorway network Spain etc. The public private partnership has gained importance over the last twenty years, which is explained by several factors: the problem of insufficient budget funds for the execution of large projects is overcome, the desire to achieve greater benefit based on the use of know-how and methods of work the private sector and the change in the role of the public sector from a direct participant in an entity that appears as an organizer, controller and regulator. (Stavrevski Zoran, 2008)

If the idea of public private partnerships is very simple, then why countries in the world that have a weak infrastructure network do not solve their problems in this way? The answer is clear: first and foremost, the terminology. Given that the legal framework is different in different countries, there are different terms for a public private partnership. The most famous forms of public private partnerships are Built-operate-Transfer (BOT) and Private Finance Initiative (PFI), with whom the private owner builds, maintains and manages the projects, and at the end, after the

agreed time, returns the project to the state; and a Concession, when the private partner builds the object on a property of the state and for that object he needs a concession agreement from the state (Alshafi, 2009). The objectives to be achieved through public-private partnerships are: bargaining and implementation of a larger number of projects, dividing the risk between the private and public sector, more efficient use of taxpayer funds, use of greater productivity of private entrepreneurs in big projects, greater efficiency in object management, the creation of additional value by combining financial and human resources, and stimulating economic growth. Although the forms vary from project to project, the following elements are characteristic for the largest number of public private partnerships:

First, a long-term contractual relationship that reaches up to 30 years. Longevity is indispensable for the private entrepreneurs to make return on the invested funds and make a profit. To be clear, the profit, together with the security of the invested funds, is the sole motive of the private partner in the decision to enter into a public-private partnership. The private partner receives compensation for the construction and maintenance of the facility or service users or the public partner if the user compensation is insufficient (for example, if the state wants a toll for consumers to be subsidized, i.e. lower, then the state must compensate the private part of the toll with budget funds). The financing of the project is partly from the private sector (own or loan funds), and often through complex contracts involving several investors. The share of the private sector in most cases ranges between 10% and 20%. The private sector has a dominant role in designing, building, reconstructing, maintaining, financing and managing the project, while the public sector is basically focused on defining the basic goals to be achieved, above all the quality of services and their prices.

The precise allocation of the risk between the private and the public sector is case-specific and differs from project to project. Although there are many positive examples of the execution of large-scale infrastructure objects there are many failed public private partnerships projects. Therefore, it is essential that the public sector clearly identifies the factors that make the project justifiable for private sector funding. For example, it is much easier through public-private partnerships to complete projects in the energy sector than in road infrastructure. The reason is

simple: the former has a product that is deficient and can be easily sold on the foreign market. In the second case, it is a big initial investment; there is a risk of traffic generating sufficient revenues, etc. However, public-private partnership has a perspective, in developing as well as developed countries. This model in Republic of Macedonia, as in other countries, will be used mainly for the construction of infrastructure projects like energy facilities (for instance: hydroelectric plants, hydroelectric power station), road infrastructure (the East-West corridor in the Republic of Macedonia), hospitals, schools, etc. Today, when Republic of Macedonia is at the threshold of membership in NATO and the European Union, the new legal framework for public private partnership-the Law on concessions and public private partnership (General assembly of Republic of Macedonia, 2012) enables the realization of a large number of foreign investments and the use of pre-accession European Union funds.

According to the European Union Commission (European Union Commission, 2004) the following elements normally characterize public private partnerships:

- The relatively long duration of the relationship, involving cooperation between the public partner and the private partner on different aspects of a planned project.
- The method of funding the project, in part from the private sector, sometimes by means of complex arrangements between the various players. Nonetheless, public funds - in some cases rather substantial - may be added to the private funds.
- The important role of the economic operator, who participates at different stages in the project (design, completion, implementation, funding). The public partner concentrates primarily on defining the objectives to be attained in terms of public interest, quality of services provided and pricing policy, and it takes responsibility for monitoring compliance with these objectives.
- The distribution of risks between the public partner and the private partner, to whom the risks generally borne by the public sector are transferred. However, a public private partnership does not necessarily mean that the private partner assumes all the risks, or even the major share of the risks linked to the project. The precise distribution of risk is determined case by case, according to the respective ability of the parties concerned to assess, control and cope with this risk.

1.1. The notion and the historical development of public private partnership

In the broadest sense, public-private partnership could be defined as a set of joint initiatives of the public sector, as well as the private profit and non-profit sector, in which each entity contributes to specific resources and participates in planning and decision-making.

However, the concept of public-private partnership in the narrower sense is a cooperative effort in which public and private sectors bring together resources and expertise, which will, through adequate allocations of resources, risk and reward, satisfy some public need. In this way, by applying different methods, the private sector can engage its resources and skills in providing goods and services that traditionally insure civil services.

The term partnership emphasizes the new quality of relations between the state and entrepreneurs, which is substantially balanced through the risk sharing and award. This does not necessarily mean that all entities participate on an equitable basis, but each partner participates depending on their capabilities and role in the partnership. The aspect of public private partnership and its basic conceptual openness and long-term cooperation is important.

Basically, this partnership covers two dimensions: strategic and operational. While the strategic dimension refers to coordinating the political goals and determining the appropriate role of each partner, the operational dimension deals with the realization and implementation of the predicted projects. Contrary to former such projects, now public private partnership implies that the private sector does not only participate in the realization of the projects, but also in the decision-making process.

The essence of public-private partnership is also perceived in the risk divide, because for the success of the project it is important to identify the risks associated with each component and phase of the project, then be allocated so that the balance will ensure the best value for the invested resources, in relation to the risk taken by the partner who can best manage those risks, thereby minimizing the overall costs.

The opportunities available for providing public services range from immediate provision of state services to complete privatization, when the state transfers all responsibilities, risks and rewards to the provision of services to the private sector.

The public private partnership in the legislation of the Republic of Macedonia, the European Union and other numerous countries is not equally defined. It covers a wide range of different forms of cooperation between the public and private sectors, the main purpose of which is to increase the quality and content of public service delivery.

Public Private Partnership consists of commercial agreements between public authorities (whether they are government authorities or local self-government) and private firms in order to design, perform, finance and operate public infrastructure and services that have traditionally been implemented by the public sector in such activities as transport, health services, water supply or education. They consist either of partnerships between state authorities and private firms based solely on contract or with the establishment of a project company involving both the public and the private sector. (European Union Commission, 2004)

Depending on the source of the definition, public-private partnership can be presented in many different forms. What type of definition could be used depends on several factors, such as: the legislative framework of the state, general economic and social and political trends, and other segments of influence.

Public-Private Partnership is cooperation between the public and the private sector, in order to provide financing, construction, renewal and management of infrastructure facilities and the services sector, i.e. financing projects and services traditionally provided by the public sector. The definition also includes the rational use of natural resources when it comes to concessions.

Observed from broader aspect, public private partnership is defined according to the provisions presented by foreign influential factors. Thus, according to the Green Paper of the European Union Commission, public-private partnership is defined in the following way:

Public-Private Partnership is a special type of activity that aims to provide partnership forms of cooperation, providing direct support in the process of employment and improving the living standard at the local level. (Ibid.)

The goal of the state is to influence the acceleration of the decentralization process and the implementation of the priority activities in ensuring sustainable development and improvement of the capacities of the municipalities, as well as in improving the overall business climate. This definition refers to countries in the regions in which the concept of regional and municipal decentralization is since the beginning or in the process of development.

Interpreting the Law on Concession and public-private partnerships in The Republic of Macedonia, Public private partnership is a form of contractually regulated, long-term cooperation between the public partner and the private partner, characterized by the following: the private partner assumes the obligation to provide a public service for the end users in fields of competence of the public partner and/or the obligation to provide the necessary prerequisites for the public partner to provide a public service for the end users and/or activities within its competence; in order to fulfill the above mentioned obligations, the private partner may assume an obligation to: finance, design, construct and/or reconstruct/renovate a public infrastructure facility, operate and maintain a new facility and/or a reconstructed/renovated public infrastructure facility; or exploit, manage and maintain an existing public infrastructure facility or; any combination of the abovementioned obligations until the combination of the referred obligations is aimed at achievement of the above mentioned goals ; where assuming the obligation, the private partner usually assumes a significant part of the risks related to financing, construction, demand and/or availability and other such activities, management, maintenance and technical risks, depending on what has been agreed in the establishment of the public private partnership and is determined case by case; each partner to the public private partnership during the public private partnership undertakes the responsibility for the risky events within its sphere of influence, or shares the responsibility in order to achieve optimal risk management during the partnership, *inter alia* , by using the managerial, technical, financial and innovative capacities of the private partner and by promoting exchange of skills and know-how

– experience between the public and private partner, without being contrary to point mentioned; in exchange for the assumed obligations, the public partner may award the private partner public works concession or public services concession, or may compensate them by payment; the public partner may also enable the private partner to carry out certain commercial, economic activities, in addition to the obligations referred above , determined by the contract, but only if there is no other possible way to ensure the necessary level of price efficiency of the private participation and reasonable recovery of the investment; and the public partner may transfer certain actual rights to the private partner, which are necessary to fulfill the contractually set forth obligations. Depending on the purpose of the funds for consideration by the public partner for provision of public works and/or public services, as well as the distribution of the key existing risks, the public private partnership may be established as: public works concession or public services concession or contract for public works procurement or contract for public services procurement. (General Assembly Republic of Macedonia, 2012)

According to the European Union public private partnership alliance, the public-private partnership is defined as:

A public process for the performance of government services by a combined legal entity concluded through an agreement between the government or a government segment and a private company. The Public private partnership is funded and maintained by both participants depending on the provisions of the previously concluded agreement. (Public private partnership alliance, 2001)

In US DOT Report 2004 Public-Private Partnership is defined as a contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed. The term public-private partnership defines an expansive set of relationships from relatively simple contracts (e.g., A+B contracting), to development agreements that can be very complicated and

technical (e.g., design-build-finance-operate-maintain). In the context of this report, the term public-private-partnership is used for any scenario under which the private sector would be more of a partner than they are under the traditional method of procurement. Further, the broad definition used for public-private partnerships includes many elements that are applied fairly regularly on appropriate projects. (National academic press, 2009).

Execution of activities and works for the needs of the state by a common corporate element, composed of a private corporation and a public administrative institution, interlinked with each other through an interoperable agreement on joint interim work.

Regardless of which type of definition is used, it is important to understand that public private partnership represents a special form of association of the two economic factors and separate legal entities - the private and the state, for the purpose of achieving a certain goal of public interest.

Manipulating the data and definitions of public-private partnership is the subject of appropriate legal review and approach; however, the basics for public-private partnership as a phenomenon are given in the aforementioned definitions and they meet the needs for defining the term.

Hence the conclusion that the possibilities available for providing public services range from direct state service provision to full privatization, when the state transfers all responsibilities, risks and rewards to the provision of services to the private sector.

Therefore, the public private partnership emphasizes the new quality of relations between the state and entrepreneurs, which is significantly balanced through the risk sharing and award in relation to the former narrow contractual relations in the field of public procurement.

As previously mentioned, public private partnership as a model has been known since the Roman Empire, (Forrer et al, 2010). It was made through the performance of public works, such as the construction of ports, markets, public baths by private owners, and their works were controlled by the Roman Senate. This form of association re-emerges in the 16th and 17th centuries, and it is experiencing its expansion in the 19th century through public works on the construction of railway infrastructure and communal services.

A modern example of a well-established model of public-private partnership is found in Pittsburgh, USA, in 1943 (Bauman and Muller, 2006), where collaboration between the city government and private companies arises in shaping economic, social and urban development strategies, resulting in a full recovery of the city's appearance. In the 70's and 80's of the last centuries, private sector participation in public infrastructure projects known as the BOT (Build-Operate-Transfer) began to be applied in Asian countries. During that period, the first tunnel of the BOT system in Hong Kong in China was built. In the early 1990's, the Private Finance Initiative (PFI) model was being developed. The first country in the European Union that applies public private partnership as a model is France, followed by Spain and Portugal. Somewhat later in 1992, the conservative government of John Major in the United Kingdom presented the Private Financing Initiative as the first formal model to support public-private partnership. Due to the great importance of the public private partnership, the European Union has adopted the guidelines governing public private partnership. These are classic guidelines-directives:

- Directives 93/37/EEC concerning the coordination of procedures for the award of public service contracts (1993)
- Directives 93/36/EEC concerning award of the public supply contracts; 1993
- Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, 1993
- Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts,

In 2003, the European Union adopted guidelines for successful public-private partnerships Guidelines for Successful Public-Private Partnerships, and in 2004 year, a Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions.

The governments of The European Union countries have focused on encouraging the private sector to begin with a more pronounced investment policy and support to public infrastructure.

Since the 1990s, 1 749 public private partnerships worth a total of 336 billion euros have reached financial close in the European Union. According to the European Union court of auditors most

public private partnerships have been implemented in the field of transport, which in 2016 accounted for one third of the entire year's investment, ahead of healthcare and education.

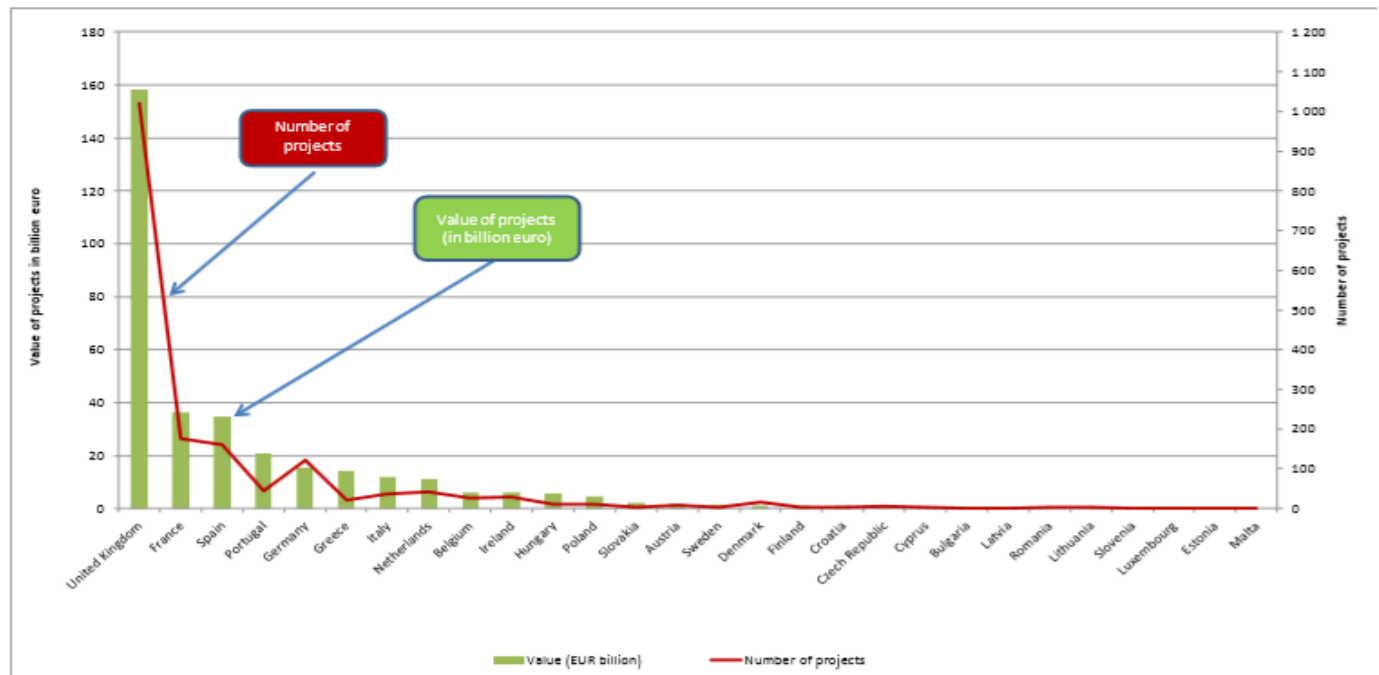


Figure 1. European Union public private partnerships market per member state (source ECA based on information provided by EPEC)

Public private partnership projects that combine European Union funds with private financing resources are called blended Public private partnership. By blending European Union funds in a public private partnership, the public sector can make a project more affordable by lowering the required financing levels.

There has been a tendency towards a more intensive leverage of public funds with private finance through public private partnerships. For instance, the European Union 2020 strategy, highlights the importance of public private partnerships. According to the strategy, leveraging financial means by combining private and public finance and creating innovative instruments to finance the needed investments is one of the key aspects that European Union must pursue in order to accomplish its objectives for European Union 2020. (European commission)

The 2011 Commission White Paper on Transport, amongst others, encourages Member States to use more public private partnerships, while recognizing that not all projects are suitable for this mechanism. Furthermore, it recognizes that financial instruments can support public private partnerships financing on a bigger scale.

In the 2014-2020 multi-annual financial framework the Commission has given increased consideration to the more intensive leverage of public funds with private funds and to the role, public private partnerships can play in that respect.

In both the Common Provisions Regulation (CPR) for the year 2014-2020 period and the CEF regulation, public private partnerships are viewed as a potentially effective means of delivering infrastructure projects which ensure the achievement of public policy objectives by bringing together different forms of public and private resources.

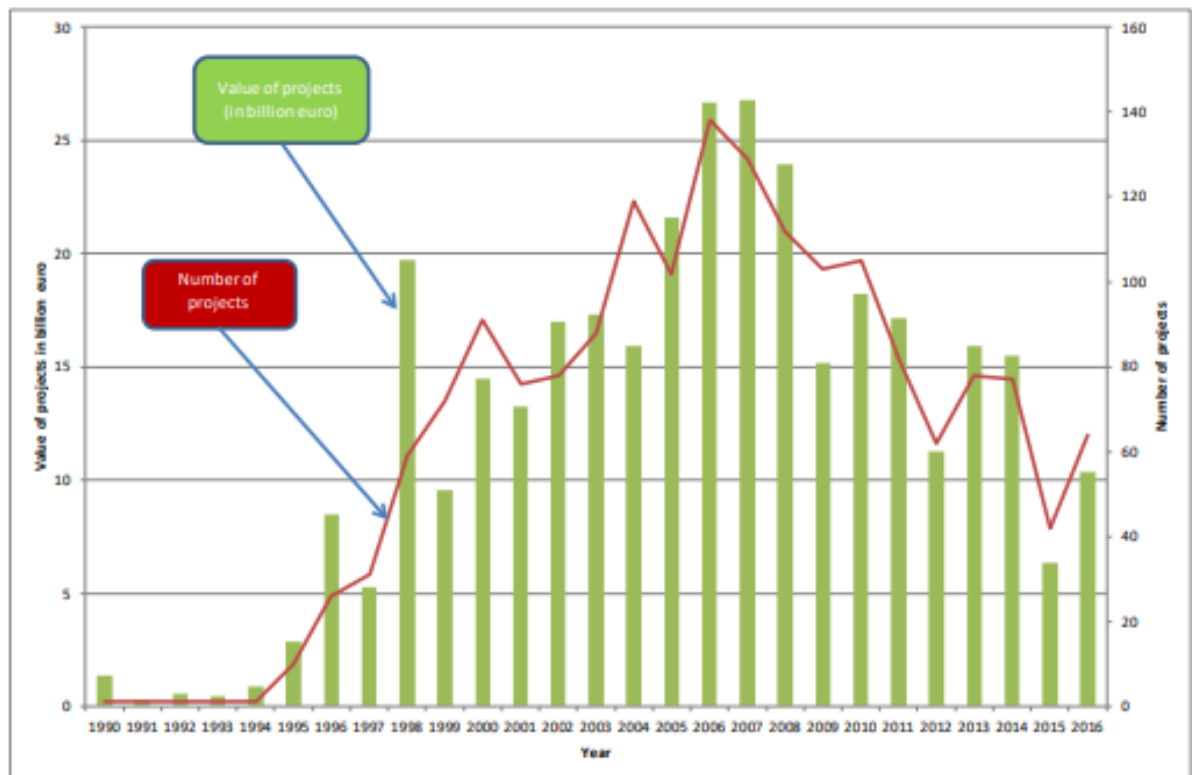
The European Union Fund for Strategic Investments (EFSI) regulation adopted in year 2015 also predicts the use of a wide range of financial products with a view to mobilize private investments. EFSI can also be used to support public private partnerships.

The first forms of concluding a public-private partnership involved isolated cases of corporate liaison between local governments and certain private companies, which borrowed on the basis of concluded contracts to achieve a specific goal in the public sector's interest.

Financing these projects to a greater extent was within the public sector's competence, but with the development of this concept, funding began to be presented as a combined model of both parties that appeared in the role of financial sources.

Certain aspects of public-private partnership initially emerged as problems that over time were resolved, especially after the establishment of an appropriate legal framework, which defines all aspects of public private partnership, as well as their implementation.

Figure 2. European Union public private partnerships market from year 1990 to 2016.



Source: European Court of Auditors based on information provided by EPEC.

1.2. Characteristics and types of public private partnership

As mentioned, public private partnership is typically characterized by the following elements:

- The private partner prepares the project documents, finances the construction of the infrastructure (in whole or in part) and continues to manage and maintain it and / or performs a public service activity (public service), for which it receives adequate compensation from the public partner or from end users of public services;
- Relatively long period of validity of the public-private partnership contract;
- The public partner reserves the right to define the objectives to be achieved in terms of the quality of public services, the prices of public services, as well as the control over the performance of public services;
- Risk allocation, which is most often transferred to the private partner.

However, public-private partnership does not necessarily mean that the private partner always takes over the full or most of the risk associated with the project. The precise risk allocation is determined by case-by-case usually characterizing the following elements.

1.3 Basic aspects of public private partnership

According to (Kacher & Kruzic, 2008) the understanding of public private partnership can be simplified if one list of the most important facts and characteristics that are implemented when practicing public private partnerships. In this sense, one can emphasize the following aspects:

- Public-private partnership is exactly what is shown in his name. It is an agreed segment in which both parties, the public entity and the private enterprise combine and share their resources, risks and benefits in order to achieve greater efficiency, easier access to the use of capital and improvement of the social environment and services for the people;
- Public-private partnership, although not in today's forms, has existed long ago, in certain countries, such as the United States. Today in the United States, on average, there are more than 4,000 such partnerships in short and long-term time intervals, which are

involved in an average of 65 different public services and services anywhere in the country. These figures are not very different nowadays in developed countries in European Union.

- A large number of such partnerships is based, above all, on the growing need for more effective results in the area of meeting the public needs and obligations that the state has towards its citizens;
- Public Private Partnership is an essential tool of the economy of a particular country, especially in turbulent times. This is particularly highlighted in periods of economic crises when government segments have to cut costs. Through the establishment of a public-private partnership, the costs that government segments would have in reducing their own costs would be reduced at the expense of already-prepared private firms that specialize in the respective area of action;
- The Public Private Partnership improves the employment situation, i.e. the number of realized public private partnerships is a proportionate factor in increasing the number of employees, and thus improving the standard of living;
- The conception of a public-private partnership enables a more effective disposition of government resources towards some of the more important issues and aspects of the governance process. An example of this is the system solutions in Los Angeles - California, USA, where a private system has been set up through public-private partnership improves life in many aspects. One of the areas where is used mostly is in the education buildings. Private firms are in charge of ensuring structural integrity and meeting the standards that are set in front of schools and faculties, especially on infrastructure issues. This also improves the education system in USA and the school standard, for example, student and student dormitories, transport and food. (Macdonald & Cheong, 2014)

These are only part of the most important aspects of a public private partnership. The facts show that the application of public-private partnerships in many areas results in a massive reduction in the cost that the government had previously spent in that area. (National Academy of

Engineering US and Institute of Medicine US Committee on Engineering and the Health Care System, 2005)

1.4. Advantages and disadvantages of public private partnership

Public Private Partnerships significantly affect public finances by:

- generating new sources of income, new infrastructures and new services;
- encouraging industrial development, which is a consequence of fiscal revenues and
- better directing of public funds.

Through the public-private partnership, it is also possible to redefine the country's immediate role in economic processes. In fact, professional private companies can implement more successfully a complex project. This concept is also a response of the state to the need for efficiency of the private sector, compared with the methods of the public sector. At the same time, a public private partnership is also a way of increasing the productivity of public services and reducing the size of the state impact.

Namely, the funds collected from taxation can be reduced, and the resources can be directed towards creating social benefit. This contributes to a better allocation of state revenues and guarantees dynamic management of public finances and public infrastructure. It should be noted that public private partnership is also a new philosophy that the state goes back to its original, primarily, political functions: representation of citizens and the delivery of services that cannot be transferred to private sector.

In the past years there was an increased cooperation between the public and the private sector in order to develop and build infrastructure in different areas such as environment and transport protection, and projects were expanding in other areas as well. Namely, the advantages provided by the cooperation with the private sector were becoming increasingly obvious. According to the Dutch ministry of transport, public works and water management (2002), among the more important advantages of public private partnerships are:

- a) Public private partnership (PFI) often allows the public sector to pay in parts for the use of services through the duration of the projects, instead of a one full payment, which allows access for the construction of infrastructure objects that would otherwise be outside the budgetary constraints.
- b) Rapid construction. Since the private sector is responsible for the design and construction, and therefore the payment by the public sector is related to the availability of the service, there are incentives for the private sector to complete the work as soon as possible.
- c) Lower total costs. The private sector is interested in reducing the costs for the entire time of operationalization of the project, which can be difficult to achieve with the existing mechanisms that are owned by the public sector.
- d) Better risk allocation. The fundamental principle of public-private partnership is the risk allocation of the partner, who can take it at the lowest cost. It should be pointed out that the goal is to optimize rather than maximize the transfer of risk, which would allow the creation of the highest values.
- e) Better service. The risk allocation should encourage the private sector to improve the quality of the service provided. For example, the majority of projects in that category of payment are linked to meeting predetermined service standards.
- f) Creating additional income. The private sector must be able to generate income from third party relationships, in that way reduces the public-sector allocations.
- g) More efficient management. Carrying out the responsibility for delivering public services, the state appears as a regulator and focuses on the planning and controlling activities rather than managing the daily delivery of services. In addition, by introducing competition in the public sector it is possible to compare the provision of public services with trade standards, which would ensure that the invested funds get the best value. In order to be able to manage the operational function by means of a contract, it must be possible to define the nature, level and quality of the requested service. While there are obvious security reasons for excluding the private sector from

certain public functions, such as the police, the military, the judiciary, the borders in those sectors are moving, so private initiatives gradually penetrate into some of those activities.

When reorganizing public authorities in the category of democratic control and operational provision of services, a wide range of operational activities can be managed through an agreement, without prejudice to the integrity of the democratic process. It should also be noted that the way of managing by contract is significantly more sophisticated than hierarchical management in public services.

In addition, the contract provides a transparent service-specification and defines the standard qualities with which the service can be compared.

The Public private partnerships legal resource center underlines that the financial crisis of year 2008 forward, brought about new interest in public private partnership in both developed and developing countries. Facing constraints on public resources and fiscal space, while diagnosing the importance of investment in infrastructure to help their economies grow, governments were gradually turning to the private sector as an alternative extra source of funding to meet the funding gap. While recent attention has been focused on fiscal risk, governments look to the private sector for other reasons:

- Exploring public private partnership as a way of introducing private sector knowhow and innovation in providing better public services through improved operational efficiency;
- Incentivizing the private sector to deliver projects on time and within budget;
- Pledging budgetary certainty by setting present and the future charges of infrastructure projects;
- Employing public private partnerships as a way of developing local private sector abilities through joint ventures with big international firms, as well as sub-contracting opportunities for local firms in areas such as civil works, electrical works, facilities management, security services, cleaning services, maintenance services;
- Via public private partnerships as a way of gradually exposing state owned enterprises and government to higher levels of private sector participation and structuring public

private partnerships in a way so as to ensure transmission of skills leading to national champions that can run their own operations professionally and eventually export their competencies by bidding for projects/ joint ventures;

- Forming versification in the economy by making the country more eligible in terms of its facilitating infrastructure base as well as giving a boost to its business and industry associated with infrastructure growth;
- Accompanying limited public sector capacities to meet the growing demand for infrastructure development;
- Getting a long-lasting value for money through proper risk transfer to the private sector over the life of the venture. (Public private partnerships legal resource center, 2016)

Theoretically, the risks to public-private partnerships are transferred to that side which can limit and control them. However, in practice, whenever the private sector assumes a risk, charges large sums for it. Bad distributed risk is one of the biggest issues in the public-private partnership in Central and Eastern European Union. Sometimes it leads to contracts that guarantee a profit, at the expense of taxpayers (for example, the Trakia motorway in Bulgaria and Wastewater Treatment Plant in Zagreb, Croatia), while in others cases it often leads to financial problems for the concessionaire and subsequent attempts to "extract" public sector guarantees for a certain level of revenue. The most problematic projects in terms of risk transfer in central and Eastern European Union are precisely the toll roads. Permanent overestimation of numbers for vehicles by policymakers in Central and Eastern European Union can create not only difficulties in the concessionaire's income or public budget expenditures, but can leads and attempts to realistically increase the level of traffic using the highways, which is in complete contradiction with the environmental goals of reducing the traffic on roads. Unfortunately, taxpayers are the ones who always end up paying, either through guarantees for the income of the concessionaire or through the re-nationalization of the project. (Jonovski, 2014)

According to APMG ¹public private partnership certified program, public private partnerships are significantly more complex than procurement procedures. Subsequently, there is a risk in spending resources into worthless or unsuitable public private partnership projects that consume more resources than conventional and less complex procurement routes. Public private partnerships projects demand more highly specialized resources and attention by the government. The time needed for public private partnership is longer than for public works projects, and governments want quick results which may be discouraging from following the public private partnership. Public private partnerships are more complex in nature and their detailed guidelines for managing the process, as well as realistic time frames and appropriate organization of resources and knowledge may be discouraging;

- Public private partnerships have more visibility and political exposure. After political change, new government administrations can perceive that they are only paying for an infrastructure project that generated political welfares to others in the past. Even more, that it is also currently reducing their budgets to develop new projects. As APMG clearly states this harmful factor can be moderated in several ways: proper communication policies, the search for political consensus on the use of the public private partnership model, and the establishment of a public private partnership program;
- Public storm may emerge due to the belief that public private partnership implies either a rise in charges or the application of new user charges. Both the public and unions may react and be opposed to public private partnerships, especially when they imply substitution for the direct provision of a public service. Once more, as APMG continues communication is the essence of managing perception and contestation risks. Additionally, retrenchment is a specific matter that deserves careful attention and specific management^[43];

¹ The APMG PUBLIC PRIVATE PARTNERSHIPS Certification Program is an innovation of the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IDB), the Islamic Development Bank (IsDB), the Multilateral Investment Fund (MIF), the World Bank Group (WBG) and part funded by the Public-Private Infrastructure Advisory Facility (PPIAF) with a shared vision of enhancing PUBLIC PRIVATE PARTNERSHIPS performance globally

- Public private partnership procurement has significantly higher transaction costs, both for the public sector and the private sector/contractor community. These higher costs are inherent in the higher complexity of the procurement, predominantly during the tender process, but also in preparation and monitoring resources. AMPG underlines that this disadvantage can be minimized if projects with only a certain significant capital size are procured. Provided a project is of a sufficient size, the public private partnership efficiencies are likely to outweigh the higher transaction charges;
- Public private partnerships produce a higher cost in terms of surveillance for governments, because of the monitoring to make sure that the efficiency and quality gains are actually delivered. Still, this higher cost is part of the price of a more reliable quality of service. In traditionally delivered ventures, the costs of ongoing quality monitoring are often less visible. On the other hand, monitoring might not occur at all, leading to a degradation in the quality of service; and

AMPG highlights that this does not mean that the public private partnership option is by definition more expensive. However, if the project is unsuitable for a public private partnership solution, is poorly structured, or the procurement process or the contract is poorly managed, the use of expensive private finance is unlikely to be offset by other efficiencies. This creates an unexpected extra burden in terms of affordability that is not compensated for by the efficiency savings.

- Countries with less sophisticated accountability and fiscal monitoring regimes face a risk that public private partnerships will result in excessive budget commitments that threaten long-term fiscal sustainability. When a public private partnership is not recognized as contributing to public debt, there is a risk of ignoring/dismissing the long-term fiscal implications. Long-term budget sustainability may be endangered as a result. Cases of excessive fiscal risks are discussed in public private partnerships reference guide, version 2.0 (World Bank, 2014);
- As a long-standing contractual commitment for the public party, a public private partnership implies inflexibility in budget management, potential renegotiations of a contract to decrease costs in an unexpected economic recession are costly. The only way to handle inflexibility

pitfalls is by controlling the exposure of public private partnership and research the affordability carefully and

- Lack of competition. When this happens, being a monopolistic supplier, the private operator has an advantage in negotiating with the government compared to a supplier in a competitive market (OECD, 2008). AMPG emphasizes that the only way to moderate these risks is to build flexibility for change into the contract, together with clear boundaries.

According to AMPG these features represent disadvantages of the public private partnership. The public private partnership option may not be the most appropriate for a specific project if these risks are not manageable by the government so as to substantially eliminate or mitigate them. Equally, public private partnership may not be appropriate if the government does not have mechanisms.

A project needs to fit with the public private partnership tool, and it should be recognized that public private partnership procurement is not appropriate for every infrastructure project.

Additionally, a particular country may face further challenges to develop the public private partnerships successfully, which relates to macro-economic conditions and the general framework for doing business in the specific country.

1.5 Forms of public private partnership

According to OECD, (OECD, 2012) the public-private partnership has two different forms:

a) Contractual public private partnership, where the partnership between the public and the private sector is based solely on a contract and

b) An institutionalized public-private partnership, where the partnership between the public and the private sector is based on their participation in a mixed legal entity.

a) Contractual Public Private Partnership - The basic models of the contractual public-private partnership are the concession model and the French model of Private Finance Initiative (PFI) model, which is often practiced in the United Kingdom.

The concession model is characterized by the direct link between the private partner and the final-users of public services: the private partner, although under the control of the public partner, provides public services instead of the public partner. The risk is mainly taken by the concessionaire.

Another feature of this model is that the fee for the performed public services is paid by the final beneficiaries, and, if necessary, part of the compensation can be supplemented by the public partner.

As for the object of the concession, the concessionaire is obliged to return to the public entity-grantor, i.e. to transfer the object of the concession to the grantor, regardless of whether it was completely or partially constructed, reconstructed, conserved, equipped or improved by the concessionaire, under conditions and in a manner determined by the concession contract, if the decision to initiate the procedure for granting the concession is not otherwise specified.

Concession is granted for a period of up to 35 years, without the right of extension, unless otherwise provided by the Law on concessions and public private partnerships (General assembly Republic of Macedonia, 2012) or by separate laws. The period of the concession starts to run from the date of conclusion of the concession contract.

There are many types of concessions:

Construction concession defined as:

- The right to manage, use and maintain the object of the concession, without payment by the grantor;
- The right to manage, use and maintain the facility of the concession with full or partial payment by the grantor.

Service Concession –

- The right to execute a public service without payment by the grantor;
- The right to perform the public services with whole or partial payment by the grantor;

- The right to perform the public service including the management, use and maintenance of the facilities of the concession, necessary for performing the public service.

The public service concession may include the partial reconstruction, conservation or renovation of the objects of the concession in cases where it is necessary. There are several public service concessions:

- Completion of the started construction;
- Partial expansion, partial reconstruction or repair of installations, plants or other means necessary for performing the concession activity.

For example, the concession for goods of general interest² in the Republic of Macedonia: the subjects of this contract are the goods of general interest for the Republic of Macedonia, given for adequate compensation paid by the concessionaire and executed with funds and risk carried by the concessionaire.

b) Institutionalized Public Private Partnership – implies establishing a new legal entity by the public and private partner in order to provide public services. Also, with the establishment of a new legal entity, the institutional public-private partnership can be realized in a way that the private partner will acquire ownership control over the already existing legal entity from the public partner.

² Pursuant to Article 56 of the Constitution of the Republic of Macedonia, goods of general interest are all-natural resources of the Republic, the flora and fauna, the goods of general use, as well as the objects and objects of particular historical and cultural significance determined by law. The Law on Property and Other real rights as good (items) of general interest for the Republic lists the construction land, forests and agricultural land, pastures and waters. (General assembly of RM, 2001)

The institutionalized public-private partnership, according to the European Union Law, always means cooperation in the form of a joint legal entity, established in accordance with the law.

Institutionalized public private partnerships (mixed companies) imply the establishment of an entity held jointly by the public partner and the private partner. The joint entity thus has the responsibility of ensuring the delivery of a work or service for the benefit of the public. The establishment of an institutionalized public private partnerships can be done either through an entity where public and private sectors jointly participate or through private sector buying and owning shares in an existing public company. Usually the public partner controls the company either as shareholder or through special rights it may hold and the private partner operates the service. This kind of cooperation between public and private partners can be very positive since the public partner keeps control over the infrastructure service, it may allow for service adjustment over time according to changing needs, conflicts are resolved internally and the public partner acquires know-how from the joint work with the private party.

Notwithstanding the existence of a sector regulator, what regulates the public private partnerships are the company statutes and the shareholder agreement. The statutes of the company establish common rules for the organization, governance and operation of the company. The shareholder agreement regulates relationships between partners (public and private). This last document is central to the performance of the entity. It establishes the minimum financial participation required by the private partner, risk sharing arrangement, the procedures to be used in a deadlock situation, and the possibility of a call-option by the public entity, placing pressure on partners to perform well during the public private partnerships contract period. In the same way that there are several advantages in the fact that the public partner can have a more active and participating role in this public private partnerships model, being able to limit conflicts and better solve difficulties, the institution is susceptible to “capture”. Due to close contact or identification with partner concerns, those representing the public might become excessively attached to the objectives of the private partner, thus harming the public interest. (Rui Cunha Marques, 2010)

1.6. Design of various models of public-private partnership in the world

Numerous practically unlimited possibilities are available for providing public services (from direct provision of services by the public entity, through numerous forms of public-private partnership to full privatization) with which the public sector is fully accountable, and the risk and the benefit of the provision of public services transfers to the private sector. (Plumer, 2002)

In the book *Understanding Options for Public-Private Partnerships in Infrastructure: Sorting out the forest from the trees: BOT, DBFO, DCMF, concession, leases...* (J.Delmon, 2010) depending on the degree of involvement of the public and the private sector in the design, construction, maintenance, financing, operationalization, management the contract may be referred as:

1. O & M (operations and maintenance)-The public partner (federal, state or local government agency or authority) agrees with the private partner to provide and / or maintain a particular service. The public partner retains the ownership and overall management of the public building or system.
2. OMM: operations, maintenance and management- The public partner (federal, state or local government agency or authority) executes contracts with a private partner in order to operate, maintain and manage an item or a system that provides a service. Under this contractual option, the public partner retains the ownership of the public facility or system, but the private party can invest its own capital in the facility or system. Each private investment is carefully calculated in terms of its operational efficiency and savings contributions during the term of the contract. Generally, the longer the contract, the greater the chance of increased private investment, as there is more time to reimburse the investment and obtain a reasonable return.
3. DBO (Design-Build-Operate) – the private sector will project and build the public good according to the requirements and specifications of the public sector, very often at a fixed price, and the financing and costs of the public sector. Upon completion of the

construction, the private sector takes the facility into a long-term lease and uses the service.

4. BOT (Build-Operate-Transfer) according to the directions given by the public-sector projects, the private sector will build the public good and will use the future service. The private partner as a service provider (under the control of the public partner) charges a fee for the given service from the public sector and / or from the end users. After the expiration of the multiyear lease, the public good is returned to the public partner.
5. BOT (Build-Own-Transfer), according to a project given by the public sector the private sector will build the public good, retain ownership for the agreed duration of the agreement and will use it with the provision of services. The private partner as a service provider will charge a fee for the services provided from the public sector and / or end-users. After the expiration of the agreed deadline, the ownership of the public good is transferred to the public partner without compensation.
6. SPV (Special Purpose Vehicle) is a legal entity (usually a limited company of some type or, sometimes, a limited partnership) created to fulfill narrow, specific or temporary objectives.
7. LDO (Lease-Develop-Operate). The private partner takes the public good on lease, technologically and functionally develops and promotes and manages its use.
8. LP Lease / purchase is a purchase agreement. Under this model, the private sector finances and builds a new facility, which is then leased to a public agency. The public agency makes scheduled lease payments to the private party. The public agency charges the capital in the facility with each payment. At the end of the lease term, the public agency owns the facility or buys it at the price of the remaining unpaid balance in the lease. Under this arrangement, the facility can be managed by a public agency or by a private investor during the lease term. The lease / purchase arrangements were used by the General Services Directorate for building federal buildings and several countries in the US for the construction of prisons and other penitentiary institutions.
9. BLOT (Build-Lease-Operate-Transfer). The private partner builds public good and takes it into the lease. Ownership remains in the public sector, and the private sector, using the

public facility, provides services. With the expiration of the agreed deadline, the ownership of the public good is returned to the public partner.

10. BOOT (Buy-Own-Operate-Transfer). The private sector purchases public good, uses the agreed number of years and provides services. After the expiration of the agreed deadline, ownership is transferred to the public sector free of charge.
11. DBFO (design- built- finance- operate). The private sector party is awarded a contract to design, construct, finance and operate a capital project. In consideration for performing its obligations under the agreement, the private sector party may be paid by the government agency or from fees collected from the project's end users. (Thomson Reuters, 2018)
12. DBFOOT (Design - Build - Finance - Own - Operate - Transfer). The private sector projects designs, builds and finances the execution of the public project, manages the provision of the given services and uses the public good which is in its possession for the agreed number of years. With the expiration of the agreed deadline, the ownership of the public good is returned to the public partner without compensation.
13. BOO (Build-Own-Operate). The private sector builds and manages the public good in its own right, without obligation to transfer the property to the public sector. A control over the participation of the private sector in the provision of services is most often implemented and regulated by public authorities.
14. Private Finance Initiative (PFI) model, the private sector similar to the BOO model builds, owns and operates a facility. A private finance initiative (PFI) is a method of providing funds for major capital investments, where private firms are contracted to complete and manage public projects. Under a private finance initiative, the private company, instead of the government, handles the up-front costs. The project is then leased to the public, and the government authority makes annual payments to the private company. These contracts are typically given to construction firms and can last 30 years or longer. DBFO and DBFOO are types of PFI. (Investopedia, 2018)
15. EUL: Enhanced leasing or underutilized asset ESL is a fundraising program in the Department of Veterans Affairs (VA) in USA that may include a variety of different leasing

arrangements (egg. lease / development / handling, construction / development / management). EUL allows VA to buy VA-controlled properties in the long term, the private sector or other public entities for non-VA uses, in return for receiving fair consideration (monetary or in-kind) that improves VA's mission or programs.

16. Sale / Lease back- this is a financial arrangement in which the owner of the object, sells the object to another entity, and then returns it back from the new owner. Both public and private entities can enter into sales / return contracts for different reasons. An innovative application of the technique of selling / returning back is the sale of a public building to a public or private holding company in order to limit government responsibility under certain statues. Under this arrangement, the government that sells the object leases it back after a certain period and continues to use it.
17. Tax liberated lease- in USA the public partner finances capital assets or funds by borrowing funds from a private investor or financial institution. A private partner generally acquires ownership of the asset, but then transfers it to a public partner either at the beginning or at the end of the lease term. The part of the leasing payment used to pay interest on the capital investment is tax-exempt under state and federal laws. Tax exemptions are used to finance a wide range of capital assets, ranging from computers to telecommunications systems and municipal vehicles.
18. Turnkey- A public agency contracts with a private investor / vendor to design and build a complete facility in accordance with the specified performance standards and criteria agreed between the agency and the seller. The private investor undertakes to build a fixed-price facility and absorb the risk of constructing fulfillment of that obligation for prices. In general, in a turnkey transaction, private partners use rapid building techniques (such as energy efficiency building projects) and are not bound by traditional procurement regulations of the public sector. This combination often allows the private partner to complete the building in significantly less time and cost than it can be achieved with traditional building techniques.

In a turnkey transaction, the financing and ownership of an object can rest with either the public or the private partner. For example, a public agency may provide funding, with

associated costs and risks. Alternatively, a private party can provide financial capital in general, in exchange for a long-term contract for the operation of the facility. (Dalmon, 2010)

From the above-mentioned public private partnership models, one can notice the differences between the various aspects of the divisions and of the roles of public and private partners in the project implementation, as well as the agreed way of financing, management, maintenance, risk allocation and ownership status of the built or modernized infrastructure or of the public building. In the foregoing it can be said that there is no universal model suitable for public-private partnership.

Every public-private partnership is particularly specific; therefore, it takes a number of factors and parameters to be considered, and in particular the willingness of the partners for cooperation and contractual risk allocation.

1.7. The process of preparation and execution of public private partnership

Like any process, public-private partnership must have a certain constructive implementation framework, consisting of a number of specific steps. The process of preparation and implementation is based on the legal regulations provided by the state, and the basis of the steps and details are based on certain previous experiences of the two partners translated into forms of ready procedures or implementation plans. According to the regulations in Republic of Macedonia, the procedure is complex and therefore long-lasting.

1.7.1. Identifying the requirement/s

This is the first step in the process of the public private partnership. This step is entirely within the competence of the public sector. It sets out the requirement/s that has to be met through the implementation of the partnership and defines the framework of action as well as the concept of executing the activities that will be part of the project. (Radosavjlevic, 2011)

The requirements for a particular project can be defined on the basis of several principles:

- The necessity to accomplish a certain project;
- The amount of opportunities for the public sector;
- The financial framework and the viability of the public private partnership;
- Time management;
- Previous experiences of related institutions with similar projects.

According to Radosavljevic the decision-making depends also on the direction of the public entity to the application of the concepts of public-private partnership to solve the problems. Several factors may arise as an obstacle in the decision-making process. For example:

- Insufficient legal standards;
- Previous bad experiences with private partners;
- Lack of a competitive goal;
- Poor market research, etc.

1.7.2. The market research,

The basics of the research are related to the data that is necessary for identifying the so-called basic flow of information through which decisions will be taken on what to do next. In other words, how to proceed with the process of selecting the most suitable partner, and thus to define the concept of required features that the future partner will have to fulfill, that latter will be part of the tender documentation.³

The research is a process that must be made even before the decision on entering into a public private partnership is through.

³ set of documents, information and requirements that constitute a basis for preparation, submission and evaluation of the request for participation, that is, the tender.

- The first step is to research the services and products on the market that are of interest to the project. This is the first segment of the study, whereby specific research and analysis of the product or service, which is required for the corresponding project, is offered by a private company. When studying products or services, attention is paid to the following:
 - The nature of the goods or services, or the usefulness and quality of the goods and services;
 - Their functional characteristic, i.e. the manner of fulfilling their function, the longevity and the possibility of meeting the needs;
 - Their competitive ability to influence products sold by direct competitors, etc.
 - The price- determination is based on several factors, and one of the more important is the current price of that product or service offered on the market by private firms. Price research focuses on the formation of a price that is acceptable by budgetary constraints and will be in line with the concepts of achieving savings or profit (for example: prices with immediate control by local units - water, utilities and etc.).
- The process is the next target of the research. Here special attention is paid to the elements and steps that will be implemented during the duration of the appropriate public private partnership. There are several factors that influence the identification of the elements and the layout of marketing, with particular courtesy being paid to: the cost of the process, the duration, the ultimate goals expected to be achieved and previous experiences with similar processes.
- The research on the environment in which the project will be executed is the next step. This research focuses on several precise segments that have an impact and whose analysis will give particular guidance on the planning and incorporation of the strategy. First of all, this section examines its environment, the general economic situation, the characteristics of the environment and the existence of factors that could influence the process (for example: how to achieve the most economical solution for harmony between ecology and the economy).

- After the completed researches, the next step is their analysis and creation. These data will later lead to making concrete decisions both on the course of management and on the implementation of some other processes.
- Finally, the analysis of research is formulated in a form that is acceptable for further processing and in the form of an accessible segment of other processes, such as partner selection and final decision making. (Radosavjlevic, 2011)

In Republic of Macedonia within the Law on concessions and public private partnerships (General assembly Republic of Macedonia, Law on concessions and public private partnerships, 2012) the preparation process is emphasized in article 16 and it states:

“The preparatory activities for awarding a concession for goods of general interest and a contract for establishment of a public private partnership shall be carried out by the concession grantor or the public partner.

The preparatory activities shall in particular include: preparation of a report for the previous analysis of the basic project elements that indicate the nature of the contract to be concluded for the purpose of establishing a public private partnership, taking into account the definition of a public private partnership in this Law; preparation of a feasibility study which is to justify the award of a concession for goods of general interest or a contract for establishment of a public private partnership; assessment of the environmental impact of the concession for goods of general interest or of the public private partnership; and other activities necessary for conducting the procedure.

The Government of the Republic of Macedonia shall prescribe the content of the feasibility study to justify the concession for goods of general interest or of the public private partnership.”

When preparing a feasibility study on the justification of the concession of goods of general interest or awarding contracts for the establishment of a public private partnership, particular account will be taken of the public interest, the financial impact of the concession on good of general interest, i.e. the public private partnership on the grantor's budget, that is, the public

partner and the compliance with the plans for economic development. (Regulation on the contents on the feasibility study for justification on concession of the goods of general interest or public private partnership, article 2 (General assembly Republic of Macedonia, Law on concessions and public private partnerships, 2012)

According to the Malawi public private partnerships commission the feasibility study shall demonstrate comparative advantage in terms of strategic and operational benefits for implementation under a public-private partnership agreement; describe in specific terms: the nature of the Contracting Authority's functions, the specific functions to be considered in relation to the project, and the expected inputs and deliverables; the extent to which those functions can lawfully and effectively be performed by a Partner in terms of an agreement; and the most appropriate form by which the Contracting Authority may implement the project under an agreement;

The feasibility study will demonstrate that the agreement shall: Be affordable to the Contracting Authority Deliver value for money; Transfer appropriate technical, operational or financial risk to the Partner; and explain the capacity of the Contracting Authority to effectively enforce the agreement, including the ability to monitor and regulate project implementation and the performance of the Partner in terms of the agreement. (Public private partnerships Commission, Malawi)

The feasibility study in particular contains: executive summary, general part, technical, financial, economic and legal analysis, and general conclusions and recommendations.

In the Law on concessions and public private partnerships in Republic of Macedonia (General Assembly, 2012) in Article 17, paragraph 1,2 and 3 states:

“In order to commence the procedure for awarding a concession for goods of general interest and a contract for establishment of a public private partnership, the concession grantor or the public partner shall adopt a decision on commencement of a procedure for awarding a concession for goods of general interest and a contract for establishment of a public private partnership.

The decision referred to in paragraph 1 of this Article shall be adopted by the concession grantor or the public partner on the basis of the study referred to in Article 16, paragraph 2, line 3 of this Law.

If the Republic of Macedonia is a concession grantor or a public partner, the decision referred to in paragraph 1 of this Article shall be brought by the Government of the Republic of Macedonia on a proposal of the minister responsible in the field in which the public private partnership or concession is awarded. “

The feasibility study is the first and one of the most important elements of the public private partnership, therefore it is essential that the feasibility study is done properly and to the point. Estimations might have roughly 3-5% average higher or lower legal, economic, financial etc. cost procreates.

Therefore, the beginning of the procedure is very clear, so the legal framework regarding the commence of the procedure is very precise. Still, the institutional part that practices the law needs to be on high level on compliance in order for the public private partnership to have solid foundation.

1.7.3. Procedure for awarding public private partnership

The procedure for awarding the public private partnership starts with announcement of the award, which content is usually part of the law of the country. The commission that carries out the procedure is formed with members and deputies in the field of economy, law, technical science etc. The public call for awarding the public private partnership after the proper tender documents are prepared. The manner of submitting the offers, deadline, and criteria for selection offers etc. everything must be determent in the tender documentation. The better technical specification the less opportunity for wrong partner and corruption. When the deadline for submitting offers expires the Commission opens the offers in public and evaluates the offers which meet the tender documentation criteria. In most of the countries electronic auction is used

as part of the procedure. In my opinion the electronic auction is a very important part of the public procurement process on which the European Union insists to be implemented in every candidate country. (Efca, 2006)

1.7.4. Selection of a partner

The choice of a private partner carries a risk of itself, because negotiation acquires a certain level of trust and knowledge. The basic risk is that the private partner may prove to be insufficiently competent or incapable of carrying out the services according to the initial specifications.

The public partner is often considered threatened, because the award of a public-private partnership agreement may create a monopoly position for the private partner or a situation of unequal competition or market access. The European Union's procurement rules encourage open and fair competition. Although this is a monopoly position for the private partner and there is a much more serious risk of corruption or price manipulation.

The process of selecting a private partner is especially emphasized as challenging in developing countries, primarily because of the large number of examples of unsuccessfully selected partners, improperly implemented tenders and non-statistic behavior and other negative phenomena that would have an impact on this part of the process for example: this phase of selection is most suitable for bribery and corruption. (Hristovska & Spasovska, 2017).

However, the basic principle of selection is through the announcement of the tender, in which the following data will be clearly stated: the goal of the project, the basic financial construction, the conditions to be met by the participants, the scoring principle, the selection criteria, the favorable and the desired aspects, etc.

The registration of private firms, their analysis and the principle of selection should be transparent and legally sound, so that the project and partnership can be properly implemented. The decision on the issue on who will be the elected partner must be public and supported by facts. (General assembly of Republic of Macedonia, 2008).

1.7.5. Forming a partnership

The legislative process of forming a partnership is a matter of legal processes and is usually comprised of negotiating and concluding partnership agreements. Both partners commit themselves to meeting the necessary public-private partnership obligations, according to given deadlines and within the financial and operational frameworks and everything that is written in the agreement above their signatures. (Koppenjan, Joop. 2005)

1.7.6. Execution of projects

This phase of the completion of the predicted activities includes several steps: preparations, creating conditions for execution, starting of the process, completing the beginning of the process, reaching the basic and additional goals, controlling and corrections, and final analyses.

Most often, the implementation of the process is based on the previously established plans and guidelines of the project, and, if necessary, possible additions and changes, but only in agreement between the two contracting parties and within the permissible legal, financial and functional limits of the action. (Dulaimi et al., 2010)

1.7.7. Analyses

The analyses are the final step of the way and their task is to determine the effectiveness and the ultimate results of the process. The data provided from the analyzes can be used for different purposes, but more often the data is used as a segment to demonstrate the effectiveness of public private partnership and the justification of the investment by both parties.

1.7.8. Terms of implementation

According to the European Union commission the public-private partnership requires changes in implementation systems related to the financing of projects with a classic grant. This is because the role and obligations of the parties are changing, with increased involvement of the private sector. The most important thing here is the transformation of the role of the public sector from the operator to administrative and regulatory role. This requires a well-developed national legislation and regulatory and institutional capacity in order to provide an efficient framework for public-private partnerships.

The implementation of any public infrastructure project requires a significant level of proactive management between the national authorities and the contracting party in order to ensure the performance of the service in accordance with the precise requirements set forth in the project contract and the product specification.

In the context of a public-private partnership project, two separate management processes must be considered:

- Project management - working on developing the project until the award of the contract, according to the directions of the conventional project management, but with additional expertise reflecting the change in the nature of the process, and
- Management contract - describes the procedures and the additional organization required to provide an appropriate service from the date of signing the contract to the end of the operational period. (European Union Commission, 2013)

In a public-private partnership project involving a transfer of performance to the private sector, the management contract applies for the entire duration of the contract.

Performance management is part of the function of the management contract and refers to monitoring the performance of the service and performance assessment in relation to the standards defined in the product specification.

According to the World bank report (World bank, 2016) the responsibility of the contracting parties in relation to the efficient management of the public private partnership in the contracts is important for ensuring the long-term completion of the service and the transfer of the risk. These tasks are usually listed in the project contract and include:

- Audit and analysis from the measures of the specified parameters carried out by the contractor, regarding the working conditions and the performance of the capacity;
- Audit and quality control and quality assurance procedures, to make sure those quality systems are in place and that they function well;
- Independent monitoring by the parties in order that the surveillance carried out by the contractor is correct and valid;
- Independent calibration of the measurement equipment that is used for service providing in order to verify the accuracy of the equipment.

Implementation of infrastructure projects in the public sector, using the public partnership approach, aims to provide cost-effective and timely services at agreed prices and according to agreed quality standards, in accordance with legal standards, financial honesty and managerial responsibility. One should be careful of the following things:

- Contract management structures in the procurement phase should be established in parallel with the project management function, in order to provide a full understanding of how the service characteristics and monitoring systems are reflected in the contract documentation;
- Staff will need to know the documentation of the agreement in detail, in order to ensure continuity in achieving efficient performance of the service.

In practice, flexible but controlled contact chains may be needed to effectively manage the daily basis for the delivery of the requested services. It will be important to ensure that such contracts are properly managed so as not to interfere with the contractual obligations of each party. This organization of work will be emphasized in the specific provisions of the project agreement that should be administered by the team that manages the project. This includes:

- Product Specifications - establishes the required performance levels and obligations for common information to assess the performance of the service, all of which must be for objective measurement;

- Manner of payment- implements and monitors the payment mechanisms, including the conditions required for starting the payment and the basis for the ongoing preparation of the confirmations.

Financial operations - reviewing the current financial performance and the position of the contractor, contrary to the predictions given in the financial model and the implementation and monitoring of any agreements for participation in the incomes or the profits;

- Monitoring arrangements - includes defined monitoring obligations for the contracting authority and the contractor, provisions for monitoring assistance given by the contracting authority and the procedures for compliance with the agreed;

- Security and insurance - monitoring the compliance with specific conditions related to insurance policy, compensation, issuing tax certificates, security procedures and systems;

- Contract management - managing all contacts between the contractor's works and those of the contracting authority. These contacts may relate to issues related to network management, the effect of new planning and development;

- Settlement of disputes - providing mechanisms for solving problems and disputes wherever and when necessary;

- Compliance with the agreed- agreement on what to do in case of non-compliance by the contractor, including advanced monitoring, proposals for repair and revocation of what should be paid;

- Unforeseen errors - arrangements that should cover the errors of the contractor or its subcontractors, where there is a risk in the continuous performance of the service;

- Change of management - implementation and management of procedures and protocols for dealing with the need for changes during the project;
- End of the terms of the contract - works on the maintaining the conditions in which the property is after the expiration of the contract and the method of the contracting authority to re-publish a new public procurement invitation for offers referring the same service. (World bank group, 2016)

Chapter II Public private partnership in developed Vs developing countries

According to the research by Burcu Kahyagullari (2013) in developed countries public private partnerships are predicted to achieve micro-economic objectives. The main concerns about public private partnerships are issues such as procuring optimal risk equilibrium between the private and public sector, reducing the complexity of the system and enhancing accountability, which require a special attention to be paid to micro-economic conditions. Similarly, orthodox analysts regard the adoption of public private partnerships policy in developed countries as a tool for further development of public services, which is related with micro-policy objectives, such as public satisfaction (Hodge, 2005). Public private partnerships policy penetrates through neoliberal ideological movement. However, what is important here is, how were these neoliberal policies adopted in countries in the first place and was the process the same in developed and developing countries.

As is known, developed countries had abandoned liberal policies after the Great Depression in 1929. Keynesian theory served as the economic model during the World War II and the post-war economic expansion (1945-1973). The stagflation of the 1970s, however, engendered criticism against the influence of government intervention. Thus, the Reagan and Thatcher administration were the first to initiate the resurgence of liberal thought. Subsequently, in less than a decade, developing countries were in the middle of this neoliberal rush. The rapid rise of these neoliberal economic policies among developing countries, however, was a result of the pressure on governments by international lending agencies. In other words, developed countries, such as the United States of America and the United Kingdom, coerced developing countries through transfer agents by procuring financial support (Appuhami et. al., 2011). The World Bank and IMF conditioned the release of external financial aid to the adoption of neoliberal policies, such as privatization, deregulation and public private partnerships, all in favour of greater freedom for market forces (Mitchell-Weaver and Manning, 1991; Moore, 2001). Countries in an urgent need of aid complied with the rules defined by these agencies and lifted controls on market forces gratuitously. Thus, market-oriented reforms emerged from developed countries. About the

policy making approach by the government. A government decides on the sectors to invest according to its main objective. Certain sectors contribute to economic development, while other sectors are closely related with social development. This relates to the research in the sense that developing and developed countries are expected to have different mentalities while adopting public private partnerships policies. In this context, in developed and developing countries public private partnerships have been initiated in various policy fields such as transportation, telecommunication, energy, health, and education. Policy-making continues in the implementation phase, and policies are generally shaped in this phase. The term form refers to the nature of the public and private sector interaction. As mentioned earlier, public private partnerships have different definitions ranging from competitive - as in contracting out - to collaborative. However, as Kahyagullari (2013) continues, public private partnerships represent some form of collaboration. Public private partnerships are not equivalent to free market economy instruments, such as privatization and deregulation (Mitchell-Weaver and Manning, 1991). On the contrary, they are collaborative in nature, where on no account does the government step out of the picture. The government and other major societal actors, such as non-governmental organizations, are involved in the decision making and implementation processes. This is defined as a form of “third party government”, where the government shares an important amount of its power with third party implementers (Salamon, 1981). Even though most developed countries, such as the United Kingdom and Australia, put emphasis on the notion of third party governments (Flinders, 2005). In developing countries, on the other hand, public private partnerships encompass quite a broad variety using different combinations of private sector resources to design, construct, finance, operate, manage and maintain (Grimsey and Lewis, 2004), which implies diversity and further collaboration between the two sectors. Hence, it can be observed that public private partnerships take different forms in developing and developed countries.

Regulatory framework signifies government institutions, such as ministries, departments, units and divisions, and government laws, regulations, policies and guidelines (Appuhami et. al., 2011). The importance of having a well-founded regulatory framework to control the public private partnerships process has been emphasized in several studies (English and Guthrie, 2003;

Kumaraswamy and Zhang, 2001). It can be evaluated as the main indicator of success/failure of public private partnerships policy. Regulation is required to “assure that a balance of public and private interests is reached through partnering arrangements” (Pongsiri, 2002). However, the nature of the regulatory framework differs significantly across countries, especially between developed and developing countries (Rafael et. al., 1997). Various studies have put forth that the establishment of regulatory framework in developing countries has been inadequate.

On the other hand, in developing countries the public private partnership strategy's adoption is evaluated as policy tools for further macro-economic development (Appuhami et. al., 2011). For instance, Appuhami et. al. (2011) put forth in their study that, rather than having a profound and well-thought private partaking policy, the motive for the Sri Lankan government while adopting public private partnerships had been to achieve macro-economic objectives, like avoiding fiscal constraints and raising capital. For developing countries, the orthodox view in adopting public private partnerships is that they are a way to reduce poverty, enhance employment and maintain a sustainable level of economic growth, which are macro targets (Bhatia and Gupta, 2006; UNESCAP, 2004). Hence, the principal aim of public private partnerships differs between developing and developed countries. Developed countries, such as the USA and the United Kingdom, pressured developing countries through transfer agents by procuring financial support (Appuhami et. al., 2011). The World Bank and IMF conditioned the release of external financial aid to the adoption of neoliberal policies, such as privatization, deregulation and public private partnerships, which all favored greater freedom of market forces (Mitchell-Weaver and Manning, 1991; Moore, 2001). Countries in an urgent need of aid complied with the rules defined by these agencies and lifted controls on market forces gratuitously. Thus, market-oriented reforms emerged from developed countries and penetrated from there to the government agendas in developing countries. Developing and developed countries are expected to have different mentalities while adopting public private partnerships policies. In this context, in developed and developing countries public private partnerships have been initiated in various policy fields such as transportation, telecommunication, energy, health, and education. As mentioned earlier, these fields can be grouped under economic and social, and hard and soft infrastructure. A study by Jamali (2004) demonstrates that the growth in private sector participation in developing

countries is mainly related with economic infrastructure activities, such as telecommunication, energy and transport. Similarly, Asian Development Bank confirms these findings and points out that most developing countries have problems in financing large scale infrastructure investments, and hence, the private sector has to compulsorily step in (Nataraj, 2007). Private sector involvement in the procurement of social infrastructure, however, can be evaluated as the sequent stage. To exemplify we may note that when public private partnerships began in the United Kingdom and Australia, they were mainly used in economic areas such as motorways, bridges and tunnels; then in the next stage they were applied in social areas like schools, hospitals and urban regeneration (Grimsey and Lewis, 2004). Hence, we can make a conclusion that in developed countries public private partnerships are related with economic as well as social infrastructure, while in developing countries, especially in its early stage, they are mostly involved with economic infrastructure development. When it comes to the power is given to third parties like NGO's, etc., developing countries do not seem to meet this criterion (Mitchell Weaver and Manning, 1991). Governments are more centrally oriented and hence, not too enthusiastic on sharing their powers with other shareholders. In developing countries, promoting privatization and government subsidies to private entrepreneurs are considered equivalent to establishing a public private partnership (Mitchell Weaver and Manning, 1991). Moreover, in their study about Russia and Kazakhstan, Mouraviev et. al. (2012) emphasize that public private partnerships in developing countries generally have a concessionary nature. In developed countries, on the other hand, public private partnerships involve quite a broad variety using different combinations of private sector resources to design, construct, finance, operate, manage and maintain (Grimsey and Lewis, 2004), which implies diversity and further collaboration between the two sectors. Therefore, it can be concluded that public private partnerships take different forms in developing and developed countries. Various studies have put forth that the establishment of regulatory framework in developing countries has been inadequate. Pongsiri (2002) and Pessoa (2006) point out that even though developing countries have initiated public private partnerships programs, most have not yet designed the appropriate regulatory framework. Similarly, Appuhami et. al. (2011) notes that the weak regulatory framework in developing countries such as Sri Lanka has been a major challenge for the implementation of public private partnerships.

Fortunately, Republic of Macedonia has a separate Law on concession and public private partnerships.

2.1. Public private partnerships in developing countries EBRD analysis

In the latest document on the insights and recommendations from the public private partnership laws assessment on the EBRD countries, The European Union bank for reconstruction and development clearly states that efficient and transparent policies are vital for the effective functioning of the infrastructure sector (which includes, for example, transport and energy and water supply, as well as social infrastructure for education and health care), as are legal and institutional frameworks that encourage private sector participation. Over the past 15 years, the EBRD has conducted a number of assessments looking at the effectiveness of legislative frameworks governing public-private partnerships in the EBRD region. These compare the legal frameworks in the various countries with internationally accepted standards and best practices, identifying strengths and weaknesses in terms of both de jure and de facto implementation. With international standards and trends in the public private partnership sector constantly evolving, the EBRD performed its latest assessment in 2017, the with previous being in 2012. The findings of these assessments are used to develop practical recommendations for policy-makers, helping them to address, through technical assistance, any weaknesses identified in the national framework. "Efficient and transparent policies are vital for the effective functioning of the infrastructure sector as are legal and institutional frameworks that encourage private sector participation." (EBRD, 2017) Part I from "The insides and recommendations on from the latest Public private partnership law assessment" looks at the comprehensiveness of legal norms, while Part II deals with issues of policy, institutional framework, the workability of the public private partnership regime overall and lessons learned from the implementation of public private partnerships projects.

Chart 1. Level of compliance, year 2017 (source EBRD)

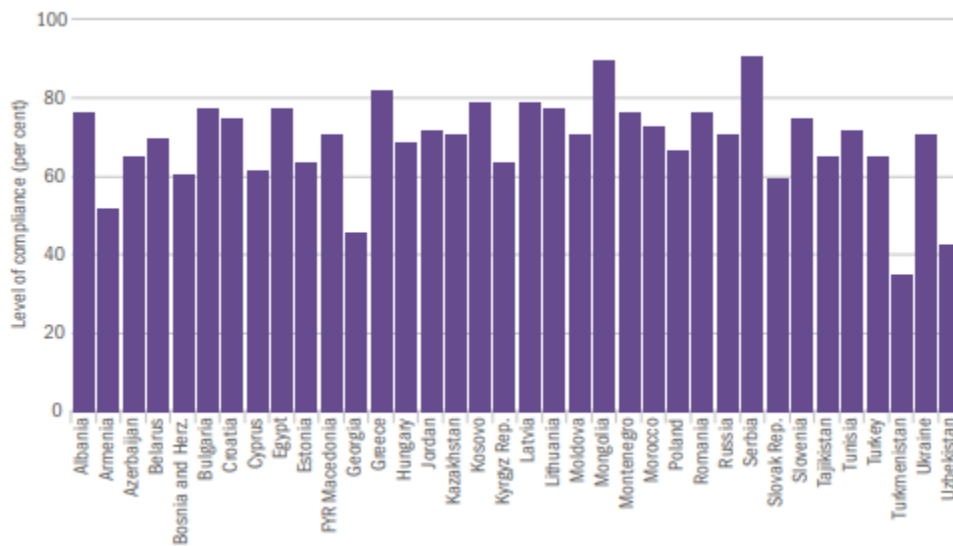
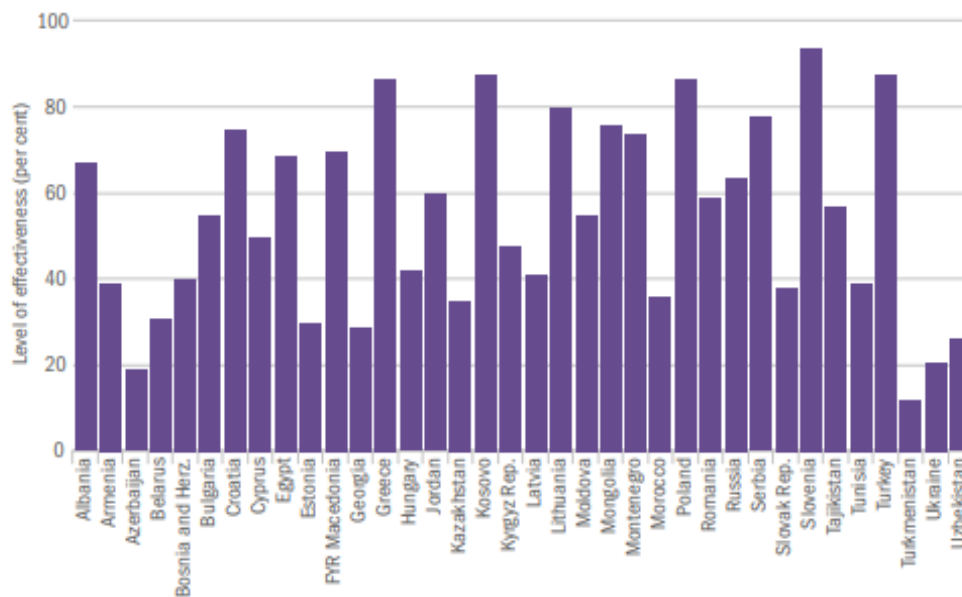
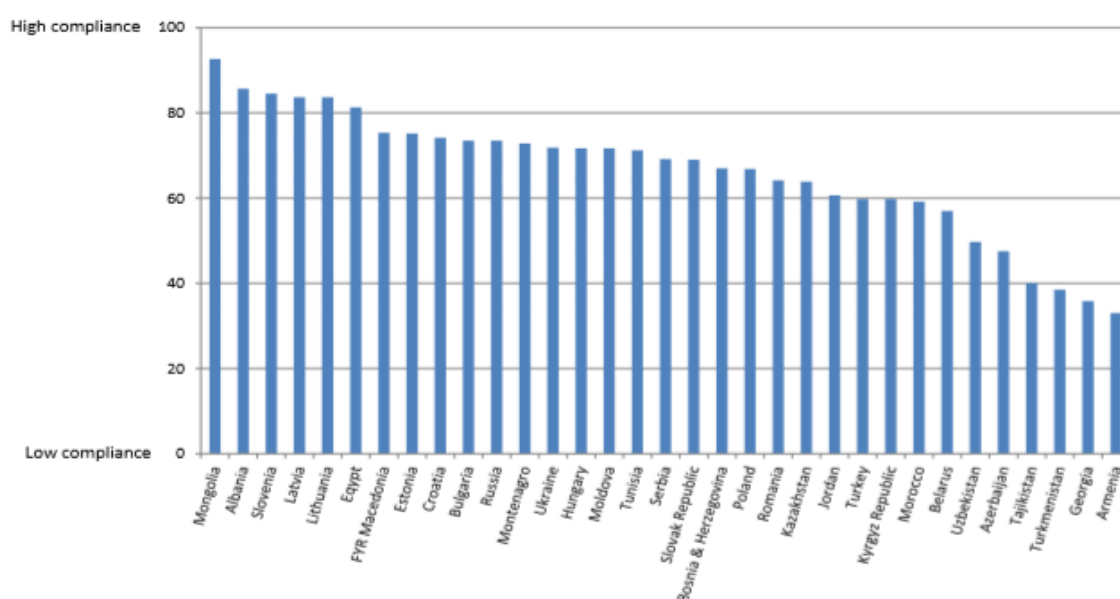


Chart 2. Level of effectiveness, year 2017 (source EBRD)



The level of compliance with internationally accepted standards and best practices, and the level of effectiveness had been measured in percentages for the following countries: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Egypt, Estonia, FYR Macedonia, Georgia, Greece, Hungary, Jordan, Kazakhstan, Kosovo, Kyrgyz Republic, Latvia, Lithuania, Moldova, Mongolia, Montenegro, Morocco, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine and Uzbekistan.

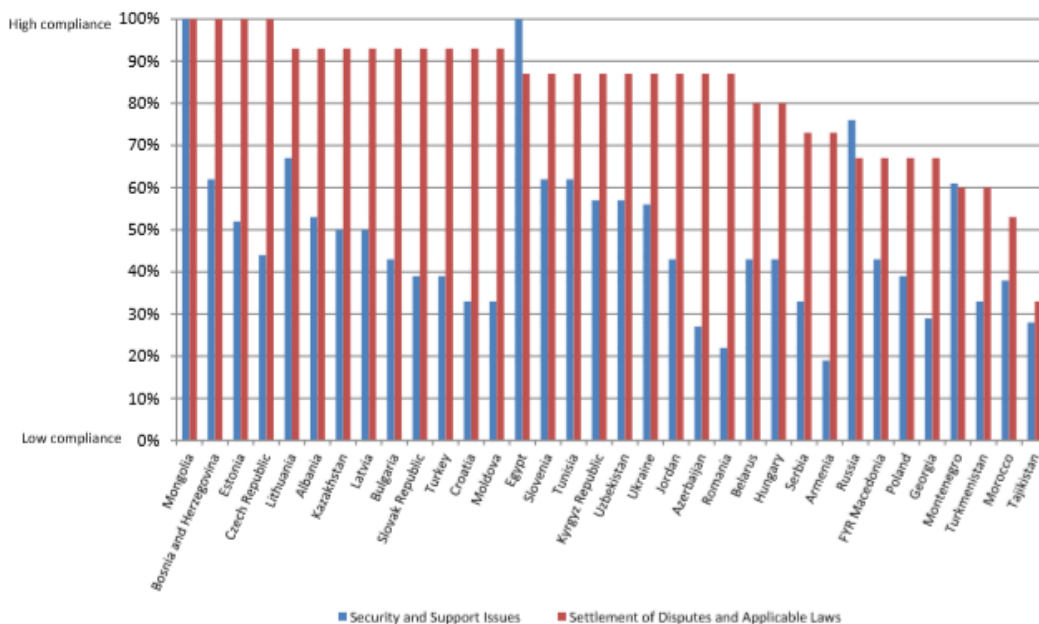
Chart 3. Level of compliance, year 2011 (source EBRD)



According to EBRD Mongolia, which displayed a very high level of compliance in the 2011 assessment, has maintained that ranking. Its Concessions Act, which was adopted in 2010, represents a comprehensive legal framework governing both concessions and Private Finance Initiative (a previously mentioned type of public private partnership used mainly in developed countries). Serbia, meanwhile, has significantly improved its ranking since the 2011 assessment and in 2017 boasts a comprehensive and very highly compliant legal framework governing public private partnership projects. Republic of Macedonia in year 2017 had the same average as in year 2012 which is moderate to high but it doesn't show any progress and, in my opinion, needs additional work regarding the institutional framework, transparency, the access to justice. (Ibid.)

According to EBRD (ibid) large number of countries have been placed in the highly compliant category on account of their sophisticated legal frameworks, their transparent procurement practices, their easy access to justice (including arbitration), and the fact that a range of security instruments are available, all of which facilitate financing. Moderately compliant countries are characterized by a business-friendly environment and fairly well-developed legal frameworks, which provide for opportunities to establish public private partnership projects. Principal aspects, such as: the legal framework; and (ii) guidelines or flexibility as regards the contents of a project agreement, the selection of a private partner and the availability of reliable security instruments, are covered by laws and regulations, although not always in a comprehensive and clear manner, underlines EBRD. This can cause skepticism and increase the risks perceived by investors. Low-compliance countries continue to face challenges in the core assessment areas. These countries typically recognize public private partnerships but have so far failed to establish a suitable legal framework. (Ibid.)

Chart 4. Security and support issues and settlement of disputes and Applicable laws, year 2012
(source EBRD)



Regarding the effectiveness of political and institutional framework- the effective implementation of laws is a challenge in many countries. Where countries do not have dedicated legislative frameworks for public private partnerships, or they have low compliance frameworks, the reasons for such a lack of effectiveness are justly clear. Investors want legal certainty regarding the scope of a law's application and may be discouraged if a public private partnership project is only governed by general laws, such as public procurement law, law on obligations etc. The reasons for modest levels of effectiveness even in high-compliance countries according to EBRD (Ibid.) appear to be two-fold. It may be that in some countries public authorities and local investors do not regard public private partnerships as an effective means of improving their countries' infrastructure. On the other hand, there may be countries where the process of adjusting legislation has been undertaken, but no significant transactions have been taken. Naturally, EBRD (Ibid.) advises for countries to establish a firm policy that will be adhered to irrespective of political developments. An inclusive and understandable policy document and clear strategic instructions will indicate a country's commitment to supporting public private partnership in achieving national development goals. Policy documents are particularly welcome in low-compliance countries, but some high-compliance countries also need to make more effort in this area in order to ensure that their policy documents are successfully implemented. The benefits from public private partnerships need additional promotion, especially in countries with low businesses, preferably by means of awareness-raising campaigns run nationally. The public often have limited knowledge about the benefits and advantages of public private partnerships, which may lead to confrontation. Public private partnerships are often regarded as expensive models that favor the private partners and facilitate the privatization of public wealth and services via the back door. This is especially true if public private partnerships have previously been associated with corruption or negative experiences in the form of failed projects, bad management or a lack of feasibility studies. Develop a set of template documents even in the presence of well-established legal frameworks, many countries need assistance in order to facilitate and expedite public private partnership projects, given their complexity. (Ministry of Foreign Affairs of the Netherlands, 2013) Template documents such as tender forms or standard heads of contract terms drawn up by a government public private partnership unit can provide

useful guidance to public entities when it comes to the development and negotiation of public private partnership, especially if those template documents incorporate the standards expected by investors. Countries with well-developed legal frameworks usually have a dedicated unit or body dealing specifically with public private partnership. These units are established by law and have predefined competences that guarantee their involvement in the selection, preparation, oversight and implementation of projects. The institutional framework is a weak point for most countries with moderate and low levels of compliance. These countries should focus on establishing dedicated bodies which deal solely with concessions and other public private partnerships. Enhance the legal framework all high-compliance countries have dedicated legal frameworks addressing issues such as project selection, tender procedures and contracting in an effective manner. (EBRD,2017) The scope of such frameworks needs to be clearly defined (with clarity, for example, regarding the definition of a public private partnership, the sectors concerned, the competent authorities, the eligibility of private entities and the use of public procurement law for certain procedures in order to ensure legal certainty and limit the risk of challenges to the validity of public private partnership contracts. Some countries adopt a public private partnership law in addition to a concession law, while others select for a single piece of legislation covering both concessions and other public private partnerships like Republic of Macedonia. Various countries recognize the necessity to provide for a wide range of public private partnership models. Countries with a limited range of public private partnership models can be expected to engage in further legislative activity with a view to providing for greater flexibility in terms of models. (Ministry of Foreign Affairs of the Netherlands, 2013)

An economic feasibility study ascertaining the viability and financial sustainability of a project over the lifetime of the contract, socio-economic benefits and environmental impact is an essential element of the preparatory process. According to EBRD in many countries, these studies are still not mandatory, or the requirements governing them are not clearly specified. In most cases, no such studies are performed, which underlines the need to make them obligatory. At the same time, EBRD advises that the required evaluation should not be excessively complex or costly. Selection of private partners are to be chosen by means of a fair and transparent selection process. Exemptions allowing for direct negotiations should be limited, and legislation should

cover clear rules on the choice of tender procedure. Public procurements have a lot at stake when pitching for public private partnerships projects, and the cost of participating in a tender procedure can be very high. Quick and effective legal remedies in the event of appeals against the decisions of the contracting authority will provide valuable protection for investors, while minimizing delays to the award process. The establishing a “one-stop shop” for permits policy-makers often focuses solely on the award procedure itself. However, private entities face many other legal issues when it comes to public private partnerships, particularly regarding the permits required for construction and operations. Such problems can be addressed by means of a “one-stop shop” incorporating other permits that need to be obtained in connection with the public private partnerships contract. (EBRD, 2017)

As EBRD concludes a significant number of countries including Republic of Macedonia have amended their legislation since the 2011 assessment. Highly and very highly compliant countries have the potential to establish significant numbers of public private partnerships in the next 10 years. However, their current transaction record seems to point to the under-utilization of such instruments, partly reflecting a perceived lack of political desire to promote the use of public private partnerships, as well as the need to qualify public officials. Moderately compliant countries have supportive business environments and established legal frameworks that is providing opportunities for the establishment of public private partnership projects. However, core areas relating to project selection, tender procedures and, in particular, the bankability of projects need to be improved further in order to increase transparency and legal certainty. Lastly, countries with low and very low levels of compliance need to adopt particular legislation governing public private partnership or improve their legal frameworks in other ways. All countries should continue to enhance their institutional capacities, if possible, by establishing a unit- tasked with developing, actively promoting and supervising public private partnerships.

For chapter number II, I mainly focus on the EBRD research because I find the qualitative and quantitative data of public private partnerships that EBRD has researched a very thorough regarding to the legal and institutional framework of developing countries.

2.2. Public private partnership in Developed Vs. Developing countries conclusion

We can conclude that, in developed countries it is generally national actors who adopt public private partnerships policies with the aim to enhance micro economic development. Since these countries have made the intended progress regarding their macro-economic aims, they focus on micro issues and are more concerned with issues like improving public service and enhancing quality. They try to form collaborative relationships with the private sector, and ensure the accountability and transparency of the system by establishing sound regulatory frameworks. Furthermore, as public private partnerships policy develops in these countries, it commences to be implemented in sectors other than economic infrastructure, such as sectors related with social development. (Burcu Kahyagullari, 2013)

In developing countries, on the other hand, public private partnerships policy penetrates into the political agenda through the efforts of international actors, which shows that in developing countries agenda setting generally happens at supranational level, and then is enforced at national level. The government is mostly concerned with macro-economic problems, and public private partnerships are evaluated as policy options to solve these problems. Since public private partnerships policy is mainly introduced in these countries as a complementary to privatization activities, it tends to be an integral part of privatization ideology and implementations. Hence, public private partnerships show little evidence of collaborative relationship. (Burcu Kahyagullari, 2013)

Chapter III

Public private partnership in United Kingdom

For the purpose of my thesis my choice of developed country is the United Kingdom, for its long tradition of successful public private partnerships that countries from the European Union have, and as an example and the developing countries as well.

Many European Union developed countries- because of the big number of public private partnerships contracts do not have the need to bring specific public private partnerships provisions into national law. Instead, allow public private partnerships to be regulated by existing public procurement contracts laws. In the European Union acquis, public private partnerships contracts can be either public procurement contracts or concessions or even contracts that are excluded from the scope of the public procurement directives. Any public private partnerships project considered being a public procurement contract or a contract for public procurement of services under the European Union's public procurement directives must be granted in the compliance with the provisions of these Directives. (European Union Commission, 2008) According to the Commission interpretative communication on the application of Community law on Public Procurement and Concessions to institutionalized public private partnerships, when public private partnerships are considered as concessions for public works, then the provisions governing the granting of concessions for public must apply. Public private partnerships that are considered as service concessions or those contracts that are excluded from application (for example, in defense) are beyond the scope of the public procurement directives. However, all public private partnerships in which a public body awards an agreement involving the economic activity of third party, are subject to the basic principles of the European Union Treaty, among which probably the most important are transparency, equal treatment, non-discrimination, proportionality and mutual recognition. (Georgieva, 2017)

The evolvement of public private partnerships in the United Kingdom was after the 1980s. During this period, the political sphere witnessed two fundamental views of two extreme parties: first the Conservative party, then the Labor party. The Conservative governments of the 1980s and 1990s had a major belief that the private sector had a primacy over the public sector. During this

period, first, privatization was preferred as a policy option, but by the late 1980's the possibilities for privatizations came to an end, the government was forced to find alternative ways to encourage private sector involvement (Broadbent and Laughlin, 2005).

Adrian Clough, David Wyles and Paul Butcher in Public Private Partnership Law review (2017), highlight that The United Kingdom had been one of the pioneers of public-private partnerships in the early 1990's. In, the Thatcher governments in the 1980s had began a privatization program for public utility services, including telecommunications, gas, electricity, water, waste, airports and railways. As Clough, Wyles and Butcher continue to describe these privatizations had been partly driven by the need for new capital investments and investment restrictions in the public sector. The privatized enterprises, supervised by the new independent regulators, were allowed to include them in their costs to end users return of capital per employee. Regulators periodically review the need for a new investment and return is allowed for an approved investment.

One of the consequences of the privatization program was that every public private partnership is not an appropriate model for financing the new infrastructure in many sectors. In addition to the privatization, there had been a small number of free goods infrastructure concessions, where the concessionaire relies on the income of the final beneficiaries for his return rather than payments from the public sector. The attempt to further unite the public sector with the benefits of the private sector disciplines began with the introduction of private sector management approaches in public sector organizations and the expansion of compulsory competitive tendering (Falconer and McLaughlin, 2000; Entwistle and Martin, 2005). In 1992, when the Private Finance Initiative (PFI) was established, the private sector was included further into policy making and implementation. Whilst initially the private sector was mainly involved in the provision of public services, with the establishment of PFI the private sector became a main actor in designing, building, operating and owning public sector facilities.

The Private Finance Initiative (PFI - this term was not used in The United Kingdom until the late 1990s), but design-built- finance- operate projects (DBFO) structured as the purchase of ongoing services, rather than capital assets, by the public sector, whereby services are defined as outputs. Payments for services were generally met by public funds, not costs for end-users. PFI was a

means of introducing private sector capital in sectors that were not considered suitable for privatization. The original justification for PFI was that it would enable greater capital investment in public services, dealing with historical capital insufficient investment. The following policy tends to focus on PFI, generating a better value for money from the public security infrastructure, with the benefits of the private sector management and expertise, performance stimulation and optimized risk allocation exceeding the higher costs of capital. (ibid.) The first public private partnership projects were started in the early 1990s and, despite changes of government, there was a steady increase in their use throughout that decade, with most activity being branded under the Private Finance Initiative (PFI). What should be emphasized about this era is that competition was the starting point of all the reforms, and moreover, these reforms were mainly ideologically driven (Feigenbaum et. al., 1998; Entwistle and Martin, 2005). The ideological convictions of Margaret Thatcher and her associates pervaded the political and administrative arena, and the program of liberalization introduced in the United Kingdom at this period and later on was seen as one of the most extensive anywhere in the world (Feigenbaum et. al., 1998). Hence, in 2006, the United Kingdom public private partnerships accounted for 76 % by number and 58 % by total value of all the European Union public private partnerships (European Union Investment Bank, 2007).

During the 1980s and 1990s, the Labor party fiercely argued against the Conservative stance on the priority of the private sector (Falconer and McLaughlin, 2000). However, when they came into power in 1997, they compulsorily perceived the fact that citizens demanded better public services while being reluctant to pay more taxes (Flinders, 2005). Governments had to deliver more with finite level of resources, due to the pressure on the government expenditure caused by factors like the European Union Maastricht convergence criteria (Harris, 2007). Hence, the new Labor party inevitably inverted the position of the former Labor party, and gave rise to a wide range of partnership programs, which represented a continuation and development of Conservative policies (Falconer and McLaughlin, 2000). Hence, the neoliberal political view diffused into the once radically social democrat Labor party. However, the new Labor government in some ways displayed a different stance than the Conservative government. They declared themselves as a third-party government, which rejected the absolute neoliberal

congestion of the previous Conservative government as well as the totally centralized planning and delivery of the traditional social democracy (Broadbent et. al., 2003). In contrary, the new Labor party highlighted the benefits of collaboration, rather than competition (Parker and Hartley, 1997), and used PFI as a pragmatic response, rather than an ideological tool, to modernize the government (Feigenbaum et. al., 1998; Falconer and McLaughlin, 2000). Even though the Conservative as well as the Labor governments were accused of using PFI as “back-door privatization”, the Labor party repeatedly put emphasis on the fact that PFI differed from privatization because the public sector still remained as a key actor (Flinders, 2005).

In the initial phase, the PFI programme was mainly related with transportation projects. However, today, while these projects still remain important, social infrastructure such as health and education, as well as defence-related projects form the other main elements of the PFI programme (Yescombe, 2007). In fact, social infrastructure produces the largest number of individual projects. By 2012, there were 717 public private partnerships projects in the United Kingdom, from which 118 were related with health and 166 were related with education (HM Treasury, 2012). The amount of transportation projects, on the other hand, was 62.

The PFI programme is remarkable for both volume and number of projects. PFI projects make up about 11-15 % of public-sector investment (Flinders, 2005; Yescombe, 2007). We can see from the table that many public services have come within the scope of the PFI programme. Nevertheless, the Treasury has restricted its use in some policy fields in the light of experience public private partnerships for smaller facilities and ancillary services, as well as IT projects is discouraged (Yescombe, 2007).

Another notable feature of the PFI programs is that in the early phase it used the concession model, which has now completely disappeared (Yescombe, 2007). Even though public private partnerships were initially based on concessions, later on as the public private partnerships concept began to rise, the use of concessions for constructing new infrastructure faded away in many developed countries, except for some countries such as France. Today, the United Kingdom uses the full PFI models. The main difference between concession and PFI model is that, while in the former model the users charge principle is used, the latter one uses the availability charge

principle. In the users-based system the private sector is paid by the beneficiaries, that is, only if the facility is used.

However, in the availability-based system the public authority pays the private sector, regardless of the beneficiaries. For the provision of public services where usage risk inherently cannot be transferred to the private sector, such as hospitals and schools, the private sector investor has to be paid by the public authority. As the United Kingdom expanded its public private partnerships agenda to social infrastructure investments, it inevitably commenced using the PFI model, as users charge principle is not feasible in these areas.

According to Financial Times (2018) the Labor parties planned to nationalize assets developed under the private finance initiative and renewed attention on PFI as a means of providing the United Kingdom with critical infrastructure. Under PFI, companies not only build infrastructure such as schools and hospitals, but they also take responsibility for financing the projects, and then maintain these assets over their lifetime. Why did PFI rise in popularity with United Kingdom governments? As mentioned, it started in 1992 PFI was seen as a way of bringing private sector discipline into public infrastructure projects. There were good reasons for wanting to do this. Ministers had long shuddered at the horror stories of traditional infrastructure projects, which were designed, financed and operated by the public sector even if they were mainly built by private contractors. These projects kept going wrong. Budgets were bust, the assets produced were often of poor quality, and there was little incentive to maintain them properly. A Treasury document from 2003 outlined a catalogue of failures. The Jubilee line extension on London's Tube network was completed two years late and ran £1.4bn over budget. The cost of a Trident submarine berth for the Royal Navy at Faslane docks in Scotland tripled in costs and was completed two-and-a-half years late. "Only 30 per cent of non-PFI major construction projects were delivered on time and only 27 per cent were within budget," concluded the Treasury. The bad reason for PFI's expansion was that Tony Blair's Labor government rigged the rules so that well-run public alternatives could not compete. Especially in education and health, PFI was the only game in town because the debt used to finance the infrastructure was classified as a private sector liability and kept off the government's books. As time passed this was the only way that

Gordon Brown, the chancellor at the time, was able to comply with his fiscal rule that public debt could not exceed 40 per cent of national income. How big did PFI become? In March last year, 716 PFI projects were left outstanding, concentrated in defense, education, health and transport, with a capital value of just under £60bn. Use of PFI had peaked in 2006. (Financial times, 2018)

In addition to PFI, the United Kingdom also makes significant use of other types of public private partnerships, such as joint ventures, concessions and information and communication technology (ICT) public private partnerships. Consequently, the number and value of closed public private partnerships projects remains high by international standards. (European Union public private partnerships Expertise Centre, 2012)

3.1. Legal framework of public private partnerships

Maastricht agreement (Council of the European communities, Commission of the European communities, 1992) also placed the government under extreme budgetary pressure as it restricted the ability to invest within infrastructure by placing limits on borrowing. Further pressure on the UK was placed by its participation in the European Union, where it had to fulfill the four principle criteria: inflation, long-term interest rates, fiscal debt and deficit and exchange rate. As a result, the UK started PPPs in the form of Private Finance Initiatives (PFI). According to HM Treasury website (HM Treasury, 2011) “Public private partnerships are arrangements typified by joint working between the public and private sector. In the broadest sense, PPPs can cover all types of collaboration across the interface between the public and private sectors to deliver policies, services and infrastructure. Where delivery of public services involves private sector investment in infrastructure, the most common form of public private partnerships is the Private finance initiative”. According to Parker and Hartley (2003) public private partnerships including public private initiatives are part of a wider policy of “privatization” based on the expectation that the private sector provides services more efficiently and more effectively than the public sector. In the United Kingdom the terms public private initiative and public private partnerships are both used and often interchangeably. PFIs involve the provision of an asset and possibly a full-service package under a long-term contract. PPPs integrate the private and public sectors, with assets not returning to government (Parker and Hartley 2003).

By public private initiative, the United Kingdom started widening its privatization and contracting out policies to incorporate the provisions of infrastructure and public services by a hybrid approach of combined public and private sector funding. Procurement was subsequently redefined as the provision of services rather than the ownership of assets, with partnerships sought on a range of projects and public private initiative promoted as a preferred procurement method (Grimsey and Lewis 2002). Since 1997, the public private partnerships approach has been seriously utilized in the United Kingdom. Specifically, private companies have so far been involved in facilities development, including designing, financing, construction, ownership, and/or operation of a public sector utility or service (Tang, Shen, Cheng 2010). Through PFI, not only the United Kingdom government makes use of partnership models to develop and deliver all manner of infrastructure, from schools to defense facilities but also pioneered the trend of public private partnerships. PFI projects represented between 10 and 13 % of all United Kingdom investment in public infrastructure and around 100 public private partnerships projects have been completed by year 2007. (Deloitte, 2006)

According to Maslyukivska and Sohail (2007), the United Kingdom does not have special public private partnerships regulations. It has selected a more centralized approach by creating one dedicated national public private partnerships unit. In the indicated range of centralization, these examples may be referred to as a mixed (centralized and decentralized) model. In the majority of cases, centralization is reflected in the creation of a separate public private partnership's unit in the country within a certain ministry with joint public and private participation. At the same time, there is a degree of decentralization to this approach, because separate units do not implement the projects (implementation is still the responsibility of the relevant department, agency or local authority). According to Maslyukivska and Sohail (2007), the PPP/PFI model developed in the United Kingdom has evolved enormously since 1994 up until recently. During the early 1990s, a central body, The Private Finance Panel Executive, was established to develop policy and best practice, but with limited project delivery or support functions. The Labor government replaced that body with the Treasury Taskforce, which was located within the Treasury to reinvigorate the Private Finance Initiative. Created within HM Treasury, it consisted of both a policy arm staffed by Treasury and seconded staff, and a project arm staffed by people

from the private sector. The formation recognized the increasingly complex way that the public sector was engaging with the private sector, and the need to supplement and enhance the public sector skills base. In the beginning, such public private partnerships units have focused particularly on developing capability, the required legal and regulatory structures, market interests and pilot projects in order to test the value of public private partnerships. However, with time the focus has shifted towards assisting the selection of public private partnerships opportunities, counseling and advice, ensuring value for money, attracting investors and above all maintaining political support and the trust of stakeholders. In 1999, the HM Treasury transformed the Taskforce, with responsibility for policy development being assigned to the new Office for Government Commerce and the project support role to the new Partnerships United Kingdom, a joint venture company established by the Treasury and a number of private companies holding a majority stake (Maslyukivska and Sohail 2007). Partnerships United Kingdom was set up in 2000 to succeed the Treasury Taskforce and set up a permanent center of excellence, moving away from the old model of 'revolving-door' secondments that offered no retention of expertise or knowledge. The Operational Taskforce (OTF) was set up by the Treasury in 2006 to provide help, support and guidance to the public sector managers of operational PFI/PPP projects. The OTF can advise on contract strategies, benchmarking and refinancing of operational contracts. Staffed by experienced PFI practitioners, its primary role is to assist the public sector in improving the operational performance of PFI and PPP contracts. The OTF advises and provides guidance on a wide range of operational issues, including the development of contract management strategies, benchmarking, market testing, managing variations, refinancing and other issues that occur during the operational phase of a contract. In March, 2010 Infrastructure UK (IUK) was established as a separate unit within the HM Treasury to work alongside the private sector on major infrastructure projects. As a result, it was announced in May 2011 that Partnerships United Kingdom was to be dissolved. Some PUK assets, services, data and staff moved to IUK and Local Partnerships (a joint venture between PUK and the Local Government Association). HM Treasury established The Infrastructure Finance Unit (TIFU) whose objective was to lend to PFI projects that could not raise sufficient debt finance on Acceptable terms. TIFU would lend along side commercial banks and the European Investment Bank (EIB)

(Farquharson and Encinas 2010). From the June 2010, Infrastructure UK (IUK) has a responsibility to provide a stronger focus on the United Kingdom's long-term infrastructure priorities and meet the challenge of facilitating significant private sector investment over the longer term.

As mentioned, the predominant form of public private partnerships in the United Kingdom was PFI (latter PF2) project and nearly 700 projects had been executed within this form. The reforms introduced by PF2 were designed to increase transparency, promote efficiency, ensure projects were good value for money and encourage alternative sources of institutional capital (such as infrastructure and pension funds). The principal reforms were:

- a. Provided the project meets its investment criteria, government will take a minority equity stake in the project vehicle, with the investment being managed by a new PF2 equity unit.
- b. Equity funding competitions will be encouraged. Bidders will be required to develop a long-term financing solution that is not reliant solely on bank debt.
- c. Private sector equity return information will be published. A 'project approvals tracker' will be available on the government's website, showing the status of each stage in the government approvals process (including pre-procurement). A running control total for off-balance sheet PF2 commitments has been introduced.
- d. Departments with a PF2 pipeline are encouraged to establish a central procurement unit. A maximum 18 months from tender issue to selecting preferred bidder has been introduced, with the procurement process being streamlined in line with the government's 'lean sourcing' principles. HM Treasury will undertake greater scrutiny of business cases during the approvals process.
- e. 'Soft' services such as cleaning and catering will be removed from PF2 to focus the contractor on provision of the asset and long-term maintenance. Underspend on anticipated life-cycle costs is to be shared equally between public and private sectors. The allocation of certain unmanageable risks to the private sector, such as unforeseen changes in law and site contamination, will cease. (Clough et al., 2017)

To date PF2 remains little used against the backdrop of a very significant decline in the number of projects in the United Kingdom market.

As Clogh et al. continues, other forms that are less common are:

- Strategic infrastructure partnership- which involves the appointment of contractor to deliver several projects, bonded together, that would be too small as separate projects to justify use of PF2.
- Concessions- project finance structures, similar to PF2 and awarded by the public sector, but with contractor's revenue coming from user charges rather than charges to procuring body.
- Regulated asset base structures- The activity is made through license and the compensation is held for the award of license. The license permits the successful licensee to recover an agreed return on expenditure efficiently employed in developing and operating the project assets, subject to independent regulation. (usually used for OFTOS-offshore electricity transitional networks).
- Delivery partner or integrator- here the project is delivered through pre-procurement, procurement, construction and into operation. The partner through client-side role that delivers the mentioned procurements so they deliver a total asset to the procuring body.
- Public private joint ventures- can be corporate where public and private sector own the new entity. Recently, the employees own a part of the joined capital company.
- Government owned contractor- operated companies transferring the activities to an appointed services contractor for the duration of the services and returning it to the public sector. The control over the asset is held by the government through a special share, not for economic reasons but strictly for controlling purposes.
- Flexible or hybrid projects- Partially large projects where a procurement body requires a custom-made approach, for instance when a long-term public private partnership relationship is desired but it is not possible to define or predict a long-term price for the whole period
- Bespoke structures- Public private partnership structures where PF2 is inappropriate. (Ibid.)

3.2 Public private partnerships institutional framework

The Public private partnerships authorities in United Kingdom are:

- European Union Commission: sets the public procurement regulatory framework for the European Union and regulates the provision for state aid to private sector entities. After Brexit it depends on the level that European Union laws and the access to the internal market will be applicable to United Kingdom.
- HM Treasury: sets the general fiscal policy on public private partnerships and approves project business cases. HM Treasury is a strong supporter of the PFI program (Heald, 1997). The HM Treasury has a direct control over the PFI program with the technical assistance of a separate company called Partnerships United Kingdom, which has 51 % private sector share and 49 % public sector share (Buisson, 2013). These two institutions together form a permanent center of expertise which creates detailed procedures and guidelines, and gives project-specific support. Under the umbrella of this central control, major government departments such as transport, health and education have also set private finance units to coordinate sector-specific expertise and project development (Buisson, 2013). Moreover, several new independent bodies have been established for major projects such as the London Underground, National Health Service and Building Schools for the Future Programmed (Flinders, 2005). Hence, the system is created of several independent organizations linked to a central body, in this case the HM Treasury.
- Cabinet office- oversees the efficiency of government functions and procurement and approves individual procurement routes and structures.

- Infrastructure and project authority (IPA)- provides expertise in infrastructure, financing, delivery and assurance of major projects to the whole government.
- Procuring bodies- department and executive agencies of central government, local government, other public bodies.
- Independent regulators- different regulators regulate different areas of activities and particular sector (like water, energy, communication etc..).
- Planning authorities: grant development concept for projects. Their identity differs by location and type of project (with a special streamlined regime for nationally significant infrastructure projects.
- Controller and auditor general national audit office: scrutinize public spending on behalf of the Parliament. (Ibid.)

In general, the United Kingdom has completed public private partnerships (PFI and PF2) ventures more than most countries in the world. According to the charts by Financial times, United Kingdom reached the top in year 2006, by executing 70 projects.

Chris Giles, an Economics Editor in Financial Times on September 26, highlights that as the financial crisis took hold, the number of new PFI projects shrank rapidly and by 2010, and the advent of David Cameron's coalition government, the initiative went rapidly out of fashion. The most recent data for the year to March 2016 show that only two new projects have been added. Private finance chart 1 But few new PFI deals does not mean Britain can forget about the initiative. PFI contracts will be a significant expense for the government until the 2040s, given that deals with companies to provide and then maintain infrastructure often last for 30 years. Charges paid by the government to these companies are currently just over £10bn a year, and will decline to little more than zero by 2050. Why did PFI fall out of fashion? Three things killed PFI. In 2008, the financial crisis destroyed government finances such that public debt burst through the 40 per cent of national income ceiling. Once Mr. Brown's fiscal rule was broken, there was little incentive to strain every sinew to secure new infrastructure using PFI. Second, the financial crisis also significantly raised private sector financing costs and limited the availability of funds, even on government-backed projects. Third, early PFI projects were shown to be poor value for money, giving equity investors windfall gains not commensurate with the

risks they had taken. Private finance char t2 What were the drawbacks of PFI? Inflexibility, complexity and costs. In 2010, the then chancellor George Osborne revealed the difficulties he faced in deciding to buy a £40 Christmas tree from the retailer B&Q for the Treasury rather than stick with the £900 arrangement specified in the department's PFI contract for it. More seriously, schools and hospitals found themselves tied into uses for new buildings that became obsolete, but were extremely difficult to change with PFI contractors. The tendering and financing of PFI projects were slow and opaque, adding to questions over value for money. (Chris Giles, 2017)



Chart published by the financial times, PFI discredited by cost complexity and inflexibility (2017)

3.3. Green investment bank

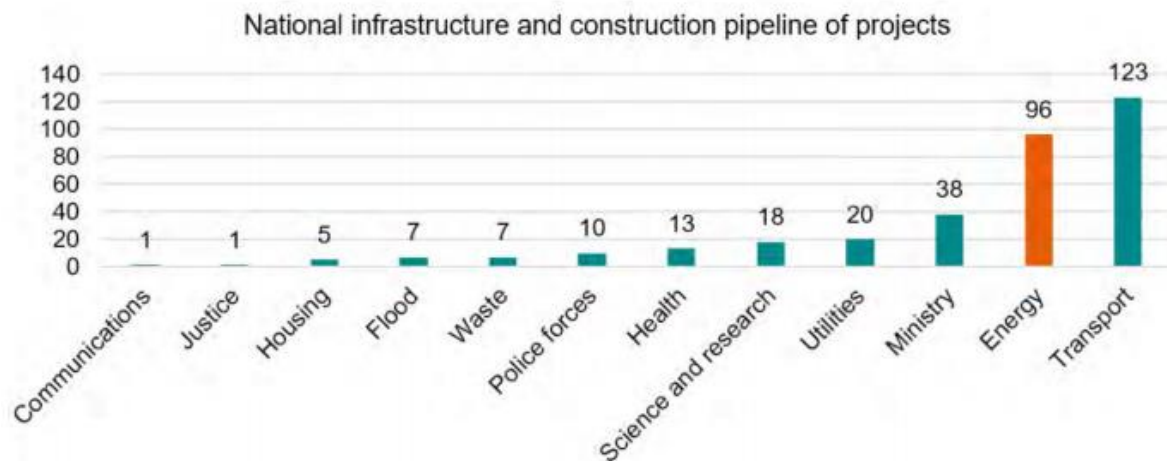
In year 2012 United Kingdom government set up Green invest bank (Gibb) in order to invest in green infrastructure project worth 11.3 billion gbp. In 2016, United Kingdom government started moving GIB to private ownership in a privatization worth 2 billion gbp. (Green investment bank press release, 2016).

In December 2016, the government published the National Infrastructure and Construction Pipeline bringing together and updating the previous separate infrastructure and construction pipelines. It provided a forward-looking assessment of planned investment in infrastructure across the public and private sectors, containing over 700 projects and programs with a total value of more than £500 billion, of which more than £300 billion is for investment by 2020/21. As with the National Infrastructure Plans published each year between 2010 and 2016,¹⁷ this document makes clear that much of the proposed investment (over 50 per cent of the pipeline to 2020/21) is to be financed and delivered by the private sector of which 60 per cent is in the regulated utilities sector (recovered through end-user charges).

The anticipated pipeline of projects to be structured using the PF2 model remains extremely limited. However, the greater appetite for government-funded infrastructure investment under the new government is reflected in its exploration of a new pipeline of projects suitable for delivery through the PF2 scheme, published in early 2017, with only two PF2 project. (HM treasury cabinet and office, 2016)

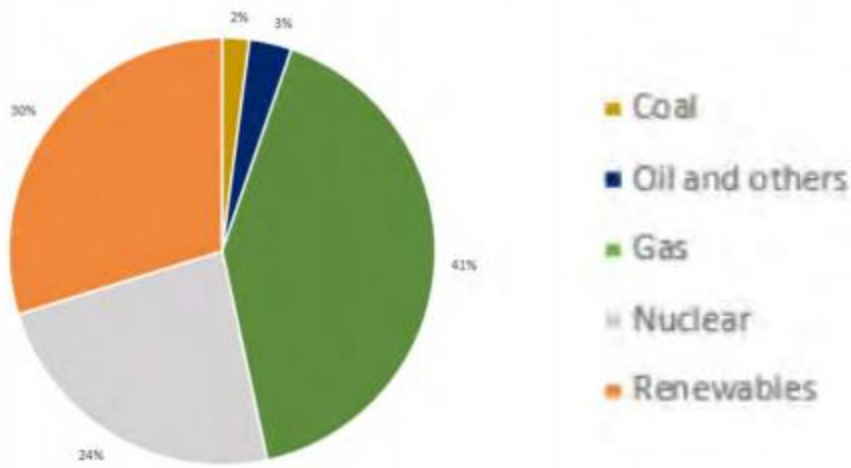
3.4. Public private partnerships in the energy sector

In 2016, the value of investments made by the UK energy sector was £11.9bn, meaning that almost 1 in every £16 invested in the UK was in the energy sector. Ongoing investment in the sector has enabled the UK to generate electricity using more efficient power plants, low carbon technologies, and innovative solutions to reducing costs throughout the lifecycle of a project. The National Infrastructure and Construction (NIC) pipeline looks at planned investment in infrastructure across the public and private sectors. The latest report in 2016 lists the energy sector in second place in terms of the number of projects of any sector, with 96 projects worth £79 billion⁶.



According to Energy UK the pace of development of renewable generation increased throughout 2016, resulting in a significant increase in low carbon plant operating on the system in 2017. Between April–June 2017, low carbon generation accounted for a record 53% of total power generation. Renewables by themselves accounted for 30%, which was an increase of 5% - or 2.7TWh - compared to the same period in 2016: equivalent to powering an extra 688,000 homes for a year. Underlying the success of low carbon power generation is the scale of renewables deployment the industry has achieved and the falling costs for particular technologies to achieve this. Solar capacity has increased by 28,000% since 2010, to reach 12.5GW in August 2017, having deployed 1GW of capacity in the 12 months to August 2017. Latest figures for wind generation show capacity at the end of 2016 of 16.2GW: an increase of 13% (1.9GW) on 2019. Energy UK is clear that they are no longer in a period of transition regarding deployment of low carbon power on the Grid; with over half of all the UK's power needs coming from these sources it really is business as usual. Today, Energy UK powers the UK economy, invests for the future, is a significant employer, gives energy initiatives, - powers UK's homes and businesses, is a step away from coal, etc. (Energy UK, 2017)

April - June 2017 Power Generation Mix



3.4.1. Energy service Law

Energy Efficiency Plan 2011 approved by the European Commission on 8th of March 2011 (European Commission, 2011) recognizes energy performance contracting as an important tool in the refurbishment of buildings. It states that the EPC model has been tried and proved cost-effective in a number of Member States and it is relevant for triggering renovation in public buildings and for upgrading the energy efficiency level of public infrastructure such as street lighting. In October 2012, the EU adopted a new Directive 2012/27/EU on energy efficiency (EED), which establishes a common framework of measures for the promotion of energy efficiency within the Union in order to ensure the achievement of the Union's 2020 20 % headline target on energy efficiency. It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of indicative national energy efficiency targets for 2020. It requires application of mandatory energy-saving measures, including renovating public buildings, energy-saving schemes for utilities, and energy audits for all large firms. EED also imposes

obligations on Member States to support energy services market, model contracts, provision of information, removal of barriers, etc. (Szomolanyiova & Sochor, 2013)

3.4.2 Energy service contracts

Energy service contracting involves the outsourcing of one or more energy-related services to a third party. In its simplest form, an energy service contract may guarantee supplies of hot water and/or electricity at reduced cost, but in a more sophisticated form the contract may guarantee particular levels of service provision, such as lighting levels, room temperatures, humidity and 'comfort'. In its most developed form, energy service contracting allows the client to minimize the total bill for the services that energy provides through a single contract with an energy services provider. This contrasts with the traditional model in which energy consumers contract separately for each energy commodity and for different types of energy conversion equipment. Energy service companies (ESCOs) offer comprehensive contracts that include energy information and control systems, energy audits, installation, operation and maintenance of equipment, competitive finance, and fuel and electricity purchasing. These contracts allow the client to reduce energy costs, transfer risk and concentrate attention on core activities. (Sorrell, 2005)

According to the European association of energy service companies, ESCO is an abbreviation of Energy Service Company and represents the generic name of the concept in the services market in the field of energy. The ESCO model encompasses the development, implementation and financing of projects with the aim of improving energy efficiency and reducing costs for operation and maintenance. The goal of each project is to reduce the cost of energy and maintenance by installing new more efficient equipment and optimizing energy systems, which ensures repayment of investment through realized savings over a period of several years depending on the client and the project. The risk of savings is taken over by the ESCO company by giving guarantees, and besides innovative projects to improve energy efficiency and reduce energy consumption, financial solutions for their implementation are often offered. During the repayment of the energy efficiency investment, the client pays the same amount for energy costs as before the implementation of the project, which is divided into the actual (reduced) energy

cost and the cost of repaying the investment. After the investment is repaid, the ESCO company exits the project and delivers all the benefits to the client. All projects are specially adapted to the client, and it is possible to expand the project by including new energy efficiency measures with the appropriate investment divide. This way, the client is able to modernize the equipment without the risk of investing, since the risk of savings can be taken over by the ESCO company. In addition, after the investment is repaid, the client generates positive cash flows during the repayment period and long-term savings. (European association of energy service companies)

For energy efficiency projects delivered through public private partnerships, the public sector uses private companies, ESCO's to provide technical, commercial and financial services. (Goldman and Dayton, 1996; Vine et al., 2003; Vine, 2005; Roshchanka and Evans, 2016; Patari and Sinkkonen, 2014) The ESCo model is centered around providing customers with the physical benefit, utility or good that people derive from energy, referred to as energy services (EU, 2006). It has been identified as a potentially financially viable means of fulfilling United Kingdom's energy needs in a way that could help to address the mounting challenges of climate change, energy security and affordability, which are facing the international energy community. (Vine, 2005; Fawkes, 2007; Hansen, 2009; Marino et al., 2011; Fang et al., 2012) ESCO's provide energy services to their customers via energy service contracts, which constitute 'the transfer of decision rights over key items of energy equipment under the terms and conditions of a long-term contract, including incentives to maintain and improve equipment performance over time' (Sorrell, 2005 p.96). Importantly, ESCos operate in a fundamentally different way to the more common Energy Utility Company model, which is predicated on the sale of units of fuel (e.g. gas, oil) or electricity. Unlike ESCos, the Energy Utility model dictates that it is the customer who is ultimately responsible for converting these units of energy into the energy services that they desire not the supplier (Hannon et al., 2013).

3.4.3. Renewable energy public private partnerships

According to Greenmatch, 30 % of the total electricity in the United Kingdom accounts for renewable energy. The biggest source of renewable energy is offshore and onshore wind. It beats

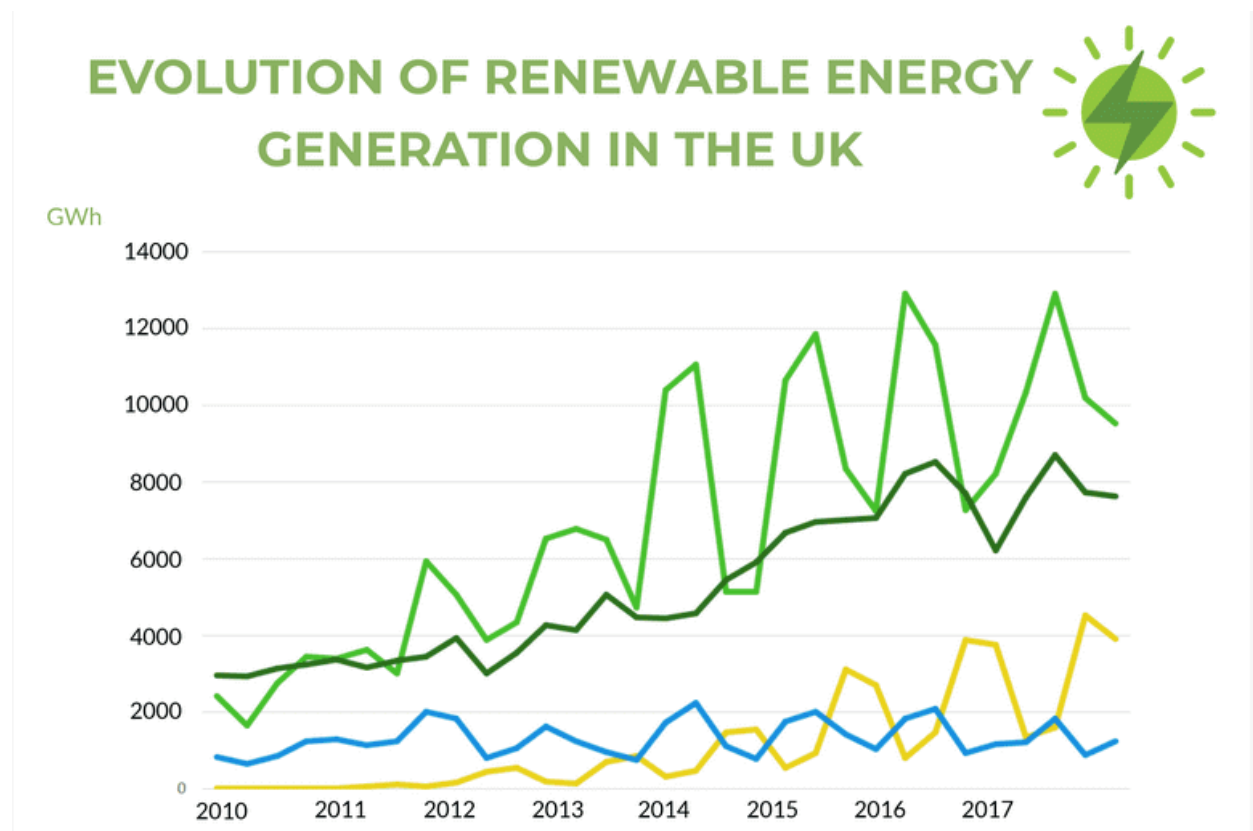
the other renewable resources by 13.8% of total electricity generation in the United Kingdom and beats the combined generation of coal, oil, and others by 6.5%.

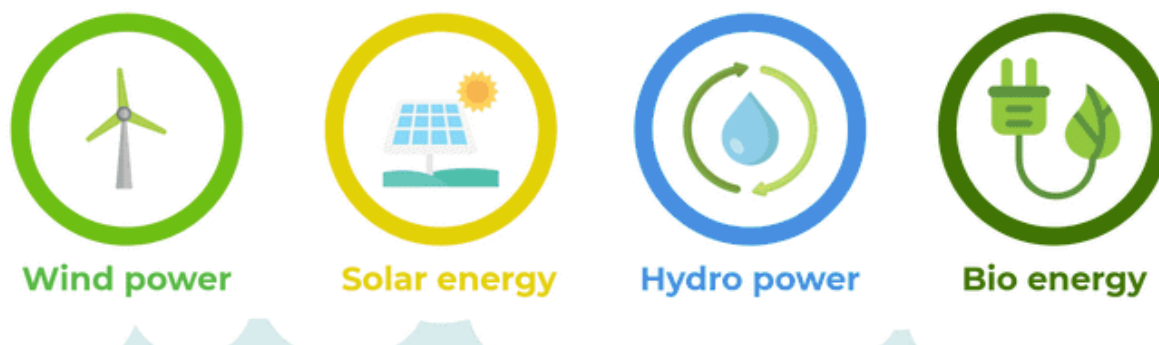
The best area in The United Kingdom in terms of renewable energy generation is in Scotland.

In parallel with the growth of renewable energy, the use of coal for electricity had continued to decay. From consuming 57,438,000 tons in 2006, to only 12,058,000 tons in 2016.

Solar power, from generating merely 20GWh in 2009 to 10420GWh in 2016. In the first three quarters of 2017 solar PV generated 10,025 GWh, that made 4.2% total electricity generation.

In the United Kingdom the usage of renewable energy incrisis all the time.





Source Greenmatch

According to the Department for Business, Energy & Industrial Strategy Government United Kingdom, the Contracts for Difference (CfD) scheme is the government's main mechanism for supporting low-carbon electricity generation.

CfDs incentivize investment in renewable energy by providing developers of projects with high upfront costs and long lifetimes with direct protection from volatile wholesale prices, and they protect consumers from paying increased support costs when electricity prices are high.

Renewable generators located in the United Kingdom that meet the eligibility requirements can apply for a CfD by submitting what is a form of 'sealed bid'. There have been two auctions, or allocation rounds, to date, which have seen a range of different renewable technologies competing directly against each other for a contract.

Successful developers of renewable projects enter into a private law contract with the Low Carbon Contracts Company (LCCC), a government-owned company. Developers are paid a flat (indexed) rate for the electricity they produce over a 15-year period; the difference between the 'strike price' (a price for electricity reflecting the cost of investing in a particular low carbon technology) and the 'reference price' (a measure of the average market price for electricity in the GB market). (Government United Kingdom, Department for business, energy and industrial strategy)

3.5. United Kingdom accomplishment in executing public private partnerships

One truthfully thinks that the answer to the question why United Kingdom executed more public private partnerships than any other European country is within the question itself. United Kingdom is a successful country period. A country that has accomplishments in almost every area, by default is successful at public private partnerships as well. United Kingdom doesn't need to have a separate public private partnership law, because as previously mentioned it has legal and institutional framework that stand on a solid ground. In other words, laws are applicable de jure and de facto. The European Union Commission, HM Treasury, Cabinet office, Infrastructure and project authority, procuring bodies, independent regulators, national audit office, they all are pillars on which public private partnerships institutional framework stands. And United Kingdom is a country with serious experience within the law and international community and in my humble opinion the successfulness of public private partnerships has everything to do with the abovementioned. Although the public private partnerships institutional frameworks work very well, the comments of researchers in the journals argue differently i.e. enormous cost and inflexible contracts are products from PFI. For instance, in the journal BMJ August 12, 2015 Stephen Black commented that PFI is an unsustainable burden on the system because, to paraphrase much of the debate "the evil private sector is profiteering from the poverty-stricken NHS⁴". In other words, the reason PFI is a problem is because the costs are higher than the alternatives.

The article shows that some trusts can reduce their costs by buying out the contracts but also admits that some will struggle to make this work.

But the analysis misses the most significant problem with the contracts. This is the almost complete lack of flexibility in the way the future payments and plans were devised. NHS planners focused on making the payments as "affordable" as possible according to treasury rules which, in practice, meant signing up for long terms to achieve the lowest annual payments. Under the last three governments, the Treasury and parts of DH encouraged this as the resulting capital

⁴ National Health service

spending would be outside recorded public expenditure (which is pretty much Enron accounting for the public sector). Even given the general encouragement from government, significant concerns were raised about several major schemes (two of the worst, Peterborough and Bart's) were approved despite significant internal concerns and serious warnings from the regulators. The incredibly damaging side effect is that the contracts look affordable when signed only if the future activity of the hospitals (and the payments they get) stay exactly as forecast for perhaps 30 years into the future. Given the major changes in both available budgets and the possible mix of activity that occur even year to year, this is a major, catastrophic error. The real problem isn't that PFI finance is expensive, it is that existing contracts were built with no flexibility to allow the NHS to adapt to the very uncertain environment. Failing to build in flexibility to plans is pretty much standard operating procedure in NHS planning but PFI schemes have embedded that absence of flexibility in reinforced concrete with a 30-year lifespan.

The lesson needs to be learned. Yes, some trusts can buy-out their contracts and get flexibility back. Others might need government help. But everyone needs to learn that, in future, building in flexibility is critical. This lesson should not be missed because PFI is naively and emotively tagged as a "private sector rip off". (Black Stephen, 2015)

3.5. Conclusion

From this chapter we can conclude that although United Kingdom has is considered to be a country with solid legal and institutional framework it still faces with grave legal and financial difficulties due to the unfeasibility of the contracts. In the following SWOT analysis, I underline the strengths, weaknesses, opportunities and threats in public private partnership in UK.



Chapter IV Public private partnerships in other European countries

The European Union court of auditors, in the year 2018 report gave insights on other European Union countries where it emphasizes that examined 12 European Union co financed public private partnerships in France, Greece, Ireland and Spain in the fields of road transport and Information and Communication Technology (ICT). The visited member states accounted for around 70 % of the total project cost (29.2 billion euros) of European Union supported public private partnerships. The European Union court of auditors assessed whether the audited projects were able to exploit the benefits public private partnerships are expected to deliver, whether they were based on sound analyses and suitable approaches and whether the overall institutional and legal frameworks within the visited member states were adequate for the successful implementation of public private partnerships. Overall, the Court of auditors found that:

- Public private partnerships allowed public authorities to procure large-scale infrastructures through a single procedure, but they increased the risk of insufficient competition and thus putting contracting authorities in a weaker negotiating position.
- Procuring public private partnerships typically requires negotiating on aspects that are usually not part of traditional procurement and therefore takes up more time than traditional projects. One third of the 12 audited project were, with their procurement duration of 5-6.5 years, affected by considerable delays.
- Similarly, to traditional projects, also the majority of the audited public private partnerships were subject to considerable inefficiencies in the form of delays during construction and major cost increases. Overall, seven out of the nine completed projects (with aggregate projects costs of 7.8 billion euros) faced delays ranging from two to 52 months. Moreover, an additional amount of almost 1.5 billion euros in public funds was necessary to complete the five motorways audited in Greece and Spain, around 30 % of which was provided by the European Union (corresponding to 422 million euros). The court considered this amount to have been spent ineffectively in terms of achieving the potential benefits.

- More importantly, in Greece (which is by far the largest recipient of European Union contributions with 59 % of the total European Union amount or 3.3 billion euros), the cost per km of three assessed motorways had increased by up to 69 %, while at the same time the project scopes were reduced by up to 55 %. This was mainly due to the financial crisis and to poorly prepared projects by the public partner, resulting in premature and insufficiently effective contracts with private concessionaires.
- The large scope, the high cost and the long duration of typical infrastructure public private partnerships require particular diligence. However, the court found that prior analyses were based on over-optimistic scenarios regarding future demand and use of the planned infrastructure, resulting in project rates of use of up to 69 % (ICT) and 35 % (motorways) below forecasts. This does not take into account the pending risk of the heavily underused motorways in Greece after their completion.
- On a positive note, nine completed audited projects have shown good levels of service and maintenance and have the potential to keep these levels for the remaining project duration.
- For most of the audited projects, the public private partnerships option was chosen without any prior comparative analysis of alternative options, such as Public Sector Comparator, thus failing to demonstrate that it was the one maximizing value-for-money and protecting the public interest by ensuring a level playing field between public private partnerships and a traditional procurement.
- The risk allocation between public and private partners was often inappropriate, incoherent and ineffective, while high remuneration rates (up to 14 %) on the private partner's risk capital did not always reflect the risks borne. In addition, most of the six audited ICT projects were not easily compatible with long contract durations since they were subject to rapid technology changes. (The European Union Court of Auditors, 2018)

The European Union court of auditors found that the potential benefits of public private partnerships often failed to materialize, as the infrastructure was not completed within the planned time and cost. In seven out of nine completed projects, corresponding to 7.8 billion euros project cost, delays ranged from two to 52 months and the total cost increases were close to 1.5 billion euros, around 30 % of which was co-funded by the European Union. In Greece, the cost

increase was of 1.2 billion euros (borne by the public partner and co-funded at 36 % by the European Union and in Spain of 0.3 billion euros (borne by the public partner), whereas in France the cost increased by 13 million euros or 73 % - the highest cost increase in relative terms observed among the audited:

1. The Spanish motorway contracts were re-negotiated soon after contract signature due to required modifications in the planned works, leading to cost increases of around 300 million euros to be borne by the public partner. The cost of the A-1 motorway increased by 33 % (158 million euros), the project being delayed by two years, while the C-25 motorway saw a cost increase of 20.7 % (143.8 million euros, including 88.9 million euros in financial costs) and delays of 14 months. (Allard Gayle, 2007)
2. The cost for the Pau Pyrenees ICT project in France increased by 73 % (from 18 to 31 million euros) in order to comply with regulatory changes; although the infrastructure for the Girondins project was completed on time, commissioning of the project was delayed by 16 months for administrative reasons. (Lattemann et al., 2006)
3. The construction phase of the Metropolitan Area Network (MAN) ICT project in Ireland was poorly planned, so that the entire project was subsequently downsized, with the result of realizing fewer MANs (to 66 towns rather than 95) and 4.2 % (50 953 euros) cost increase per town.
4. The construction of the three motorways in Greece was significantly delayed (by four years on average) and renegotiation of the public private partnerships meant substantial additional costs (1.2 billion euros) to be borne by the public partner, even though the scope of two projects was considerably reduced.

The Greek 'reset': What happens when things go wrong in a public private partnership and who pays the bill? Close to 1.2 billion additional euros paid by the public. The first wave of public private partnerships in Greece was awarded in the 1990s and included projects such as the Iron Antiriot Bridge, the Athens ring road and the new Athens international airport. The second wave

of public private partnerships was awarded in 2007-2008 and mainly comprised the construction of motorways. The European Union court of auditors audited three of those motorways.

4.1. Concession motorways in Greece

These projects had been financed to a considerable extent by toll revenues along pre-defined motorway sections, which had been operated by the private partner. However, the severe financial and economic crisis in Greece brought about a collapse in traffic volumes, which fell by around 50 % below the most pessimistic scenarios, and thus a sharp decline in both actual and estimated revenue for the three audited concessions. In particular, between 2011 and the 'Reset', the three audited motorways faced a considerable decline in revenue through the reduction of traffic by at least 63 % (Central Motorway), 49 % (Olympia Motorway) and 20 % (Mores Motorway) compared to forecast. As the public authorities had largely transferred the demand (traffic) risk to the private partners (concessionaires) in the public private partnerships contracts, the reduction in revenues seriously affected the contracts' financial balance and induced lenders to cease funding the projects, as they no longer believed in their financial viability, resulting in the immediate suspension of works. (General secretariat for concessions Greece, 2011)

After having agreed to a contract clause (extended force majeure for the private partner in case of exceptional circumstances), the Greek authorities brought themselves in a situation where their only possibility was to:

1. either cease the construction of the motorways and expose themselves to legal disputes and possible payment of penalties and compensations;
2. or renegotiate the concession agreements with the concessionaires (and lenders), in order to restore their viability, but also at additional public cost.

The Greek authorities considered that the first scenario, i.e. stopping the construction of the motorways, had been less favorable given the broader macroeconomic and social consequences that such a decision would entail. Therefore, after three years of negotiations, the contracts with

the concessionaires were re-negotiated in November 2013 (Olympia and Central E-65 motorways) and December 2015 (Mores) This, entails that the public partner had to bear almost 1.2 billion European Union additional costs.

With the 'reset', while the end date for the concessions remained unchanged, a decision was reached to defer the construction of significant stretches of motorway (45 % of the Olympia motorway and 55 % of the Central) and to extend the construction completion deadlines for all three projects, leading to shorter operating periods for the reimbursement of infrastructure costs. Delaying the projects and reducing them in scope had an impact on the objective of extending the Greek motorway network and a knock-on effect on the TEN-T as a whole. Furthermore, there is the pending risk that the Central Motorway and the Elektra-Sparta section of the Mores motorway projects are heavily underused, which are not in line with sound financial management criteria. (The European Union Court of Auditors, 2018)

In addition, the public partner was also required to take on almost 1.2 billion euros in additional cost. Following the above-mentioned decision to renegotiate the contracts:

1. An additional financial contribution of 470 million euros (including 422 million euros from European Union funds) had been paid for the construction periods of the Olympia and Central motorways. This was to cover financing gaps created mainly by the decreased revenues deriving from the reduced traffic volumes and the significant increase in the projects' financial costs as consequence of the financial crisis, which seriously altered the contracts' financial balances.
2. Moreover, the public partner also had to pay additional 705 million euros to the concessionaires of the three motorways mainly due to agreements to accelerate works, which were not required by capacity needs and to the following delays attributable to the public partner:
 - for clearing archaeological findings;
 - for obtaining the required environmental permits;

- For finalizing the necessary land expropriations.

The high amount of this payment was also due to poorly prepared projects, and especially to the fact that public private partnerships contracts were signed before relevant issues were solved and because delays did not automatically result in a rescheduling of the end of the operations periods; instead the private partners had less time left to collect revenues and achieve the expected profitability. (The European Union court of auditors, 2018)

4.2. Energy sector

In general, public private partnerships within the energy sector in Europe, do not face bad reviews by auditors because they deliver the expectations more or less. European countries have concessions on solar/water power plants, windmills, biothermal concessions etc. Hydropower is the largest sector of renewable electricity in the EU and already contributes to 40% of all renewable electricity generation in Europe. It can contribute to achieving the aims of the Energy Union, in particular to provide 20% of final energy consumption from renewable energy by 2020 and at least 27% by 2030. (European Commission, Press Release, 2019)

Additionally, the energy efficiency area is facing bigger expansion every day. Public authorities are using different ESCO's. According to Citynvest, The Federal state of Berlin in partnership with Berlin Energy Agency (BEA) has initiated in 1996 the "Energy Savings Partnerships" for improving energy efficiency in public buildings in Berlin. They project manage the retrofit of public and private buildings, preparing tenders for works that will guarantee reductions in energy consumptions of an average of 26% based on Energy Performance Contracting (EPC) with the private ESCO sector (Energy Services Companies). In this program, BEA acts as project marketer, aggregator and facilitator, as well as financial advisor for the beneficiaries of the program (federal and local authorities). So far 1.400 buildings have been upgraded or retrofitted, delivering CO2 reductions of more than 70,000 tonnes per year. (Citynvest)

4.3. Other popular European public private partnerships contracts

According to The European Union court of auditors the best known is the municipal waste management system with the production of energy in Poznan, Poland. (Agency for public private partnerships Croatia, 2013) The project is worth approximately 189 million euros, funded non-refundable with 45%. The 165 km high-speed railway project in Portugal is worth 1.35 billion euros, of which 41% are financed from the European Union. There is also a military hospital in the Czech Republic with a total value of 18 million euros, half of which is co-financed by the European Union's funds. (European Commission, 2013)

There is an estimation that from the total potential of approximately 3 billion euros in public private partnerships, in the next 3 to 5 years. Combined financing could be applied to a total potential of approximately 3 billion euros in public private partnerships. In the next 3 to 5 years combined financing could apply to projects worth around 1 billion euros, in sectors such as public lighting, energy renovation of public buildings, wastewater treatment, solid waste management, optical infrastructure, culture and urban transport. Of course, other sectors such as education, health and prison systems, kindergartens, general administrative buildings, sports facilities, transport are also suitable for the implementation of the public private partnerships model. It is very likely that, by using the public private partnerships model, the increase in public investment by the European Union in additional 3 billion euros would not follow the increase in public debt by an additional 5 percentage points. (Ibid.)

Chapter V. Public private partnerships in Republic of Croatia

It is not by random choose that I select Republic of Croatia as an example of developed/ developing country before I go onward to the case of Republic of Macedonia. Republic of Croatia though is considered as developed country today in a way is very similar to the Republic of Macedonia, and still very different. Republic of Croatia is a member of the European Union, (a community where Republic of Macedonia aspires to be in), and it has walked all the difficult steps that candidate countries which join much later than the founders of the Union, must take. On the other hand, Republic of Croatia was member of The Federal Republic of Yugoslavia from year 1945 to year 1992 therefore the pillars on which both countries stand are the same.

The British Business Magazine the Economist in year 2013 published a column evaluating the environment for public-private partnerships in Eastern Europe and the CIS⁵ the 2012 Introscope. Here the newspaper has explored the prerequisites for the implementation of public private partnerships projects that involve assessing the legal and institutional framework, investment climate, financial and organization, and the capacity of local authorities to implement a concrete project. It is also important that the existing legal framework is implemented in reality. In the comprehensive table, out of 100 possible points for the ideal environment for public-private partnership, Croatia got 63.5 points. Followed by Lithuania with 62.9 and Slovenia with 61.8.

These three countries are in line for receiving of public private partnerships investments. All others are in the category of those with some degree of the developing market. With 10 points behind Croatia's leading trio, are Latvia, Hungary, Poland, Macedonia, Russia and Albania. Of the other countries in the region, Serbia is 14th with 43 points, Montenegro is at the 19th position with 31.7, followed by Bosnia and Herzegovina. The worst ranked in this analysis is Belarus, which did not actually make the transformation of the planned socialist economy into a market, and in The Economist's analysis it only got 10 points.

⁵ CIS is a regional intergovernmental organization of 10 post-Soviet republics in Eurasia formed following the dissolution of the Soviet Union.

There are a number of criteria and reasons why some countries are more successful and some less successful in public private partnerships. There are countries that do not have any infrastructure for this kind of investment, such as countries like Belarus, Georgia or Kyrgyzstan. On the other hand, there are countries like Slovakia and Hungary that have all the conditions for greater presence of public private partnerships, but there is no political will to implement it. In countries such as Turkey, with a developed market and sufficient capital, and with potential political will, it is necessary to better regulate the legal framework for this type of investment. The Economist states that countries like Russia, Slovenia and Bosnia and Herzegovina have the necessity for public-private partnership, but there is no knowledge, either at the state level, and even less in the local self-government for the implementation of such projects. Therefore, most of the projects in these countries were made in an international arrangement.

This kind of investment in some countries is prevented by the international community itself, if a country or just a project under the European Union financial package or the World Bank or the arrangement with the International Monetary Fund itself, mixed investments is undesirable.

Although it has not implemented the most projects of public-private partnership itself, Croatia has the strongest institutional framework for it. Moreover, the country is the only one that had a specialized Public Private Partnership Agency as a central state body that coordinates all activities related to such projects. For many of Croatia, Lithuania and Slovenia do not have such an agency, but public private partnerships work is done by various ministries, specifically in Lithuania, the Ministry of Economy and Transport, and the Central Office for Project Management. (The Economist Intelligence Unit Limited, 2013)

5.1. Legal framework and policy

The area of public private partnerships in the Republic of Croatia is regulated by the Public Private Partnership Act (OG 78/12) and the accompanying Regulation on implementation of Public Private Partnership Projects (OG 88/12), Concessions Act (OG 143/12) and the Public Procurement Act (OG 90/11 and OG 83/13) relating to the procedures for awarding the public procurement contracts and concessions contracts.

In wider sense integral part of the legal system are other relevant sectoral acts regulating concessions.

The Law clearly defines its scope of application, regulates the selection procedure (publication, preselection and procedure for requesting proposals, publication of concession award, possibility of review procedures) and provides for a flexible framework for the project agreement (with reference to termination/compensation, tariff setting/service standards, etc.) as well as the manner and procedure for granting of the agreements regarding other types of public private partnership, contest of the agreement of public private partnership, rights and obligations of the public and private partner and legal protection in procedure for granting of the agreements for public private partnership. The Public private partnerships law is quite well written and constitutes a solid basis for the development of public private partnerships in the country provided the financing and arbitration issue can be solved in accordance with international best practice for public private partnership. Public private partnership law and public procurement law as well generally are aligned with the European Union *acquis*, and are duly enforced.

In a concrete sense, Republic of Croatia has adopted the following acts: Public Private Partnership Act (OG 78/2012); Act on amendments to the Act on PPP, (OG 152/2014); Public Procurement Act (OG 120/16); Concessions Act (OG 69/17); Act on the State Commission for Supervision over Public Procurement Procedure (OG 18/2013, 127/13, 74/17); Act on Amendments to the Nature Protection Act, (OG 139/08, OG 15/18); Health Protection Act, (OG 150/08, OG 71/10, 139/10, 22/11, 84/11, 12/12, 35/12, 70/12, 82/13, 159/13, 22/14, 154/14, 70/16, 131/17); Agricultural Land Act, (OG 120/18); Act on the Amendments of the Act on Cableway designed to Carry Persons, OG 75/09); Act on Protection and Preservation of Cultural Goods, (OG 87/09, 88/10, 61/11, 25/11, 136/12, 157/13, 152/14, 98/15, 44/17 Waters Act, OG 153/09, 130/11, 56/13, 14/14, 46/18); Act on the Amendments to the Electronic Media Act, (OG 12/09; Act on the Amendments to the Hunting Act, OG 75/09, 140/05, 75/09, 14/14, 21/16, 41/16, 67/16, 62/17); Act on Liner Shipping and Seasonal Coastal Maritime Transport, (OG 87/09); The Act on the Amendments to the Waste Act, (OG 87/09; Act on Gas Market, OG 18/18); Act on the Production, Distribution and Supply of Thermal Energy, (OG 20/10; Utilities Act, OG

79/09, 153/09, 49/11, 144/12, 147/14, 36/15; Railways Act, OG 94/13, 148/13, 73/17); Act on the Amendments to the Maritime Domain and Seaports Act, (OG 141/06; Mining Act, OG 56/13, 14/14, 52/1875/09); Public Roads Act,(OG 153/09). (Agency for investments and competitiveness, 2017)

Republic of Croatia adopted the following regulation on amendments to the Regulation on the implementation of PPP projects, OG (15/2015); Regulation on implementation of Public Private Partnership projects, (OG 88/12); Ordinance on the Organization and Keeping of the Register of Public-Private Partnership Contracts (OG 16/2013); Ordinance on small value PPP projects, (OG 23/2015); Regulation on the methodology for drawing up and handling tender documents and tenders, (Official Gazette 10/2012); Regulation on public procurement notices, (Official Gazette 10/2012); Regulation on control over the implementation of the Public Procurement Act, (Official Gazette 10/2012); Ordinance on training in the field of public procurement, (Official Gazette 06/2012); Ordinance on the application of the Common Procurement Vocabulary (CPV), (Official Gazette 06/2012); Ordinance on the list of entities bound by the Public Procurement Act, (Official Gazette 19/2012); Ordinance on the public procurement in diplomatic missions and consular offices of the Republic of Croatia abroad, (Official Gazette 22/2012); Ordinance on the Concession Register (OG 26/2013); Regulation on format and publication of standard concession notices (OG 20/2013); Ordinance on the establishment and keeping of the Concession Register (OG 9/09). (Agency for investments and competitiveness, 2017)

Particular articles from the Law on public private partnerships are not cited nor explained in this chapter due to the fact that there is thorough description in the chapter that covers the Republic of Macedonia and the Laws for both countries are very similar. Nonetheless, there is one large difference, that is the reason why I have chosen Republic of Croatia as a case study for this thesis. It is the fact that Republic of Croatia has a separate body responsible for public private partnerships and that is the Agency for investments and competitiveness.

5.2. Institutional framework

The quality of contracts accompanied by the necessity to avoid bribery and corruption in the public private partnerships contracts is of utmost importance. Public private partnership needs to serve the public interests. On the grounds of the Public Private Partnership Act was established the Agency for Public Private Partnership (General assembly, Public Private Partnership Act OG 78/2012) as a central national authority and knowledge center in charge for evaluating, approving and monitoring the implementation of public private partnership projects, particularly according to article 22 :

a) The Agency was to conduct the procedure for the approval of Public Private Partnership project proposals; b) publish the list of information on projects that are intended to be implemented according to the public private partnership model; c) publish the list of the approved PPP projects; d) co-operate with public bodies in the procedure of selection of private partner; e) constitute and keep the Register of public private partnership contracts; f) monitor implementation of PPP projects according to the provisions of this Act; g) propose to authorized proposers amendments to this Act; h) participate in proposing drafts of bylaws from the field of public private partnership; i) make and publish guides and handbooks for preparing; concluding and implementing PPP projects; gives directions and explanations from the field of PPP; j) pass decisions in relation to performance of tasks under the competence of the Agency provided by this Act; k) participate in informing the subjects on the market of public private partnership on legal and institutional frame of PPP, in transfer of PPP know-how and in promotion of the best practices, co-operate with foreign state bodies entitled to apply PPP models and implement PPP projects; and with the international organizations and institutions for the purpose of advancing the national PPP model theory and implementation, and for the purpose of fulfilling the international obligations of the Republic of Croatia that were transferred to the competence of the Agency; l) co-operate with the national scientific and research institutions, social partners, economic and non-governmental organizations and other stakeholders for the purpose of advancing the national PPP model theory and implementation, m) perform other tasks in

accordance with the provisions of this Act and the Statute of the Agency. (General assembly Republic of Croatia, Public Private Partnership Act OG 78/2012)

Pursuant to the Act on Amendments to the Public Private Partnership Act (OG 152/14) and the Amendments to the Law on Establishment of the Investment and Competitiveness Agency (OG 152/14), on March 2, 2015 the Agency for Public Private Partnership was merged with the Agency for Investments and Competitiveness (AIK), within which the Sector for Public Private Partnership took over the responsibilities of the former Agency for public private partnership. (General Assembly Republic of Croatia, 2014)

In the preparation and implementation of the public private partnership projects, the Agency has a key role with the Ministry of Finance which grants approval for the PPP projects regarding their compliance with the budget projections and plans, fiscal risks and constraints regulated by special regulations, as well as the financial and fiscal sustainability of the project proposal. Similarly, the Ministry of Finance approves the public private partnership project proposal. In this sense, the Agency and the Ministry of Finance consists the functional unit. The process of approving project proposals includes other relevant ministries and other central state administration and local and regional self-government responsible for the adopted sectoral development plans and strategies with defined objectives and expected impacts (Article 11, Public Private Partnership Act OG 78/2012).

In the public procurement system, the significant role has the Ministry of Economy (training, supervision and enforcement procedures for the award of public contracts), and the State Commission for Supervision of Public Procurement, in charge for handling the appeals in the public procurement procedures, the granting of the concessions and selecting a private partner in public private partnership as a body of first instance and second instance Administrative Court as a body competent to deal with the same procedures. (Agency for competition and investment, 2017)

A series of projects have been accomplished in Croatia and Lithuania, the majority of which is of a national character and of less value is still in preparation. In contrast, almost all Slovenian

projects are worth more than a million euros and most of them are related to international projects. Bosnia and Herzegovina have a number of problems with the implementation of public private partnerships from the institutional framework, legal security, knowledge and financing, to the entity-wide division of the country, which further slows down such projects.

The Economist estimates that in Republican Ruska the forest distance was in Behr, where private investments are better accepted and are easier and faster realized in relation to the rest of the country. Montenegro must also significantly improve the legal and institutional framework, as well as the overall technical capacities for the implementation of public-private partnership projects. This analysis states that there is obviously a political will in Montenegro to improve the conditions that would facilitate public private partnerships projects and concessions. The main problems in Montenegro are the lack of knowledge for the implementation of such projects, but also the problem of unclear and intertwined competencies and poor coordination of the institutions involved. (The Economist Intelligence Unit Limited, 2013)

5.3. Money from European Union funds

According to the Economist each of the 25 countries surveyed has its own specificities, but it can be divided into at least two groups - the members of the European Union and the others. Members of the Union have much more opportunities to carry out public-private partnership projects. This is primarily reflected in the institutional framework - the example of Slovenia and Croatia, which have harmonized their legislation on this issue with the European Union regulations before they became members of the Union, is cited. (Ibid.)

The unique market also enables easier transfer of knowledge, goods and capital. Similar to financial transactions, from lending to subsidization and payment, are within the European Union much simpler and more secure than when it comes to countries outside the Union. But there are also aggravating circumstances, because, according to The Economist, local units in European Union countries are much less interested in public-private partnership projects than in non-member countries. The reason for this is because they count on public funds, and also on

European Union funds that generally does not want to participate in infrastructure projects that include private capital. (Ibid.)

Investment and Competitiveness Agency has been granted the second European Union project 'Combined Financing Instruments'.

European Union Regulation 1303/2013 extends the door to the use of European Union funds in public-private partnership projects. The combination of European Union funds and public private partnerships is supported by the European Union Commission and the European Union Investment Bank, as well as other entities of the organization and financing of public infrastructure projects.

The reasons are simple and logical: the involvement of the private sector in the construction, maintenance and financing of public projects increases the quality of public services, reduces the overall cost of the project, long-term preserves the value and quality of public buildings, public investments are delivered within the planned budget and deadline, increases the value for money of taxpayers and end users, reduces the pressure on the current public budget and allows for the increase in public investment, while at the same time reducing the public debt relatively.

By combining public private partnership with European Union funds, the capacity of paying long-term liabilities increases, which positively affects the deficit and price of public services for end users. When European sources, European structural investment funds (ESIF) and European Fund for strategic investment (EFSI) are used in combination with public private partnerships, the efficiency of using these resources increases, as less funds are needed for an equal amount of public performance. This fact is especially important for taxpayers, but also for domestic funds such as, for example, Fund for Environmental Protection and Energy Efficiency. (Ibid.)

5.4. Pioneering venture

The former public private partnerships Agency started developing a procedure for combining European Union funds with public private partnerships believing that such financing of public investment would be particularly important for Croatia as an over-indebted country. The task had been and remained to create the conditions for effective public investment. In mid-2013 Croatia defined the procedure and described it in the manual "Combining the public private partnerships model with European Union funds". (Damir Juricic, 2016) At that time, Croatia was one of the first countries in European Union to have a well-defined combined financing procedure. It should also be recalled that the so-called "Junker Fund (EFSI) one of the requirements clearly defined exactly such a procedure. Later Croatia perfected the procedure. Since this is a complex financing model, but particularly important for increasing the number of public investments, The European Union recognized the importance of further development, and decided to finance non-refundable training with the aim of applying it in other countries. Also, what is particularly important to Croatia, using the public private partnerships model, is that the use of various financial instruments of European Union funds is significantly more efficient. These instruments are particularly interesting for the domestic construction sector, which could replace the missing part of their own sources of financing. With this project Croatia will further develop this part. (Luciana Dujilović, 2017)

5.5. Public private partnerships in the energy sector

A more intensive application of public private partnerships could result in the effect of a larger volume of public investment with the relative stagnation of public debt.

Public-private partnership modeling is often mentioned in energy efficiency projects. Croatia uses the Esco Model as well as The United Kingdom and other EU countries. According to the List of providers of energy services in Croatia, there are ten ESco companies that operate in Croatia. Through public private partnership model ESco, Croatia executed energy efficiency projects like:

- Ministry of Transport, Maritime Affairs and Infrastructure, Zagreb;

- Police station Dubrava, Zagreb;
- Police station Sisak, Sisak;
- Home for mentally ill adults Bidružica, Desnić;
- Rehabilitation Center Fra Ante Sekelez, Vrlika;;
- Primary school Vukovina, Velika Gorica;
- Multipurpose building Ožujka br.6, Zagreb;
- General Hospital Varaždin, Varaždin;
- Clinic for Infectious Diseases Fran Mihaljević, Zagreb;
- Pupils' home, Varaždin;
- Vocational and Economic School, Varaždin;
- Mechanical and Traffic School, Varaždin;
- Electric Power School, Varazdin;
- Construction, natural science and mining school, Varaždin. (National portal for energy efficiency)

Dammar Juristic, deputy director of the Agency for Investments and Competitiveness, at an interview for Poslovni dnevnik on 10.11.2015 explained how these investments are taking place, whether there is a problem and what kind of benefit would be from taxpayers and the state from public private partnerships projects.

On the question about the use of public-private partnership model in energy efficiency projects, that is often mentioned in the media, and the benefit of public private partnerships application Mr. Juristic answer that “Public private partnerships idea is based on the efficient management of public investment in their overall lifetime. It manages risks. Namely, any investment, whether public or private, is created by a large number of risks. It may be, symbolically, to say that every

investment is a bag is full of risk. Unlike traditional models where public order managers take control of almost all project risks (among them, surely, a large number of those who do not manage effectively), public private partnerships risk transfers to that entity in a project that manages them most efficiently. This optimally shares the benefits and costs, reduces public expenditures in the overall life of a public building and achieves value for taxpayer money. It is precisely this value for money taxpayers that should be the basic criterion in assessing each model of public investment delivery. To open the mentioned risk bag and identify each risk, quantify and allocate it, it seems to be a socially justified and economically rational approach to public management in the preparation of public investments.” (Juricic, 2015)

On the question about the concept of Energy Performance Contracting (EPS) and ESCO (Energy Service Company) is related to energy efficiency as well as public private partnerships and what is the difference Mr. Juristic answered that “The EPS is a contract where the energy efficiency project is implemented by the involvement of the supplier (usually from the private sector) that undertakes to implement energy efficiency measures and be charged according to the savings achieved. ESCO is often referred to as a model, but it is a legal entity (trading company) that carries out agreed energy saving measures. In public private partnerships, such a company is called SPV (Special Purpose Vehicle). The energy efficiency project can be delivered using traditional models (procurement of works - borrowing, commodity loan or financial leasing) and alternative models (procurement of services - public private partnerships or operational leasing). In traditional models, all risks are assumed by the contracting authority, and in the case of alternative, most of the risks are transferred to the provider of availability services as defined by European Union. It is also important to point out that different models also have a different impact on public debt. As a rule, all traditional models go into public debt while the alternative models do not have to.” (Juricic, 2015)

About the question on the regulation of public private partnerships in Croatia regarding the investments in increasing energy efficiency are encouraged and generally accepted and consumers of such projects, for example, local and regional self-government units, encounter problems in immediate application, Mr. Juricic answered that “The problems in immediate

application come from two basic sources. One is the legislative framework, the other is ignorance. It is about the fact that regulations that regulate the preparation and implementation of energy efficiency projects are not fully harmonized (regulations in the area of energy efficiency, in the area of budget, concessions, public private partnerships and European Union criteria). I believe that we will be examined by us from direct practice, not only because of the greater physical volume of investments in this area, but more than efficiently and effectively delivered investments. The public private partnerships are exceptionally well regulated in our country. According to The Economist and EBRD research, the Croatian legislative framework for the implementation of public private partnerships ranks first in the ranking of 28 countries of Southeast, Eastern European Union and CIS countries. It is a model, despite the negative thinking of individuals, a delivery model with head and tail. It is a clear procedure for preparation, evaluation and approval, procurement and implementation. It is a transparent model in its overall lifetime. However, the impression that this transparency is at the same time the biggest enemy. This is a model in which the maximization of value for money for taxpayers is the focus.” (Juricic, 2015)

When it comes to showing how the public private partnership model works within smart cities in practice, there are not enough examples. Regarding this issue the next question was connected with the description of how public private partnerships work in practice on an example of public lighting? “We are still in the Public-Private Partnership Agency, and even now in the Agency for Investments and Competitiveness emphasized that it is not socially justified, and even economically rational energy efficiency projects in public lighting can only be reduced to replacing lamps. Our view is that the public lighting system is not just a place of cost, but a valuable resource. The public lighting system is an indented system of electric lines, which can be used to replace numerous modules, in addition to replacing the luminaires. These can be systems of electric vehicle chargers, surveillance camera systems for increasing the safety of citizens and their property, sensor systems for increasing the quality of life such as, for example, pollen sensors that would be of great use to allergens while moving city, DTK infrastructure systems, it is probably possible to introduce an optical infrastructure in the existing cable network and to connect all public buildings with optics, thus increasing the security of public data. It is that in

such a way the lighting system begins to generate revenues that affect the reduction of public expenditures. That is, you will agree with me, rational. Of course, I only listed the additional infrastructure, but the services that would deliver the infrastructure with this infrastructure are numerous and we can, in a small number, predict it today.” (Juricic, 2015)

In my opinion, with his responses Mr. Juricic wanted to underline the importance of using the public private partnerships model especially in the energy sector.

5.6. The market in Republic of Croatia

Public and private sector cooperation in the Republic of Croatia initially appeared in the form of concessions and various forms of institutional forms of public private partnerships (companies in full or majority public ownership that fulfill public function, etc.) where the Concession Act, the Public Law on procurement etc. By implementing several pilot projects (gymnasiums in Koprivnica, the county administration in the Varaždin County, the primary and secondary school portfolio in the Varaždin County, etc.), contractual forms of public private partnerships began to be used in Croatia to a considerable extent (since 2005). Trial projects have been accomplished within the existing legislation and it is precisely at the beginning of the implementation of contractual forms of public private partnerships that there has been a need for further regulation of the subject area by the state. In the Republic of Croatia 14 projects have been agreed (in the phase of use) until now, 12 projects have been approved, and 8 of them are intended to be implemented. (Luciana Dujilovic, 2017)

Investments in education account for the largest share in the total structure (40%). In addition to the most contracted projects (nine out of a total of 14) referring to investments in the education sector, another 3 projects have been approved. Investments in the energy sector account for 17% of the total market. These investments relate to preparatory and contracted reconstruction projects of public lighting in the City of Vrgorac, the City of Novi Vinodolski, the City of Novae, the City of Kraljevica, the Municipality of Visnjan and the Municipality of Kostroma. Since out of the 14 contracted projects none of the one concerned the energy sector, we can conclude that the public private partnerships model in the Republic of Croatia is recognized as a desirable purchasing model by this sector and its application is expanding. The sector of health refers to a

15% share of investments, while the investments in public administration and sports facilities account for an equal share of 9% of the total market. The smallest share (3%) is investing in objects of cultural significance, which relates to the Croatian History Museum in Zagreb. (Luciana Dujilovic, 2017)

It should be aspired to consider the application of public private partnerships in other economic sectors that need development and progress, such as, for example, industry and energy.

5.7. Public private partnership case: Gymnasium "Fran Galovic" and sports hall in Koprivnica

The former secondary school building in Koprivnica had been built in 1972 and there were 3 secondary schools with about 2600 high school students. Due to the lack of classrooms, corridors and sanitary facilities were used as a student space, and the teaching took place in as many as three shifts, which in pedagogical, didactic and humanitarian terms became unsustainable. The inadequate capacity, the lack of functionality and the irrationality of the existing building were the reasons why Koprivnica high school students attended classes in conditions that did not satisfy even the most elemental needs that were not in line with both Croatian and European Union pedagogical standards. The construction of a new gymnasium building in Koprivnica has thus become one of the most important priorities of the city of Koprivnica and the Region of Koprivnica-Križevci. (Koprivnicki godisnak, 2006)

In 2006, it had been decided that the new building would be built according to the model of public-private partnership. The contract in the expected 25-year period was concluded between the City of Koprivnica and Koprivnica-Križevci County as public partners and the company Technique SPV d.o.o. in the role of a private partner. By the PUBLIC PRIVATE PARTNERSHIPS Contract, the City of Koprivnica gave the right to build a land on its property for a period of 25 years and took over part of the space of the sports hall and related facilities (it paid 38.5% of the total amount of rent), while the County of Koprivnica-Križevci rented school and accompanying premises (pays 61.5% of the total amount of rent). In the selection process of the private partner, the negotiated procedure of the public procurement was used and, based on the analysis and alignment of the tender, according to the lowest price criterion, the final offer of the most favorable bidder was selected and accepted (Tehnika d.d. Zagreb), which, solely for the purpose

of realization of the said project, founded a special purpose company (Tehnika SPV doo). By agreement, the private partner undertakes to take over the construction and bear the risk of constructing the building, the risk of availability of built capacity, and the risk of variation in demand in the area of space intended for commercialization. It was agreed that during the duration of the contract, land is owned by the City, and the owner of the school is a private partner. After 25 years the object is transferred to the property of the public (public sector). The contract is paid by the City of Koprivnica and Koprivnica - Križevci County in the form of 286 monthly wages of approx. 700,000 HRK (due to changes in the market conditions, the rental price is adjusted monthly according to the change in the consumer price and middle exchange rate of the European Union - the report of the Croatian National Bank). The current fee paid by the City of Koprivnica amounts to HRK 298,644.35 per month, and the fee paid by the Koprivnica-Križevci County is 545,741.36 HRK per month. The city of Koprivnica receives a fee of HRK 43,849.96 per month from the private partner. The price of construction and equipment without VAT amounted to 74,861,322 kn, which according to the official data in all segments is significantly cheaper compared to other halls built according to the model public private partnership, or in comparison with the halls built according to the traditional model. For example, the construction of the Koprivnica gymnasium and the hall (it should be noted that the schools are more expensive in the construction and equipping of the hall) is twice cheaper than the Varaždin and Zadar hall, and even three times cheaper than the construction of the Split and Zagreb Hall. The same applies to the rental price which is from 30% up to 100% lower than the rental prices of other halls built according to the public private partnership model. (Barković & Sirić, 2014)

The project included the construction of a school base with a hall in the Koprivnica municipality board of Podolice, which will be attended by 560 pupils, the reconstruction of the Djuro Ester elementary school and the construction of the accompanying hall, and the upgrading of the Art School through the reconstruction of the former synagogue building, and the estimated value of the Koprivnica School project, of amounts to 120 million kuna.

"This is a big step for the city of Koprivnica, but also for Croatia. The public private partnership project in the education sector should give an enormous wind in the back of investments and

increase the gross domestic product in the Republic of Croatia," said Minister Jovanovic, stressing that the investment storm starts in Koprivnica. (Vedran Brkulj, 2012)

He added that the ministry has developed a potential investment framework for the implementation of the public private partnership model in elementary and secondary schools in the total amount of HRK 6.2 billion, which includes the construction, upgrading, reconstruction or equipping of 338 facilities declared by the counties, the City of Zagreb and 33 bigger cities as bearers of financing of works.

This investment framework will cover a total of 835,334 square meters of educational institutions, and for each square meter will be spent 7,442 kuna.

The Minister noted that Koprivnica had experience with public private partnerships, considering that in the first cycle of that model in Koprivnica was built the gymnasium Fran Galovic, and the Croatian government took over the costs of that old public private partnership. In this way, the county provided three million kuna of annual potential investments in the county budget. Therefore, from the county, the minister said, "I expect a core innovation and entrepreneurship to go through the model of public private partnership. In the construction of a vocational school in Koprivnica." (Poslovni, 2013)

For this framework, the investment through public private partnership Ministry will provide 55 percent, while the local government units will have the remaining part of the funds.

After Koprivnica, the first to sign the agreement, the signing of the agreement in the Varaždin County for the four educational institutions is followed.

Commenting on the criticism of the profitability of public private partnership through education, the minister told reporters that this is the only model that will ensure the construction of schools, and all those who oppose him and have a better solution, the ministry will support.

Asked by reporters on the possible cuts in finance to the Ministry of Science, Education and Sports, and so that it could reflect on these projects, Jovanovic said that preparations are being made for the budget rebalance and the budget for the next year.

"You have heard from the Minister of Finance that this is an excessive budget deficit, but we do not expect cutting, but we expect the system to rational disposal of funds, so savings are possible. We are also analyzing possible outsourcing, which means that we may be able to get all non-steady staff from school, but only based on the figures that will be made in the next month. We want to spend the money we have in the system more rationally and better, "Jovanovic pointed out.

Minister Jovanovic also addressed the issue of health care for students, pointing out that amendments to the Law on Health Insurance will be discussed in the government tomorrow, and in the parliamentary procedure they should find the next week to be adopted before November. They will allow all regular students, eight years from the date of enrollment to faculties, to have health insurance as they have had to date. (Poslovni, 2013)

On the question about the weather public private partnership is a solution to the public debt as stated in the public private partnership policy, the answer was the following:

"Public private partnerships, concessions, real estate construction and operating leasing are the only models that can achieve the performance of project records outside the public debt. Indeed, a more intensive application of public private partnerships could result in the effect of a larger volume of public investment with the relative stagnation of public debt. However, this is not the primary reason for using public private partnerships. Primary reasons are higher value for money taxpayers, smaller public expenditures because, according to the Public private partnerships Law, the total cost of living in public private partnerships is less than the same for traditional models, more efficient project risk management, better quality of public services, equalizing the benefits and costs of existing and future generations of users, increasing the value of private companies entering the public private partnerships project, its greater transparency. The most interesting reason for its application is the effect of reducing the asymmetry of information between taxpayers, as a source of budget financing, and public management, such as those who decide to spend money on taxpayers. On this subject, our society has not yet started a public debate." (Poslovni, 2013)

5.8. Conclusion

Although public private partnership projects in the Republic of Croatia have only in the past 10 years come to life, a certain euphoria among members of local self-government units and other public sector representatives can be noticed. However, it should be noted that public private partnerships models do not offer benefits for all public infrastructure projects. The advantage of the public private partnership model over the traditional way must be proven by analyzing the costs of the public sector, Public Sector Comparator. Only if this way proves the advantages of the public private partnerships model over the traditional way, the tender procedure starts. After the competition, it is necessary to re-conduct the analysis and determine whether the risk allocation is proposed by the tender documentation and accepted by the tenderer, i.e. whether there have been some changes in the negotiation or competitive dialogue process, as well as a comparison of the offer against the predictions presented in the analysis. Only if this analysis offers favorable results, i.e. proves the advantages of the public private partnerships model, the procedure for contracting and implementing the public private partnership project begins. Public private partnership projects offer new ideas in developing and implementing public infrastructure projects. Properly guided in accordance with best practices and learned from the experiences of already implemented projects, public private partnership models can greatly accelerate the development of public infrastructure and bring significant benefits against traditional purchasing methods. In the years to come, I think that Republic of Croatia will see whether the benefits of the public private partnership model in the completion of projects come to full expression in the Republic of Croatia. This area requires detailed analysis and comparison of public private partnership projects with similar projects implemented in a traditional way. Such analyzes should provide answers to many more unresolved issues, but also give guidelines for further efforts to make barriers to the implementation of such projects as small as possible and to further reflect the benefits that these models can offer.

SWOT Analysis Republic of Croatia



In the SWOT analysis one clearly sees that the charts are similar, if not the same with the SWOT analysis of The United Kingdom. That is a good recommendation that no matter the level of development, countries have similar way of comprehending the public private partnerships.

Chapter VI. Public private partnerships in Republic of Macedonia

My choice of developing county is obviously the Republic of Macedonia, because the main goal of this research is to improve the legal and institutional frame of public private partnerships in Republic of Macedonia.

With the decentralization, which started with the laws on local self-government in 2002 (General assembly Republic of Macedonia, 2002) the scope of competencies of the local self-government units significantly increased. In addition to the previous competences at the local level, new competences were also transferred that relate to the performance of public services (commercial and non-commercial).

The normative assumptions about the manner and conditions for performing public services or activities of public interest are contained in the laws by which these works are determined as works of public interest of local importance. Depending on whether it is a matter of economic or non-economic activities of public interest, public services at local level are most often provided through the public services (public enterprises and public institutions) established by the local self-government units.

In addition, for the provision of public services, municipalities can establish joint public services. Economic activities of public interest may also be performed by legal entities or natural persons by granting a concession or permit by the local self-government units or by including them by public enterprises as subcontractors by concluding service contracts. Non-economic activities of public interest are performed by public or private institutions, or by institutions of mixed ownership. (Jonoski, 2014)

One of the possible ways of more efficient and better performing of public services, as well as solving issues from local economic development, is the establishment of forms of public private partnership between the units of local self-government and private sector entities.

6.1. Legal framework

The first Law on Concessions was published in 1993 in the Official gazette of Republic of Macedonia. This law regulated the manner and conditions under which goods of general interest for the Republic determined by law could be given for use with an approval (concession). (Article one). Today, it is not in force. (General Assembly Republic of Macedonia, Official Gazette No. 42/1993)

In 2002 there was a new Law on Concessions that regulated the manner, procedure and general conditions for issuing concessions related to the goods of general interest for the Republic and the performance of activities related to these goods for which a concession is stipulated by a special law. Currently, it is not in force. (General Assembly Republic of Macedonia, Official Gazette No. 25/2002)

For the third time a new Law on concessions and other types of public private partnerships was voted by the General Assembly of Republic of Macedonia in 2008. This law regulated the conditions, manner and procedure for awarding a concession, the content of the concession agreement, the rights and obligations of the grantor and the concessionaires, the legal protection in the procedure for granting the concession, the manner and the procedure for awarding contracts for other types of public private partnership, the content of the contract for public private partnership, the rights and obligations of the public and private partner and the legal protection in the procedure for awarding public-private partnership contracts. Currently, it is not in force, as well.

Furthermore, there are three rulebooks originating from the previously mentioned Law on concessions and other types of public private partnerships (General assembly Republic of Macedonia, Official gazette No. 7/2008): Rulebook on the form and content of the register of awarded contracts for concession/ public private partnership and form and the content of the data for awarded contracts for concession/public private partnership (Ministry of Finance, Official gazette Republic of Macedonia No. 2008) that today is not in force, due to the fact that originates from Law that is not in force; Rulebook on the format and contents of the report on

the concluded concession/ public private partnerships agreement and unconcluded concession/public private partnership procedure (Ministry of Finance, 2008) also is not in force, due to the fact that originates from Law that is not in force ; I Assembly Republic of Macedonia, Official Gazette No. 7/2008)

A procedure for a Drafted Law on Concession and Public Private Partnership was initiated in August 2009, by the Ministry of Economy. The General Secretariat, the Secretariat for European Affairs, the Ministry of Finance, the Ministry of Transport and Communications, the Ministry of Agriculture, Forestry and Water Economy, the Ministry of Justice and the Public Procurement Bureau had positively declared the Draft-Law on Public Private Partnership. The law was published in Official Gazette of Republic of Macedonia in number 6 on January 13, year 2012. (General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

The purpose of the proposed law was to ensure full harmonization of European Union legislation in the area of public private partnership and concessions, that is, the adoption of appropriate legal legislation as a necessary presumption for increasing investments and securing more dynamic economic development. The proposed law was based on the following principles: the procedure for awarding a concession for goods of general interest and a contract for establishment of a public private partnership shall be conducted in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment and mutual recognition.

In short, in the Law are presented, the material-legal provisions that regulate the issues of the subject, the actors, the form of the partnership, and the rules relating to the public private partnership agreement. Although the law explicitly underlines the public interest as a central precondition for concluding a public private partnership, its provisions are aimed at maintaining a balance between public and private interest, which inevitably intersect each other at each conclusion of a contract. According to the law, the contracting parties, the public and the private partner, are completely equitable, but they carry quite different features and obligations. At one end is the public partner, as a legal entity that awards the contract. Public Private Partnership. It may be the Republic of Macedonia, the municipalities, The City of Skopje, public enterprises,

public institutions, commercial companies established by the Republic of Macedonia as well as companies on which the state or the bodies of the municipality, the City of Skopje and the municipalities in the City of Skopje, through ownership, have direct or indirect influence, as well as other legal entities that, according to the laws, perform public authorizations. On the other side is a private partner represented by a domestic or foreign legal entity or natural person or by a consortium through which a public partner concludes a public private partnership contract, or who for that purpose-based company for a special purpose. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

Today's Law regulates the awarding of a concession for goods of general interest and an agreement for the establishment of a public private partnership, the legal protection for any person who has or has had an interest in obtaining such an agreement and who risks of being damaged in the procedure for awarding such agreement, as well as other issues related to the concessions of goods of general interest and contracts for the establishment of a public-private partnership. There are 5 amendments to this law and the most important is the modification of the law published in Official Gazette of the Republic of Macedonia number 147 from year 2014 where among other additions the lawmaker enhances an additional 7 new articles that amended article 15.

There are six Regulations that originate from the Law on concessions and public private partnerships (General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012): Regulation on the form and content of the report for started but not ended procedure for awarding an agreement for establishing a public private partnership (Government Republic of Macedonia, Official Gazette Republic of Macedonia No. 44/ 2012); Regulation on the format and contents for the private partner's intention form, to grant agreement for works to third parties (Ibid.); Regulation on the form and contents for the announcement of the public private partnership agreement that have an assessment as concession for public work, or as concession for public service (Ibid); Regulation on the form, contents and manner of managing the register for the established public private partnerships agreements, and the outline and contents on the form for data of granted public private partnership agreements (Ibid); Regulation for the contents

of the feasibility studies for conducting concession on goods of general interest or to public private partnerships (Ibid); Regulation for the contents of the agreement for establishment of public private partnership and agreement for concession on goods of general interest (Ibid). And there is a Rulebook for the manner of use of the electronic system for electronic auction for awarding the agreement for establishment of public private partnership that is still in use because it originates from the Law on concessions and public private partnership (Ministry of Economy, Official gazette Republic of Macedonia No. 231/2015);

Article 15. Application of the Law on Public Procurement and of other special laws. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

The provisions of the Law on Public Procurement that refer to the procedures for awarding contracts for public works procurement and contracts for public services procurement shall accordingly apply to the procedures for awarding contracts for establishment of a public private partnership, unless otherwise determined by this Law.

The public partner shall conduct the procedures for awarding contracts for establishment of a public private partnership as an open procedure, restricted procedure, negotiated procedure with prior publication of an announcement, or competitive dialogue, in accordance with the conditions and in the manner anticipated by the Law on Public Procurement.

The provisions of this Law, as well as the provisions of the special laws, shall apply to the procedures for awarding concessions for goods of general interest by mandatory compliance with the basic principles and rationales determined in Article 8 of this Law.

Article 15-a, Electronic auction. The public partner shall mandatorily use an electronic auction as a final phase of an open procedure and restricted procedure where acceptable and appropriate offers are received, as well as of a negotiated procedure with prior publication of an announcement in the cases where no acceptable offer or appropriate offer in an open procedure, restricted procedure or competitive dialogue is received, and where the previous procedure has

been annulled without significant change in the initial requirements in the tender documentation, prior to the award of the contract for establishment of a public private partnership. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

The public partner shall state the use of an electronic auction in the announcement for award of a contract for establishment of a public private partnership and in the tender documentation.

The public partner shall be obliged to include the following in the tender documentation or in the open invitation for participation in an electronic auction: the part of the offer which is the subject-matter of the electronic auction, provided that it can be determined and expressed in figures or percentages; the information which are available to tenderers in the course of the electronic auction and when these information are to be made available; the relevant information concerning the electronic auction process (the manner of registration in the electronic auction system, the manner of identifying the participants in the electronic auction); and the requirements under which the tenderers can bid, and in particular the minimum differences allowed in the process of positive and negative bidding. (Article 15-b, Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012)

Article 15-c. Prior to the commencement of the electronic auction, the public partner shall conduct a full evaluation of the capacity and the initial offers of the tenderers in accordance with the requirements and the criteria referred to in the tender documentation.

The public partner shall invite all tenderers that have submitted acceptable offers to submit new prices or new values for the part of the offer which is the subject-matter of the electronic auction. The invitation shall be simultaneously submitted to all tenderers by using electronic means.

The date and time of commencement of the electronic auction, the manner of conducting the auction, as well as all necessary information concerning the connection with the electronic devices used in the Ministry of Economy, shall be stated in the open invitation.

If the criterion for awarding the contract for establishment of a public private partnership is economically the most favorable offer, the invitation shall state the outcome of the full evaluation of the relevant initial offer of the tenderer to which the open invitation is sent.

The electronic positive or negative bidding can start no sooner than two days following the date on which the invitations for participation in the electronic auction have been sent. (Ibid.)

Article 15-d. In the case where only one offer has been submitted which is acceptable or only one acceptable offer has remained, the public partner shall mandatorily invite the single tenderer to submit a final price via the electronic system for electronic auction for awarding a contract for establishment of a public private partnership.

In the cases referred to in paragraph 1 of this Article, the invitation to the single tenderer shall particularly include: identification of the part of the offer which is to be the subject for submission of a final price, and the time of submission of the final price which cannot be shorter than 48 hours as of the sending of the invitation.

The single tenderer shall submit the final price at the time which is set out in paragraph 2 line 2 of this Article only once, and if it does not submit a final price, the initially offered price shall be regarded as final.

The following can be the subject-matter of the electronic auction: a) only the price, where only the highest or the lowest price is a criterion for awarding the contract for establishment of a public private partnership; or b) the price or the new values of the part of the offer which is the subject-matter of the electronic auction stated in the tender documentation, if the criterion for awarding the contract for establishment of a public private partnership is the economically most favorable offer. (Article 15-e, Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

The electronic auction may be conducted in several successive rounds.

Article 15-f. During each round of the electronic auction, the public partner shall deliver to all tenderer's information needed to determine, at any time, their ranking. The public partner may also deliver other information in connection with: the number of participants in the respective round of the electronic auction; and the new prices or values that have been submitted in the respective round of the electronic auction by the other tenderers, provided that the tender documentation anticipates such possibility.

In the course of conducting the rounds of the electronic auction, the public partner must not disclose the identity of the tenderers. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

Article 15-g. The electronic auction shall be closed in one or several of the following manners: at a previously set time for which the tenderers have been informed in the invitation for the electronic auction; when the number of rounds determined in the invitation for the electronic auction is met, if the invitation also includes a time frame for each round or when new prices or new values that met the requirements concerning the minimum differences are no longer received, where the public partner, in the invitation, states the time period which is allowed to elapse after receiving the last offer before the electronic auction is closed.

Based on the results obtained upon the end of the electronic auction, the public partner shall select the most favorable offer, for which it adopts a decision, based on the criterion for awarding the contract for establishment of a public private partnership determined in the announcement for awarding a contract for establishment of a public private partnership and in the tender documentation, provided that the tenderer whose offer is the most favorable meets the prescribed criteria for establishment of the capacity.

If the electronic auction does not succeed, the most favorable offer shall be deemed the most favorable offer of the tenderer submitted in the previous phase of the procedure for awarding the contract for establishment of a public private partnership, except with regard to the negotiated procedure with prior publication of an announcement in the cases where no acceptable offer or appropriate offer in an open procedure, restricted procedure or competitive

dialogue is received, and where the previous procedure has been annulled without significant change in the initial requirements in the tender documentation. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

Article 15-h. The electronic auction for awarding of a contract for establishment of a public private partnership shall be conducted in the electronic system for electronic auction established in the Ministry of Economy. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

The Ministry of Economy shall manage and operate the electronic system for electronic auction for awarding a contract for establishment of a public private partnership.

The manner of using the electronic system for electronic auction for awarding a contract for establishment of a public private partnership shall be prescribed by the minister of economy.

The Law on concession and public private partnership is in a close relation to the Law on public procurement (General assembly Republic of Macedonia, Official Gazette No. 136/ 2007). This can be concluded from a simple glance at the Law on concession and public private partnership where the Law on public procurance is mentioned eighteen times.

This new amendment is possibly the strongest way in preventing corruption in public private partnerships.

6.1.1. The meaning of the terms in Public procurement Law

In article 4 the meaning of the terms defined in the Law on Public Procurement shall accordingly apply to the Law on concession and public private partnerships, unless otherwise determined by this Law.

The terms used in this Law shall have the following meaning:

- “Public works concession” is a contract of the same type as the contract for public works procurement, except that the consideration for such works consists in the right to exploit such works or in that right together with payment;
- “Public services concession” is a contract of the same type as the contract for public services procurement, except that the consideration for those services consists in the right to exploit such services or in that right together with payment;
- “Concession for goods of general interest” is a contract other than the public works concession and the public services concession the subject of which is award of a right to exploit goods of general interest;
- “Public partner” is a legal entity that awards a contract for establishment of a public private partnership, that is: the Republic of Macedonia; the municipality, the City of Skopje and the municipalities in the city of Skopje; the public enterprises, the public institutions, the trade companies established by the Republic of Macedonia, the municipality, the City of Skopje and the municipalities in the city of Skopje, and the companies where the state or the bodies of the municipality, of the City of Skopje and of the municipalities in the city of Skopje have an ownership-based direct or indirect influence, that is, where they own the major part of the capital of the company, have the majority votes of the shareholders/partners and appoint more than half of the members of the governing or supervisory board, that is, the governing bodies of the company, and other legal entities that, in accordance with the law, exercise public powers in the part of the exercise of the public powers;

- “Concession grantor” is an entity that awards a concession for goods of general interest, that is: The Republic of Macedonia and the municipality, the City of Skopje and the municipalities in the city of Skopje;
- “Private partner” is a domestic or foreign legal entity or natural person or consortium with which the public partner concludes a contract for establishment of a public private partnership, or which establishes a special purpose company for that end;
- . “Concessionaire” is a domestic or foreign legal entity or natural person or a consortium with which a contract for concession for goods of general interest is concluded or which establishes a special purpose company for that end;
- “Economic operator” is any domestic or foreign legal entity or natural person or group of such entities/persons that offers goods, services or works on the market;
- “Tenderer” is any economic operator that has submitted an offer;
- “Authorized signatory” is a person who is authorized by the public partner or the concession grantor to conclude a contract for establishment of a public private partnership or a contract for concession for goods of general interest;
- “Competence” are authorizations and duties and directions to execute the functions and duties of the concession grantor, that is, of the public partner;
- “Special law” is a law that regulates the issues related to the concessions awarded in the field regulated by that particular law;
- “Special purpose company” is a trade company that may be established by the private partner or the concessionaire for the purpose of concluding a contract for establishment of a public private partnership or for concession for goods of general interest and/or for implementation of a public private partnership or concession for goods of general interest (hereinafter: SPC);

- “Consortium” is a group of economic operators that jointly submit an offer or an application for participation, without having a special legal form;
- “Acceptable offer” is an offer that is submitted within the set deadline and for which it is established to fully conform to all the requirements of the tender documentation and the technical specifications and conforms to all the criteria, conditions and possible requirements regarding the capacity of the tenderers;
- “Electronic auction” is a recurrent process of positive or negative bidding realized after an initial full evaluation of tenders, whereby the tenderers have a possibility, exclusively by using electronic means, to revise the proposed prices, wherefore the ranking is made automatically by using electronic means;
- “Construction process” is carrying out construction activities or constructing a facility, design and carrying out construction or design activities and constructing a facility or finalizing by any construction means that correspond to the requirements determined by the public partner and that it itself conforms to certain technical and economical functions; and
- “Facility” is a result of a construction process or an existing public infrastructure in ownership or possession of a public partner or a public infrastructure that is to be completed under the contract for establishment of a public private partnership.

Under article 5 of the Law on concessions and public private partnerships- public private partnership is a form of contractually regulated, long-term cooperation between the public partner and the private partner, characterized by the following: a) the private partner assumes the obligation to provide a public service for the end users in fields of competence of the public partner and/or the obligation to provide the necessary prerequisites for the public partner to provide a public service for the end users and/or activities within its competence; b) in order to fulfill the obligations referred to in point a) of this Article, the private partner may assume an obligation to: finance, design, construct and/or reconstruct/renovate a public infrastructure facility, operate and maintain a new facility and/or a reconstructed/renovate

public infrastructure facility or exploit, manage and maintain an existing public infrastructure facility or any combination of the abovementioned obligations until the combination of the referred obligations is aimed at achievement of the goals set forth in point a) of this paragraph;

c) where assuming the obligation referred to in points a) and b) of this paragraph, the private partner usually assumes a significant part of the risks related to financing, construction, demand and/or availability and other such activities, management, maintenance and technical risks, depending on what has been agreed in the establishment of the public private partnership and is determined case by case;

d) each partner to the public private partnership during the public private partnership undertakes the responsibility for the risky events within its sphere of influence, or shares the responsibility in order to achieve optimal risk management during the partnership, inter alia, by using the managerial, technical, financial and innovative capacities of the private partner and by promoting exchange of skills and know-how – experience between the public and private partner, without being contrary to point c) of this paragraph;

e) in exchange for the assumed obligations, the public partner may award the private partner public works concession or public services concession, or may compensate them by payment;

f) the public partner may also enable the private partner to carry out certain commercial, economic activities, in addition to the obligations referred to in points a) and b) of this paragraph, determined by the contract, but only if there is no other possible way to ensure the necessary level of price efficiency of the private participation and reasonable recovery of the investment and

g) the public partner may transfer certain actual rights to the private partner, which are necessary to fulfill the contractually set forth obligations.

Depending on the purpose of the funds for consideration by the public partner for provision of public works and/or public services, as well as the distribution of the key existing risks, the public private partnership may be established as: public works concession or public services concession or contract for public works procurement or contract for public services procurement.

The public private partnership shall be established by a contract. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No. 6/ 2012).

6.1.2. Pros and cons of the existing legislation

According to Analytica (2017) the use of the lowest price as a unique criterion for awarding a public-private partnership/concession contract can violate the principle of “value for money”. Using the economically most favorable bid as the criteria for awarding the public-private partnership/concession contract is allowed but is subject to the consent of the Public Procurement Council. There is no explicate provision in the public private partnership law prescribing the prior consent of the Public Procurement Council for using the economically most favorable bid as the criteria for awarding the public private partnership contract, but in practice such consent is required. This comes from the fact that Public private partnership law prescribes that provisions from the Public procurement law concerning the awarding procedures shall be adequately applied to the award procedures for contracts establishing a public private partnership, unless otherwise provided by the Public private partnership law. Such understanding looks like unnecessarily bureaucratic approach. In addition to this, existing legislation on public procurement and public -private partnerships and concessions should be harmonized with the newest European Union directives on public procurement and concession. (Analytica, 2017)

Since 2014 the Public private partnership law obliged the public partners to use e-auctions (positive and negative auction) in awarding procedure i.e. in evaluation bid process. According to the Public private partnership law “electronic auction “shall mean a positive or negative auction realized after an initial full evaluation of bids, in which the bidders have a possibility, exclusively by electronic means to revise the offered prices so that the ranking is done automatically by electronic means. The Public private partnership law, however, applies to “possessions of common interest”; an ambiguous phrase and much rely on specific sectorial law for implementation purpose. Also, the law does not contain clear provisions concerning government support and financial security and overall the possibility of international arbitration remains questionable except with respect to the International center for settlement of investments disputes (ICSID) arbitration.

A general policy framework for improving the legal environment and promoting public private partnerships has not been identified in Macedonia. Policy documents like programs and strategies related to public private partnerships have not been adopted, yet.

6.2. Initiative for accession to public private partnership in Republic of Macedonia

In Republic of Macedonia as in worldwide, the decision to initiate a public-private partnership procedure is made by the public partner on the basis of a preliminary study of the project, which will determine its effectiveness and the risks associated with the implementation.

According to the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships (OECD, 2012) the study in particular contains:

- The risk associated with the implementation of the venture, considering the various ways of sharing this risk between the public and private partner and the impact of budget revenues and expenditures;
- The economic and financial effects of the venture, including the comparison of the cost of implementation of the venture within a public-private partnership with the costs of its implementation in another form;
- Comparison of the benefits related to the implementation of the venture within the framework of the public private partnership with the benefits and social consequences associated with the implementation of the enterprise with another form;
- The legal status of movable and immovable property, if the rights arising from the property are to be transferred or determined by the public partner to the private partner.

Funding - The total amount of funds to which the public partner can assume financial obligations in a given year in connection with public-private partnership contracts should be determined by the budget of the public partner.

When adopting the budget, the public partner should consider:

- The costs required to cover the obligations arising from public-private partnership contracts;
- The effects of remuneration, temporary suspension (interruption) or criminalization of the venture, which may arise from a public-private partnership contract; and
- Compensation costs (compensation) of private partners, which may arise from public-private partnership contracts.

If, on the basis of the feasibility study which is to justify the award of the contract for establishment of a public private partnership, it is confirmed that funds from the Budget of the Republic of Macedonia are necessary for the implementation of the contract for establishment of a public private partnership, it shall be necessary to obtain consent from the Ministry of Finance before the adoption of the decision on commencement of the procedure.

Risk - Depending on the type, the form and the manner of the financial participation of the private partner, the issues related to the risk of the execution of a given public-private partnership contract, the risks are borne by the public or private partner and they are subject to the regulation of the public-private partnership contract.

Ownership - In the event that the private partner owns the constructed facilities and equipment, the ownership is transferred to the public partner after the expiration of the contract for a public private partnership, unless otherwise stipulated in the contract.

Method of signing - The public private partnership agreement is concluded by the grantor / the public partner and the first ranked candidate within three months from the day of the decision for selection.

When concluding a public-private partnership contract, the first ranked candidate is obliged to act in accordance with the proposals submitted with the bid and the proposal of the public-private partnership agreement. (ibid.)

According to Article 19 on Law on Concessions and public-private partnership (General assembly, 2012) the award of a contract for establishment of a public private partnership shall be carried out by means of an announcement.

The form, content and manner of publication of the announcement for award of a contract for establishment of a public private partnership which is implemented as a contract for public works procurement or a contract for public services procurement shall comply with the Law on Public Procurement and its bylaws.

The form and content of the announcement for award of a contract for establishment of a public private partnership that is implemented as a public works concession or a public services concession shall be prescribed by the Government of the Republic of Macedonia and shall be published in accordance with the Law on Public Procurement.

The announcement for award of a contract for establishment of a public private partnership that is implemented as a public works concession and a public services concession shall particularly contain the following data: a) name, address, fax number and e-mail of the public partner; 2) a) place of implementation and b) subject of the public works concession or the public services concession, nature and scope of the works and/or services, as well as explanation of the justification to award the public works concession and the public services concession and definition of the aims; 3. a) time period for submitting applications, b) address for sending the applications, and c) language in which the applications should be written; 4) type of procedure for award of a contract, in accordance with Article 15 of this Law; 5) fee for the tender documentation; 6) personal, technical and financial requirements that the candidates should meet; 7) criteria to be applied to the contract award; 8) if necessary, the minimum scope of works to be awarded to third parties, regulated in accordance with the contract referred to in Article 48 of this Law; 9) if necessary, the minimum amount of the concession fee and/or the manner of calculating the fee; 10) publication date of the announcement; and 11) name and address of the competent body for deciding upon an appeal, information about the final deadlines for filing

appeals and, if necessary, name, address, telephone, fax and e-mail of the person to obtain information from. (ibid.)

The procedure for awarding a contract for establishment of a public private partnership, that is implemented as a public works concession and a public services concession, shall be considered commenced as of the day of publication of the announcement.

According to article 20 (Ibid.) The procedure for awarding a concession for goods of general interest and a contract for establishment of a public private partnership shall be conducted by the Commission for Conducting a Procedure (hereinafter: the Commission), formed by the Government of the Republic of Macedonia, on a proposal of the minister responsible in the field in which the contract is awarded or of the mayor of the municipality, the mayor of the City of Skopje or the mayor of the municipality in the city of Skopje, or of the management body in the other legal entities that, in accordance with the law, exercise public powers in the part of the exercise of the public powers; The Commission referred to in paragraph 1 of this Article shall be composed of a president and at least four members and their deputies in the field of economy, law and technical sciences and other relevant areas, depending on the subject of the contract. External experts may participate in the work of the Commission, without the right to vote.

Members of the Commission cannot be persons who: are married, related to the second degree or related by adoption or guardianship to the tenderer or the candidate, to his/her attorney-in-fact, and in the cases where the tenderer or the candidate is a legal entity, to the members of its management, supervisory or other bodies; in the last three years, have been employed or have been members of the management or supervisory bodies of the tenderer or the candidate; are in another legal relation with the tenderer or the candidate, and are convicted for a financial crime, fraud or corruption.

On its sessions, the Commission shall work in a plenary manner and shall adopt the decisions by majority votes.

The Commission shall carry out the following activities: prepare the tender documentation, including the draft contract; determine the criteria for contract award; receive the participation applications and the offers; establish the capacity of the candidates and appoint candidates with the right to participate further in the procedure, establish the capacity of the tenderers; give explanations and submit additional information and documents; review and evaluate the offers and rank the tenderers by proposing the first ranked to be selected; draw up a report about the evaluation of the offers; submit a proposal for annulment of the procedure; and carry out other activities required for conducting the procedure. (Ibid.)

The concession grantor or the public partner shall be obliged to adopt a decision on selection of the most favorable offer or a decision on annulment of the procedure for awarding concession for goods of general interest or a contract for establishment of a public private partnership within a period of 30 days as of the day set as a final deadline for submission of offers.

Where the concession grantor or a public partner is the Republic of Macedonia, the decision referred to in paragraph 1 of this Article shall be adopted by the Government of the Republic of Macedonia on a proposal of the minister responsible in the field in which the public private partnership or the concession is awarded.

Where the concession grantor or a public partner is the municipality, the City of Skopje or the municipality in the city of Skopje, the decision referred to in paragraph 1 of this Article shall be adopted by the council of the municipality, the council of the City of Skopje or the council of the municipality in the city of Skopje on a proposal of the mayor of the municipality, the mayor of the City of Skopje or the mayor of the municipality in the city of Skopje.

Where the public partner is one of the entities referred to in Article 4 point 5 lines 3 and 4 of this Law, the decision referred to in paragraph 1 of this Article shall be adopted by the governing body and the founder shall give its consent.

As the Law continues, the Commission may entrust the preparation of the tender documentation to a scientific or professional organization or to experts in the respective area.

The entity which prepares the tender documentation cannot participate as a tenderer in the procedure in which it has been entrusted to conduct research, experiments, studies or development with regard to the contract in question.

The Commission may determine that the data or part of the data contained in the tender documentation are to be considered confidential in accordance with the Law on Classified Information. In such a case, the participants in the procedure shall be obliged to submit a statement, attached to the documentation, whereby they oblige themselves not to disclose the data considered confidential.

The Government of the Republic of Macedonia, on a proposal of the minister responsible in the field in which the concession for goods of general interest is awarded, that is, of the mayor of the municipality, the mayor of the City of Skopje or the mayor of the municipality in the city of Skopje, shall approve the tender documentation. (Ibid.)

Contents of the tender documentation:

According to article 23 (Law on concession and public private partnerships, General assembly Republic of Macedonia, Official gazette, No 6, 2012) depending on the nature of the concession for goods of general interest, the tender documentation shall particularly contain the following elements: name, address, telephone number, fax number and e-mail of the concession grantor, subject of the concession for goods of general interest; purpose of the concession for goods of general interest; place and location for which the concession for goods of general interest is to be awarded; instructions regarding the preparation and submission of the offer; duration for which the concession for goods of general interest is awarded; deadline for submission of the offers; validity period of the offer; address for sending the offers; types of guarantees and conditions of the guarantees, language in which the offers should be written; personal, professional and financial requirements that must be met by the tenderers and the documents that prove that they are met; criteria for selection of the most favorable offer; name and address of the competent body for deciding upon appeals and deadlines for filing appeals; minimum amount of the concession fee, if it is anticipated and/or the manner for calculating the fee;

and other information important for the subject of the concession for goods of general interest in accordance with other regulations and professional rules. (Ibid.)

The Commission shall be obliged to respond to all the additional questions related to the tender documentation asked by the economic operators that have taken the tender documentation, provided that such questions are asked in a period of 14 days before the expiry of the deadline for submission of the offers.

The Commission shall be obliged to submit the answers to the questions asked to all of the economic operators that have taken the tender documentation without stating the name of the economic operator having asked the question, and not later than seven days before the expiry of the deadline for submission of the offers. (Ibid.)

A criterion for selection of the most favorable offer may be: 1) the economically most favorable offer that contains elements related to the subject of concession for goods of general interest, such as: quality, technical features, aesthetic, functional and ecological features, and - other elements laid down by the special law regulating the subject of the concession or 2) the highest offered concession fee. (Ibid.)

The elements of the economically most favorable offer criterion, as well as the maximum number of points for each element separately, must be clearly determined in the public call, actually related to the subject of the concession for goods of general interest and, as soon as they are determined, they cannot be altered during the whole period of duration of the procedure for awarding the contract for concession for goods of general interest.

Where the most favorable offer is selected on the basis of the economically most favorable offer criterion, the concession grantor shall be obliged to provide explanation of the manner of evaluation and application of the elements of this criterion in the tender documentation.

The Government of the Republic of Macedonia may authorize a minister in the relevant field to conclude the contract for concession for goods of general interest and the contract for

establishment of a public private partnership, on behalf of the Government of the Republic of Macedonia. (Ibid.)

The council of the municipality, the Council of the City of Skopje and the council of the municipality in the city of Skopje may authorize the mayor to conclude the contract for concession for goods of general interest and the contract for establishment of a public private partnership.

The annex to the contract may be concluded upon an initiative of the concession grantor or of the public partner in particular in the following cases: danger against the national security and country defense, threat to the environment, nature and human health and the public order facilities; decay of the facility under concession or the facility of the public private partnership, or objective impossibility to use it, in the case of force majeure; amendment to the relevant regulations; other cases that lead to change in the actual and legal base for using the facility or providing the service, or carrying out the concession activity, and other cases laid down by special laws. (Ibid.)

The public partner may require: the private partner to award contracts to third parties that are at least 30% of the total value of the contract for establishment of a public private partnership, implemented as a public works concession or public services concession, at the same time offering the tenderers a possibility to increase this minimum percentage which is to be determined in the contract; or from the tenderers to state the percentage of the total value of the contract for establishment of a public private partnership they intend to award to third parties in their offers. (Ibid.)

In Article 51 another law gets a full attention. The law on Obligations, Official Gazette Republic of Macedonia No. 18,2001. It is considered that everything that is not postulated by the Law on concessions and public private partnerships that shall apply to all matters pertaining to the contracts.

The concession grantor and the public partner shall continuously and regularly supervise the implementation of the concession for goods of general interest and of the contract for establishment of a public private partnership and the implementation of the awarded contract, as well as the compliance with the obligations by the concessionaire or the private partner, in accordance with law and the respective contract. (Law on concession and public private partnerships, General assembly Republic of Macedonia, Official Gazette, No 6, 2012)

The legal protection for all the procedures for contract awards under this Law shall be provided in accordance with the Law on Public Procurement, General assembly Republic of Macedonia, Official gazette, No 136, 2007.

Each element of the economically most favorable offer criterion shall be worth the maximum number of points determined in the public call and, in exceptional cases where it is not possible, the elements shall be listed according to the order of their importance.

Upon the expiry of the deadline for submission of offers, the Commission shall open the offers in public, in the presence of authorized representatives of the tenderers, in a place and at a time set out in the public call for award of a concession for goods of general interest.

The Commission shall prepare minutes for the public opening of the offers. The Commission shall evaluate the offers only of those tenderers that meet the personal, professional and financial requirements set out in the tender documentation. The Commission shall establish a list of tenderers on the basis of the criteria laid down in the public call for award of a concession for goods of general interest, that is, in the tender documentation and shall propose the selection of the most favorable tenderer or propose annulment of the procedure for award of a concession for goods of general interest.

Based on the proposal of the Commission and the evaluation report, the concession grantor shall adopt a decision on selection of the most favorable offer. (Law on concession and public private partnerships, General assembly Republic of Macedonia, Official Gazette, No 6, 2012)

The decision on selection of the most favorable offer along with a copy of the minutes, the review and the evaluation of the offer and the evaluation report shall be submitted to each tenderer without any delay, in a manner that can prove its delivery.

The concession grantor must not sign the contract for concession for goods of general interest before the expiry of the deadline for filing an appeal.

The deadline for filing an appeal shall be determined in the decision on selection of the most favorable offer, in accordance with the data from the public call for award of a concession for goods of general interest.

The contract for concession for goods of general interest may be signed when the decision on selection of the most favorable offer becomes final.

The decision on selection of the most favorable offer shall be published in the "Official Gazette of the Republic of Macedonia"

Article 37 from this Law states: The decision on selection of the most favorable offer shall contain: name of the concession grantor, including the number and date of the decision on commencement of the procedure for awarding a contract for concession for goods of general interest; explanation of the reasons for selection of the most favorable tenderer, name of the tenderer, including the number and date of submission of the offer; subject of the concession for goods of general interest; place of implementation of the subject of the concession for goods of general interest; duration of the contract for concession for goods of general interest; special requirements set out in the tender documentation that the tenderer should meet during the validity period of the concession for goods of general interest; amount of the concession fee paid by the concessionaire for the awarded concession for goods of general interest or the basis for determination of the amount of the concession fee that should be paid by the concessionaire, if anticipated; time frame during which the tenderer is obliged to sign the contract for concession for goods of general interest with the concession grantor; competent body for conclusion of the contract for concession for goods of general interest; competent body for implementation and

supervision of the awarded concession for goods of general interest, and legal instruction. The decision for selection of the most favorable offer may also contain other data in accordance with the tender documentation and the submitted offer. The concession grantor shall annul the procedure for awarding a concession for goods of general interest if: circumstances are identified which if familiar before the commencement of the procedure for awarding a concession for goods of general interest, the public call for concession award would not been published, or the public call would be significantly different; or there is no offer received until the expiry of the deadline for submission of offers; or there is no acceptable offer submitted. (Law on concession and public private partnerships, General assembly Republic of Macedonia, Official Gazette, No 6, 2012)

The concession grantor may annul the procedure for awarding a concession for goods of general interest if only one offer is received until the expiry of the deadline for submission of offers, that is, if only one acceptable offer remains during the evaluation of the offers. (Ibid.)

The concession grantor shall be obliged without any delay to deliver to each tenderer the decision on annulment of the procedure for awarding a concession for goods of general interest, including a copy of the minutes and of the evaluation report, in a manner that can prove its delivery.

As of the day the decision on annulment of the procedure for awarding a concession for goods of general interest is delivered to each tenderer, the period of 15 days for filing an appeal shall start running. (Ibid.)

New procedure for awarding a concession for goods of general interest may be initiated as soon as the decision on annulment of the procedure for concession award becomes final.

The decision on annulment of the procedure for awarding a concession for goods of general interest shall be published in the "Official Gazette of the Republic of Macedonia".

The contracts anticipated by this Law shall be concluded for a period of up to 35 years as of the day of the conclusion of the contract, that is, as of the day of entry into force of the contract, in the case the two dates differ, unless otherwise anticipated by a special law. (Ibid.)

Form of the Public Private Partnership Agreement - The contract for public private partnership shall be concluded in writing in at least three original copies, one for each of the contracting parties and the third copy for registration in the register kept by the Ministry of Economy.

The data on the awarded contracts shall be submitted within three days from the date of conclusion of the contract, on an appropriate form to the Ministry of Economy. (Ibid.)

The registry is published on the website of the Ministry of Economy.

6.3. Contents of the Public Private Partnership Agreement

According to the Law on concession and public private partnerships, (General assembly of Republic of Macedonia, Official Gazette No 6, 2012) the public private partnership agreement particularly contains provisions for:

- The purpose, subject matter and deadline of the undertaking;
- The manner, form and conditions for performing the undertaking;
- The description of the facility of the venture, as well as the description of the existing infrastructure;
- Date for entry into force of the agreement for the undertaking;
- The conditions, manner and deadline for handing over the object of the undertaking and the termination of the contract;
- The rights and obligations of the parties to the agreement, including the terms and conditions for their fulfillment;
- The amount, the time limit and the manner of payment of the fee, when it is foreseen;
- The income, share in income and risk-sharing of the venture;
- The categories, scope and deadlines for the fulfillment of the investment obligation;

- The form, amount and deadlines for payment of the undertaking by the grantor, when such payment is provided for by the procedure for awarding the undertaking;
- The type, amount, deadlines and manner of delivery of the guarantees and guarantees determined with the obligations to fulfill the contract;
- The conditions and the manner of financing the measures and activities for eliminating the consequences of possible environmental damages;
- Responsibility for failure to fulfill the obligations under the contract;
- The conditions and the way of executing the supervision of the performance of the undertaking, including provisions for performing special expert supervision from authorized third parties, as well as the manner of reimbursement of expenses, for the implementation of professional supervision;
- The method of resolving disputes concerning the contract.

Supervision. The concession grantor and the public partner shall continuously and regularly supervise the implementation of the concession for goods of general interest and of the contract for establishment of a public private partnership and the implementation of the awarded contract, as well as the compliance with the obligations by the concessionaire or the private partner, in accordance with law and the respective contract.

Legal protection. The legal protection for all the procedures for contract awards under this Law shall be provided in accordance with the Law on Public Procurement. (Ibid.)

6.4. Institutional framework

6.4.1. Public private partnership authorities

Taking into account the development of the legal framework, as well as the current situation in the Republic of Macedonia, it seems that there are four relevant institutions working in the area of public private partnership, they are the following:

Public Procurement Bureau, since, in accordance with national legislation it is uncharged about the development of the electronic system of public procurement (ESPP), as well as the provision of rationality, efficiency and transparency in the implementation of public procurement. As previously mentioned in Article there is a reference of the Law on Public Procurement, also we must pay attention to the fact that, according to legislation in the European Union, as shown in certain cases in the judicial practice of The European Union Court of Justice and the doctrine developed by the European Union Commission services, concessions and public private partnership are included in the concept of public procurement, although concessions are excluded from the scope of application of Directive 2004/17 / EC, and only concessions for public works are covered in Directive 2004/18 / EC. In fact, in the Strategy of the Public Procurement Bureau, in the section entitled "Goals and Priorities - Improving the Legal Framework", states that: "The Bureau for Public Procurement will seriously consider the possibility of taking concessions for works and concessions for services and their integration into the public procurement system." Also, in Objective in the Action Plan it is stated that it is responsible for the analysis of the regulations on concessions for services and works. However, the practical implementation of such provisions still is behind, so it is precisely because of this that there is often overlap of the institutional obligations between the Ministry of Economy and the Ministry of Finance. (Public Procurement Bureau, Strategy of the Public Procurement Bureau for the development of the public procurement system 2010-2012)

State Appeals Commission on Public Procurement (SAC), seems to be is developing in a positive direction. Starting from January 2012, the Commission is in charge to act on appeals in procedures for awarding concession contracts and public private partnerships whereby this an issue has been resolved in Article 54 of the Law on concessions and Public private partnership:

Right to appeal, which reads as follows: "Legal protection for all procedures of awarding contracts in compliance with this law is provided in accordance with the Law on public procurement." This access is recommended. Before adopting this law, a future competence of the Commission was foreseen, however before the entry into force of this law the Commission had no right to decide upon such questions. An example of the lack of competence of the Commission in this area is the case in which the procedure was annulled, because the contracting authority did not have it the necessary funds to pay for it. The body had assets for only one year instead of five years - the duration of the contract. The funds were to be approved by the Ministry of Finance. The Administrative Court rejected the decision because the body which assigns the contract, claimed that the Commission had no legal competence to adopt decision on this issue.

Ministry of economy, which according to the new Law on concessions and public-private partnership performs the following responsibilities:

- develops and implements measures and activities aimed at achieving and maintaining a fully transparent and efficient public-private partnership system;
- maintains the Register of awarded contracts for the establishment of Public Private Partnership;
- prepares proposals for amendments to the regulations in the field of public private partnership, and gives instructions for the implementation of this law;
- organizes and implements education and training in the field of public private partnership for all participants in the process,
- monitors, analyzes and provide expert assistance and opinion on the implementation of the procedures;
- monitor, analyze and study current European Union and global trends, knowledge and experience in the field of public private partnership and
- perform other activities and tasks related to the public private partnership.

Ministry of Economy, the Ministry of Finance, the Ministry of Transport and Communications, the Ministry of Health, the Ministry of Education and Science, the Ministry of Agriculture, Forestry and Water Resources Management, the Ministry of Environment and Spatial Planning, the Ministry of Culture, the General Secretariat of the Government of the Republic of Macedonia – Office of the Deputy Prime Minister of the Government in charge of economic affairs and coordination with the economic departments, the Public Procurement Bureau, the ZELS, the business community, as well as independent experts particularly in the field of economics and law, taking into consideration the equitable representation of all the national and ethnic groups in the Republic of Macedonia are to be members in the Council , which has an advisory role to the Government of the Republic of Macedonia in the field of public private partnership, promotes public-private partnership, proposes public projects private partnership, and gives an initiative with proposals for amending the regulations of this area. (Law on concessions and public private partnerships, General assembly of Republic of Macedonia, Official Gazette No 6, 2012)

- State audit office
- State commission for preventing corruption

Without any doubt the upper mentioned clarifies that the legal framework is written within European Union directives. Especially the part where every public private partnership procedure is subjected electronic auction. There are institutions responsible for the legality of the procedures, and still somehow Republic of Macedonia in occasions fails to deliver a public private partnership on a higher level. The Directive 2014/23/EU on the Award of Concession Contracts contains one addition that is not implemented within the Law on Concessions and Public private partnerships in the Republic of Macedonia and that is the controlling role on the body in charge of public private partnership in the case of the Republic of Macedonia that is the Ministry of Economy. Till today, the Ministry of Economy has only a consultative (horizontal) law i.e. gives opinions to public bodies but cannot give orders or sanctions. (General assembly of Republic of Macedonia, Official Gazette No 6, 2012)

6.5. Public private partnerships and the local community

According to the Manual for design and implementation of effective Public-private partnerships by ZELS⁶ (2008) the notion of public private partnership in Macedonia, is mainly also considered from the aspect of the local self-government and the municipalities as the main carriers. Cooperation between municipalities is often necessary to solve the problems that municipality residents face in their everyday lives. The common goal of municipalities is to improve the standard of their inhabitants, that can be successfully accomplished with common forces by the Government of Republic of Macedonia along with the municipalities. The Government of the Republic of Macedonia and the units of the local self-government see public-private partnership as an additional solution for overcoming the lack of financial resources for capital investments on central and local level as well as a tool that will increase the competitiveness of communal activities and will affect contributing to de-monopolization for public utility companies. For that purpose, it is why the Law on Concessions and public private partnerships was adopted. (Zels, 2008)

6.6. The interest of private sector to participate in public private partnerships

According to Zels one of the factors that influenced, and in the future, will be a relevant factor, of course, are the interests of private enterprises to participate in a public private partnership. Until 2004 in Republic of Macedonia, there was little interest of private firms for this type of cooperation with the state. This was based on several factors:

- Little information about the concept of public-private partnership;
- Mistrust in the security of the state as a whole;
- The influence of political relations and party nepotism;
- Lack of sufficient support from the banks and the state in the financial plan;

⁶ Association of the units of local self -government of the Republic of Macedonia - ZELS

- Monopolization by large private companies;
- The poor state's interest in the proper use of European Union funds in the direction of supporting the private sector, etc.

After the adoption of the legal framework for concessions and the changes in some other laws particularly law on public procurements that partially and fully outlined the concepts of public private partnership, as well as the efforts by non-governmental organizations and foreign offices, public private partnerships estates have gradually increase. (Zels, 2008)

During 2007 and 2008, the interest rates of private firms were increasing, primarily due to several important steps that the central and municipal authorities were undertaking. The most prominent were the following:

- Facilitating tender procedures;
- Support to small and medium businesses through credit lines from commercial banks, etc.

According to the analyzes of ZELS, one of the crucial factors for increasing the low percentage of interest was the changes in the local procedures and procedures by the municipal organizations, when it comes to the agreements and borders of both parties in the public-private partnership.

Also, the fact that the central government focused on increasing the capacity for realization of larger projects of the private sector in other parts of Macedonia is also considered as progress, because according to the analyzes, the City of Skopje had a considerable percentage of development. (Zels, 2008)

6.7. Development of the Public Private Partnership in the Republic of Macedonia (2007-2018)

Thanks to the processes of support of private businesses, the Government of the Republic of Macedonia in the past ten years has gradually striven to develop the concepts of public private partnership. Also, here are the efforts of the European Union institutions, which increasingly imply their rules for the development of the private sector, and public private partnerships are presented as one of the basic segments of these efforts.

Based on the previous analyzes, the ZELS reports find conceptual intentions for the development of the public private partnership in the coming period, primarily in the willingness of the municipalities to participate and support the public private partnerships.

Regarding the foreseen profit from the realization of the planned projects, the public sector is in the leading position in all the investigated areas. Thus, the ratio of communal services is 25 million European Unions to 11 million euros in favor of the public sector. Profits in the health sector are particularly noticeable, where 11 million euros is the profit for the public as opposed to 5 million European Unions for the private sector and in the traffic 18 million for the public, and 9 million for the private sector. (ZELS Manual "A Guide to the competencies of newly elected mayors and members of municipal councils", 2015)

Such tendencies and predictions could be met without some major obstacles and problems, but of course several preconditions must be met, such as:

- Municipal authorities neglect political influences and focus on the usefulness and cost-effectiveness of projects;
- Banks to continue investing and supporting the private sector;
- Access to foreign markets;
- Access to foreign funds, etc.

6. 8. The economic possibilities public private partnership

According to Radosavljevic, 2011, the lack of infrastructure projects and their negative impact on economic growth and the creation of new jobs have been established many years ago, both in the European Union and worldwide.

The need for infrastructure promotion, especially in the transport sector, is a necessary piece of the puzzle for successful economic growth. However, central and local governments have a limited source of funding for investing in infrastructure projects and improving public services. In order to overcome the growing gap between the costs required for infrastructure projects and the available financial resources for these purposes, as well as ensuring the provision of quality

and economically justified public service, the accomplishment of cost-effective infrastructure projects is a key issue. In this context, public private partnership is a growing element in the "procurement" of public services. So, instead of the usual practice, infrastructure projects and the provision of public services to be financed exclusively from central and / or local budgets, through the different models of public private partnership enables the private sector to be involved in their financing and performing. (Ibid.)

Public Private Partnership is often accomplished in the provision of various types of public services and infrastructure projects, such as transport (roads, railways, airports), telecommunications, drinking water supply and wastewater treatment, waste management, healthcare, facilities intended for education (schools, boarding schools), social protection and protection of the environment.

6.9. The financial possibilities of the public-private partnerships

As Radosavjlevic continues the economic situation in the next period will have a huge impact on the overall financial perspectives of the public private partnership in the Republic of Macedonia. The changing climate in the area of finance is the basis for a certain instability and a weak possibility of anticipating further flows.

Until this moment, the public private partnership has been represented in a sufficient number, everywhere in the territory of the Republic of Macedonia and in all areas. However, such representation does not guarantee security in the future implementation of these concepts, especially when it comes to some major projects.

The policy of the Government of the Republic of Macedonia for saving, as a step towards improving the so bad economy, can have different effects in the field of public private partnership. Depending on this, as can be seen in the further course of events, it is possible to elaborate two basic points, positively and negatively.

The positive view of the financial situation is focused on the following conclusions and forecasts;

- In the future, the Government of the Republic of Macedonia, in spite of the financial crisis, will be able to find means and methods for further promotion and upgrading of the concept of public private partnership;
- The European Union-Atlantic integration of the country will take place in a short period of time and the funds from abroad will become available in larger quantities, which will massively support the public private partnership;
- A large proportion of municipalities will establish relations with twinned municipalities from foreign countries and in that process, it will clearly emphasize the need to promote public-private partnership;
- The municipal authorities will continue the trend of concluding public private partnerships in all areas in which needs arise;
- The central government will provide facilities for the private sector, which will influence their participation in the public-private partnership;
- Banks will increase their credit limits and Increase the available funds for private lending credit losses;
- Private enterprises will fully accept the challenge of public-private partnership;
- Insecurity and mistrust in the opposite side of the public-private partnership will be reduced by increasing bonuses and financial guarantees, etc. (Ibid.)

These, by all means, are the optimistic predictions and expectations. However, such flows on the basis of the financial possibilities of the public-private partnership in the future will depend on a number of factors.

In addition to these positive impulses and predictions, consideration should also be given to the possible negative implications that may arise in the future, of course if previous predictions and success factors do not break into reality.

According to such considerations, a number of factors and phenomena can be distinguished that would have a negative impact on the overall financial aspects and perspectives of the public private partnership in the future:

- Republic of Macedonia will not enter in a due time in the European Union, thereby reducing the prospects for entry of foreign funds at municipal, but also at central level;
- The political situation in the state will be negative accompanied by corruption, nepotism, discrimination etc.
- Private enterprises will move away from the formation of public private partnerships due to insecurity in the government;
- The banks will not extend credit lines and will not support the further development of the private sector.

Deutsche Welle reports that, such negative opportunities and concepts for the future from a financial point of view can be a real scenario. (Petrevski Goran, How Macedonia is dealing with financial crisis? Deutsche Welle 2009)

6.10. Areas of public private partnerships implementation

The most of the public private partnerships' projects are based locally. Considering the competencies of local authorities defined by the Law on Local Self-Government, published in Official gazette of Republic of Macedonia No. 5 in year 2002, the most of public private partnerships projects are implemented by local authorities in the area of public utilities, parking, street lightening, administrative buildings and green market. However, it can be concluded that there are no public private partnerships projects in the water supply and sewerage. There is also only one public private partnerships project implemented in the field of waste disposal, although it is necessary to build more municipal and/or regional landfills for waste disposal, either through public procurement or through public private partnership projects.

At the central government level, the most significant public private partnership projects are airport, technical and industrial development zones (TIRZ) as well as hydropower plants. It should be noted that domestic and foreign investors are not interested in participating in the procedure for awarding a contract establishing a public private partnership for the construction and operation of road infrastructure. There are no interested private partners for building a road

infrastructure because there is no economic viability. This is because the traffic frequencies cannot expect return on investment during the period of the contract. Therefore, the construction of the road infrastructure is carried out through classical public procurement. (Analytica, 2017)

6.10.1 Utility services

This is perhaps the largest area in which after a functional review the private sector can offer opportunities for forming a public private partnership. Currently there are more than 150 private companies in Republic of Macedonia that are qualified for accomplishment activities of this type.

On the other hand, the public sector is increasingly degrading qualities and opportunities, primarily due to the outdated techniques, the lack of asset recovery, and, to a large extent, the dependence on precisely these private partners, which in the past have proven to be a quality partner with a high degree of efficiency in the realization of these services.

Particularly well-known segments in this area, in which the private sector has shown functional advantages in terms of the public sector are:

- Drinking water supply;
- Drainage and purification of wastewater;
- maintaining public cleanliness;
- Collection, transportation and handling of municipal solid and technological waste;
- Supply of gas and heat;
- Maintenance of graves, cemeteries and provision of funeral services;
- The construction and maintenance of the public parking space;
- Construction and maintenance of markets;
- The maintenance and use of parks, greenery, park forests and recreational areas, etc.

6.10.2. Infrastructure services

According to Analytica, many governments turn to public private partnerships because they recognize that more investment in infrastructure is needed, but the government cannot “afford”

to undertake additional infrastructure projects through traditional public procurement. Although this is one of the most common motivations for using public private partnerships, it is also among the most debated. The extent to which public private partnership genuinely enable governments to increase spending on infrastructure depends on the nature of the project in question, and of a government's particular funding and financing constraints.

Several projects were realized since adopting of the public private partnership models in the positive legislation, in fields such as infrastructure. They are the are the following:

- a) Airport project: Government as a grantor awarded a contract to design, finance, build, operate and transfer the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul "in Ohrid;
- b) Hydroelectric plants: The public private partnership contracts for the construction of hydroelectric plants had been awarded by central and local government;
- c) Waste disposal: City of Skopje as a grantor awarded a concession agreement covering the reconstruction of the landfill "Drisla" – Skopje including construction of new installations for the disposal of waste in accordance with European Union standards and within the investment dynamics given in the bid of the selected concessionaire.

This is a developed area, when it comes to the functionality of the private sector, are the infrastructure services. In the past years, a number of private construction companies appeared in Republic of Macedonia, which over time and following of world trends achieved a high level of efficiency in the operation. The most prominent segments of this area are:

- The construction of all kinds of buildings;
- Maintenance and repair;
- Supply of building materials;
- Production of technical materials and assets;
- Supply of construction machines and tools;
- Design and planning of space;
- Designing;

- Financing of infrastructure projects;
- Real estate management;
- Purchase and sale of property on the property, etc.

All these segments gradually abandon the public domain and move into the perspective competence of the private sector. (Ibid.)

Projects at local level are the following:

The previously mentioned waste disposal: City of Skopje as a grantor awarded a concession contact covering the reconstruction of the landfill “Drisla” – Skopje including construction of new installations for the disposal of waste in accordance with European Union standards and within the investment dynamics given in the bid of the selected concessionaire. The concession is implemented as an “institutional public private partnership”, given that existing public enterprise established by the City of Skopje is transformed into a limited liability.

Company whose founders are the City of Skopje (20% equity) and the foreign private partner as majority partner (80% equity). City of Skopje is obliged to disposal a certain amount of waste each year. In the case of less amount of waste City of Skopje is obliged to compensate the unrealized income from the waste disposal to the concessionaire. The investment is estimated at about 90 million euros. The period of the contract is 35 years.

Municipality of Bitola as grantor has awarded a public service concession for parking system. The concessionaire is obliged to acquire the toll pick up vehicle, management software system parking zone, devices for zonal system of parking, vertical and horizontal signaling, “call center” and other equipment needed for the operation of parking lots, as well as to do winter and summer marking. In return for the investment, recovering the costs of operation and achieving reasonable profit, the concessionaire is entitled to charge end users of the parking services. Concessionaire pays to the municipality a concession fee each year. The investment is estimated at about 2 million euros. The period of the contract is 6 years. The concession agreement has achieved the following goals: arranging and organizing a new, modern and automated way of controlling and controlling of street parking as well as the parking of closed type-zone parking and parking in indoor parkings; procurement of equipment for the provision of parking services by the private partner (concessionaire); increasing the quality of parking services; improving the

traffic flow and increasing the safety of the streets; and increasing the utilization of every parking place. (Ibid.)

In the period from 2015 to 2017 by the central government were awarded 79 contracts for taking a construction of hydropower plants, 109 on photovoltaic plants, 1 contract for Wind power plant "Park of wind power plants Bogdanci" and 3 biomass power plants. (Register of power plants for electricity generation from RES, 2018) There is one example of unsuccessful public private partnership projects. It concerns the street lighting public private partnership project in the Municipality of Sveti Nikole. The public private partnership contract is terminated by the fault of the Municipality of Sveti Nikole because the municipality did not pay its obligations to the private partner. (Analytica, 2017)

6.11. Current public private partnerships activities

In the Republic Macedonia according to the availability of data in the part of the public-private sector partnerships, the following current situation can be identified:

- The design of public private partnership (BOT) is used on a large scale.

These projects are among the largest projects the country will ever take; therefore, it is important that they properly prepare and the procedure be correct. Below are listed the most significant examples of these public private partnership projects that are executed by now in the Republic of Macedonia.

- According to Jonovski, 2014, the concession for the airport system in Republic of Macedonia (Ministry of Transport). In 2008, the Government, through the Ministry of Transport, signed a contract with the Turkish company Tepee Auden Ventures (TAV) for a 20-year concession, during which period the company would manage the two existing airports in Macedonia: the airport Alexander the Great in Skopje and the St. Paul the Apostle Airport in Horrid. Planned works

included building a new terminal building in Skopje, expanding the runway, a new administrative building and a new access road with parking space, which would increase the capacity of the Skopje airport to four million passengers a year.

Regarding the Ohrid airport, the terminal building and the VIP salon have been modernized. The concession agreement also includes the construction of a third airport, a cargo airport near Stip, in eastern Macedonia. The total amount of the investment was projected to amount to 200 million euros, of which 30 to 40 million euros are expected to be paid to the grantor during the entire 20-year concession period. It is claimed that the obligations regarding the Ohrid airport are realized on time. As far as the cargo airport in Stip according to the recent statement by Minister Sugarevski, due to the climate in Stip it is not possible for the convenient to build a cargo airport, but instead the amount of more than 40 million euros for the concession grant will be invested in other public goods. (Factor, September 18, 2018) The project had been awarded in accordance with the old Law on Concessions from 2008 and by application of the restricted procedure provided for in this Law. It is a commendable fact that this project was published in the international media and European Union, and this activity resulted in 20 applications for participation. Four companies were pre-qualified: one from France, one from Germany, one from Austria and one from Turkey. The public bodies, supported by Dutch consultants, held conference for bidders and prepared the data room at the Skopje airport. All these activities represent the best international practice, but cannot predict the quality of the outcome. The criterion for awarding the project was "the amount of compensation for concession", and the tender documentation itself included the draft contract. In the end, only the Turkish company submitted a project offer. It can be argued that the fee for the concession would simply add to the cost of construction work and that the fee for Concession is almost never the most economical method for implementing an infrastructure private-sector funded project. Republic of Macedonia has no transparent methodology to determine whether this project is implemented or not in a way that would provide the greatest economic advantage for the state. (Jonovski, 2014)

- Concessions for the main highways (Ministry of Transport)

The Ministry of Transport had been looking for bids for a very significant project for privately financed highways in the Republic of Macedonia, with an estimated investment value of one billion euros. Again, the Law on Concessions from 2008 was re-used and the announcements were again published in the international media and the Official Gazette of the European Union. At that time, there were 8 applications and only 6 companies had been prequalified. The award criterion was the minimum number of vehicles that should have been guaranteed by the state. In the meantime, as previously mentioned a new Law on Concessions and Public-Private Partnership was adopted. (Ibid)

Will the state be able to make the move the right way or give up the idea of issuing a concession on the highways in the Republic of Macedonia remains to be seen. Also, I should mention the reconstruction of a two highway Kiev- Horrid and Miladinovci-Shtip. The reconstruction started in the course of year 2013 where part of the works was performed right through the principle of public-private partnership with Chinese construction companies Sino hydro Corporation Limited, Chegongzhuang. The total value of this Agreement is: 411.287.800,07 euros that include the Accepted Item calculation in the amount of 373.898.000,07 euros and the Provisional amount of 37,389,800.00 euros. (Law for implementation of infrastructure projects for construction of road site Miladinovsi-Shtip and road site Kichevo- Ohrid, General Assembly of the Republic of Macedonia, 2013)

- Large hydropower plants

The state electricity supplier (Macedonian power plants) is 100% owned by the Republic of Macedonia, but operates on a commercial basis. As a result, Macedonian power plants is still obliged to perform in accordance with the provisions on sectoral activities within the Macedonian Law on Public Procurements. The sectoral contracts according to article 176 on Law on public procurements (General Assembly, Official Gazette Republic of Macedonia No. 136, 2007) are awarded for these activities: water supply, energy, transport, postal services, and other covered activities. For sectoral contract the article 173 is obligatory as well as other public procurements. Which means that the procedure dossier must contain: a decision on

public procurement, a prior indicative notice and a proof that it has been sent for publication, a notice for awarding a public procurement contract and a proof that it has been sent for publication, a tender documentation, received requests for participation, communication between the contracting authority and the economic operators, a report assessing the ability of the candidates, a decision on selection of qualified candidates, received tenders, minutes of the public opening, statements of the existence/non-existence of conflict of interests, reports by external experts, a report of the conducted evaluation, a decision on selection of the most favorable tender, a signed public procurement contract or framework agreement, a notification of a concluded contract and a proof that it has been sent for publication. (Ibid.)

The company works to make a profit, and therefore it considers that it is not related to the state budget. Investment projects in the last few years are significant scale and, generally speaking, the state does not have enough funds to finance them. Therefore, the company requested a combination of own capital, funds from donors, and in one case, a commercial loan. The company uses external, usually international, consultants designated by their partner donor (examples given for the existing projects are: EBRD, World Bank, IFC and KfW) for the purpose of preparing the project. As a result, the majority of the works are actually carried out by these consultants, rather than by the clerks. However, this is a useful transfer of knowledge to the officers working on projects, because things seem to be of a very high standard. When it comes to evaluation of the bids, the price / quality ratio is encouraged from a minimum of 30:70. (Jonovski, 2014)

Examples of active projects of this nature that are either executed or in procurement phase are:

- Crna reka Project: co-financed by the EBRD. Limited procedure. Value of investment = up to 700 million euros,
- Boskov Most Project: Co-financed by the EBRD. Limited procedure. Value of investment = 80million euros.

According to the study by Macedonian power plants (ELEM), Boskov Most is a complex hydropower system where it is fully predicted the exploitation of the hydro potential of Mala

Reka, i.e. its tributaries Tresonce, Rosoki, Lazaropolska Reka, Valovnica, Garska, Zvoncica and Blesnitsa, whose basin is located in the western part of the Republic of Macedonia. Hydroelectric power plant Boshkov Most with inflow and drainage organs and the machine building is located in the western regions of Macedonia, near the HPP Spilje, that is, close to Debar. In the immediate vicinity of the building passes the Republic highway- Skopje-Debar-Ohrid. It is a typical derivative plant where the waters from the Mala Reka that flow into river Radika are 10 km upstream from the inflow of Radika in the river Crni Drim. It is planned to build a barrier and form an accumulation, involve all passing streams from the Mala Reka basin, derivative channels, tunnel, pipeline and machining building. (ELEM, Department for development and investments, 2017)

· The Windmill Project: co-financed by KfW. Value of investment equals to 55million euros. The long-awaited wind park in Bogdanci, a pioneer of the state in the production of wind current, will only mean 2% of the current annual electricity production. The investment is estimated at 55.5 million euros. The consortium of Siemens Wind from Denmark and Siemens AS from Greece will soon deliver to ELEM (Macedonian Power plants) sixteen wind turbines for the Park of Wind Power Plants in Bogdanci. At the Ranavec location, near the Bogdanci, the construction of the command building is completed, the substation where the wind park will be connected. At the moment it is also working on the excavation of the foundations where these power plants should be installed. During the summer, windmills should arrive in the country, after which their installation will start, they discover from ELEM for Factor. "At present, the construction of the necessary infra structure and associated facilities for the wind park is already in progress through an agreement with the consortium" Ternna Siemens "for the construction of a road infrastructure, a connecting highway, a command building and a 20/110-kilowatt substation. According to the dynamics of work, this capacity will be included in the electricity system of the Republic of Macedonia by the end of the year. The installation of these windmills will provide total installed capacity of 36.8 megawatts, which completes the first phase in the construction of this visionary energy facility, "explained the ELEM for Factor. With an investment of 55.5 million euros - we will receive only 2% of the current annual electricity production?! From ELEM say that part of the money for the realization of the First Wind Park "Bogdanci" was provided through a loan from the German KfW Bank, signed in April last year. For a project whose estimated value

of 55.5 million euros, the KfW Bank loan is in the amount of almost 48 million euros, while 7.6 million euros will be provided by State Power Plants from own funds. The company is optimistic that the wind park in Bogdanci will produce a current sufficient to supply about 15,000 households or a total of 60,000 citizens. The Danish-Greek consortium is obliged to deliver, transport and install the equipment, put it into operation and take care of the maintenance of the wind park. "For its first such project, AD ELEM has set a minimum annual production of 100 gigawatt / hours of wind energy or approximately 2% of current annual production. The calculation based on the widely used turbines with installed capacity between 2 and 2.5 megawatts, the size of the 50 MW wind park is designed to meet this goal. Detailed site evaluation showed that this size of the park of wind power plants optimizes the use of available space and wind resources, and that precisely the location "Ranavec" is the most suitable for the purpose compared to all other locations where we set measuring stations for the wind movement ", explains the company. Wind is a renewable source of energy that always has priority over all other renewable energy sources when it comes to the power system. In the case of wind, strong enough to produce electricity, windmills have priority over hydropower plants. Wind energy is still entering the Macedonian power system, but it is good if there is a need for energy balancing. Factor asked the question does the country wants a monopoly over the windmills?! According to the laws and bylaws, the maximum allowed installed capacity for production of wind current, which will be purchased at a subsidized tariff, is 150 MW in the entire territory of the Republic of Macedonia. Hence, if the investment of Macedonian Power Plants is realized, a small investor will remain a small space for investment and purchase of electricity at a subsidized price. The Global Energy Development Strategy means the inclusion of alternative energy sources, which are environmentally and economically justified. International protocols and commitments to reduce carbon dioxide emissions, according to the Kyoto Protocol (1997), also require for Republic of Macedonia to increase the environmental production of energy. By 2020, 12% of the energy produced should originate from the wind. State Power Plants in the event of producing wind currents in the night hours, will save the hydro power plants, thereby saving some of the water for electricity generation. ELEM's initial announcements were that the wind park will start to build in the autumn of last year. Construction of a wind park of 100

megawatt-hours of electricity two years ago also announced from Inval Macedonia, a daughter company of the Spanish company Inval, which together with the South Korean Samsung heavy industry and Koseib, had to build 66 windmills in Stip, a project estimated at 180 million euros. But their announcements have not yet come to reality. Cybernetician Trpe Gruevski underlines that the state does little to attract investors to the windmills. He explains that Macedonia is one of the few countries that do not have a quality map to show the movement of winds. "All my initiatives in this field have already failed. It is necessary for Macedonia to install automatic meteorological stations at 28 meteorological stations at a height of 60 to 100 meters, which will circle the movement and intensity of the wind around the clock for a period of one to three years. Based on these data will be known at which location, height and capacity the windmills would build. This card will help investors invest in this type of energy. These are the main reasons why to date there is no development of renewable energy sources," Gruevski says. K.П. (Factor, 2013).

The current Minister of finance Dragan Tevdovski who took part in the Annual Meetings of the European Union Bank for Reconstruction and Development, which took place in Jordan, highlighted that the European Bank for Reconstruction and Development, as well as other investment banks, want to participate in financing the construction of windmills in Miravci and the photovoltaic power plant in Oslomej. (Ministry of Finance, May 11, 2018).

Thermal power station in Bitola. Investment value of € 46,34 million euros - financed through a loan from KfW Bank in 39 million euros and participation of ELEM in the ratio of 7.34 million euros. At this time, this project has been stopped by the new government (ELEM, Development Plan, 2016-2020)

Lukovo Pole: co-funded by the World Bank. Investment value of 62 million of euros. The loan value is 52 million euros with participation on ELEM of 10million euros; (Ibid)

· Restoration of 6 hydro power plants: Co-financed by KfW, with the participation of ELEM in the ratio of 27 million-euro KfWs: 4 million euros ELEM.

Large projects, such as those outlined above, are usually implemented through ELEM; the small electric power plants that are usually not of interest to ELEM because of their small size, are

awarded through a competitive procedure through concessions. Within the Ministry of Economy there is a department that manages the processes. It is surprising, therefore, that in the report of the Bureau of the public procurement states that the responsible officials there were not consulted at all on the new Law on Concessions and Public-Private Partnerships. This can be considered as another example of weak institutional co-operation. (Jonovski, 2014)

Most of the smaller projects for electricity generation are projects for hydropower plants. A few years ago, a technical study was identified almost 400 possible projects for hydropower plants. As previously mentioned according to the Summary overview of the Register of power plants for electricity generation from Energy Agency Republic of Macedonia, last modified on 06/20/2018, 79 concessions have already been executed to total installed capacity of 71.88 MW and expected yearly production of 258.595 MWh. The concessions were awarded at 23 years, 3 years for the construction of power plants and 20 years of operation with the plants. They are provided on the basis of the method "design, build, manage and transfer" (DBT). All concessions are published in the Official Gazette of the Republic of Macedonia and in The Financial Times. The interest in participating seems to be good with mainly three, four or five bidders, although there were sometimes no sufficient bidders to justify the extension of the procedure to be implemented in additional one or two remote locations. Just over 50% of the projects were awarded to foreign companies, and somewhat less than 50% of Macedonian companies. (Energy Agency Republic of Macedonia, 2018)

6.12. Concessions for goods of general interest

Concessions for goods of general interest - such as aggregates and minerals most likely will not be considered. This area seems to cause the greatest concern and confusion not only because of the problem being defined in a way that is consistent with European Union legislation. It is clear that a significant number of these concessions are awarded every year, in the Registry of Concessions (Ministry for Economy, 2018), there is a total of 365 concessions limestone, marble, dolomite, underground water, mineral water, quartz, etc. Such concessions are included within the new Law on Concessions and Public-Private Partnerships although the procedures for granting a license to one entity or renewal of such a permit should be in accordance with the

basic principles of the Agreement on the functioning of The European Union, in particular the principle of equal treatment and the subsequent commitment for transparency. It is also considered that within the Law on Concessions and public private partnerships (2012) the biggest challenge there is precisely, is in the regulation of the relations and ways of cooperation between the state and private partners, when it comes to exploiting the natural resources of earth. (Jonovski, 2014)

6.13. Started but not completed public private partnership tenders

According to Analytica (2017) there are two significant examples of started, but not completed tenders.

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

Amusement park: Public private partnership for financing, design, construction, operation and maintenance of an amusement park in Skopje. City of Skopje as a grantor published a call, but tender procedure was canceled because there were no interested bidders. (Analytica, 2017)

6.14. The Law on institutions

In the Republic of Macedonia there are two general legal frameworks that regulate public-private partnership: from the beginning of 2012 the Law on Concessions and Public-Private Partnerships and the Law on Institutions (2005).

The Law on Concessions and Public-Private Partnership stipulates that a public private partnership is actually characterized by the obligation of the private partner to provide a public service for end users within the competence of the public partner necessary prerequisites for

providing a public service to end-users and / or activities under its authority. (Article 5 Law on concessions and public private partnerships, Official Gazette Republic of Macedonia, No 6, 2012).

The benefits from public interest (cost savings for the public partner, higher standard of the given public services or other public amenities) that exceeds the benefits that arise from the usual way of providing conditions for performing public services. (Article 23, Ibid.) However, the forms of the undertaking referred to in Article 5 of the Law on Concessions and Public-Private partnership, continue to persist the conclusion that the goal for public private partnerships in giving public services in classical public services (education, culture, science, health, social protection, etc.), some researchers (Jonovski, 2014) argue that a more appropriate regulation is the Law on Institutions. To this conclusion is due to the fact that the Law on Concessions and public private partnerships contains all the elements for investments by private entities / partners for the purpose of continuous and more efficient performing only this particular type of public service that constitutes the notion of public service in the narrower sense of the word.

"Agreement on joint establishment of an institution is a contract concluded between two or more co-founders of the institution that regulate each other relations of co-founders "- in this way the legislator leaves the opportunity to conclude a classic agreement for a public-private partnership in the provision of public services; "Interesting either functional connection is the connection of institutions of the same or related activity due to joint performance of the core business or for the accomplishment of a more rational and economic performance of the core business "- this would mean the possibility of joining the private and public institution for the purposes that are common to concluding a public private partnership: "mixed institution is an establishment initiated with state or local ownership and funds of domestic or foreign legal entity and natural person or institution established with state funds or local ownership in which private assets are invested- legal possibility for pooling funds for the establishment of an institution providing public services; "Co-founder of institution is a domestic and foreign legal entity and a natural person who is a co-founder of an institution in founding, co-founder of an already established institution in a procedure of ownership transformation " - types and ways of private investments

in a public institution, etc. (Law on Institutions, Official Gazette Republic of Macedonia, No 32, 2005)

In Art. 4, Par. 3 from the same Law, provides for the establishment of a private institution, which also is a type of public private partnership when the private founder carries out a public activity for which he has received authorization from the public entity. "An institution with mixed capital can be founded by the Republic of Macedonia by funds in state ownership, by a municipality or the City of Skopje by funds in ownership of the municipality, i.e. the City of Skopje and a domestic and foreign legal entity and a natural person by private funds. The co-founders of the institution with mixed capital shall acquire founders' share in the institution" (ibid.)

In Art. 6, Par. 1 are listed the activities for which the private entity is performing necessary to obtain a license for their performance: education, science, culture, health, social protection, child protection, protection of persons with intellectual or physical disability and other activities by law established as a public service "An institution shall be founded for the purpose of performing an activity in the field of education, science, culture, health, social protection, children's protection, protection of persons with intellectual and physical impediment, as well as other activities determined as a public service by law." (ibid.)

Similarly, to all laws on concessions and public private partnerships, and in the Law on Institutions, it is established obligation to submit a financial guarantee by the private partner (Article 17).

"The founder of the private institution, besides fulfilling the conditions for founding an institution determined by this or another law, as well as by the norms and standards referred to in paragraph 16 of this Law, shall be obliged to submit a quality financial and another guarantee proving to be able to perform the public service continuously and without stoppage and to compensate for the damage that can be caused to the public service users, if the institution stops working." (ibid.)

Furthermore, in the common forms of investment in an institution, the Law establishes an obligation for concluding a special type of agreement for joint establishment of an institution that has the character of an agreement on an oracle, but further, the rights and obligations

regarding the performance of contractor's obligations that entail the performance of a public service have the character of an administrative contract. Law on institutions contain numerous modalities for cooperation or joint performance of the public activity by the public and private partners, but unfortunately, this Law, although adopted in 2005, has not been applied in the practice of the functioning of the public services in the Republic of Macedonia. On the contrary, in order to achieve the goal of privatizing public services or their own modernization and for the increasing of the efficiency through investments of private entities, are used the provisions of the specific laws governing the activities of public services separately, for example, the Law on Health Care, the Law on Higher Education, the Law for secondary education, the Law on Culture, etc.

It is difficult to ensure consistency or uniformity in formation of public-private partnerships in the public sector as a whole. By the year 2012 an insufficient use of the existing legislation led to the fact that in the public sector actually has no real examples of public private partnership, but only classical privatization of "lucrative" public services. So, in education, we had witnessed on examples of the founding only of classical private institutions, not of mixed ones. It was the same case with health, as well as in the field of child care, care for the elderly, etc. (Jonovski, 2014)

Efforts to privatize the activity in the public healthcare institutions were visible, but also in this case were not about public private partnerships, but about private financing of the public service given by the public entity - afternoon delivery of health services by self-financing of patients by public health officials in existing public institutions without participation in private equity and investments.

According to the register on Public private partnerships from year 2012 (Ministry for economy Republic of Macedonia, 2012) till today there are twenty-eight award contracts, apart from concessions. The register of public private partnerships is not completely reliable due to the fact that the public partners that have an obligation to report according to article 5 of the Law on Concession and public private partnership "The public partner shall be obliged, within a period of 30 days as of the day of occurrence of the amendments to the contract for establishment of a public private partnership, awarded in accordance with this Law, to report all the amendments

related to the relevant contract to the Ministry of Economy, on the form referred to in Article 56 of this Law.” (General assembly Republic of Macedonia, 2012)

In my opinion the Law on Institution (2005) is a good start but not a good solution on a long run. Because it has all the basic components that a public private partnership should have, but has no way of protecting the “award” procedure by offering fair competition instead only has a contract between two similar entities which can be public and private. (General assembly Republic of Macedonia, 2005)

6.15. Public private partnership and the public dept

According to Jonoski (2014) the high level of public debt of the Republic of Macedonia and financial constraints for further increasing the debt puts public private partnership as one of the possibilities that the government could use in order to provide and improve much needed services for the citizens. However, this private sector vehicle for financing public services should be used carefully, bearing in mind that it generates implicit debt.

6.16. Corruption in public private partnership

The State Commission for Prevention of Corruption submits to the General Assembly of the Republic of Macedonia an Annual Reports on the work of the State Commission for Prevention of Corruption respecting the principles of legality, publicity, transparency, accountability and responsibility. (Jonoski, 2014)

6.16.1. State auditing office reports on public private partnership performance at local level

6.16.1.1. Report year 2013

In this report is the following information. In public private partnership sector of the State Program, five risk factors for the occurrence of corruption and conflicts of interest, which are mainly related to public procurement procedures and concessions with special emphasis on the activities for their overcoming, are identified by introducing mechanisms for transparency, competitiveness, economy and non-discrimination. (State auditing office, 2013)

According to the State audit office from the predicted 13 activities in this sector of public private partnerships, 7 were executed, 3 were unexecuted and 3 activities were in progress. The activities for establishing a single database of concessions, public private partnership and public procurements have been completed and should be completed. Uncompleted activities in this sector are related to the amendment of the Law on Public Procurement and the Law on Concessions and public private partnership in the direction of independence of the Public Procurement Bureau and transfer to the Public Procurement Agency, as well as transferring the competence for concessions and public-private partnerships to the agency by strengthening its competencies. Also, there is a requirement for adopting practical tools for detecting corruption and conflicting interests in public procurement, concessions and public private partnerships, as well as for conducting specialized trainings for persons involved in public procurement procedures and for immediate application of laws in this field.

6.16.1.2. Report year 2014

The section eight of the report covers the public procurement and prevention and repression of corruption and conflict of interest, the position and role of the Public Procurement Bureau, long-term sustainability through continuous training for the participants in the public procurement procedures, the tender procedures and their annulment, the handling of concessions and excesses discretionary powers of the authorities in these areas. Five risk factors for the occurrence of corruption and conflict of interests are identified and is predicted an introducing of mechanisms for transparency, competitiveness, economy and non-discrimination. (State auditing office, 2014)

In order to detect corruption and collision of interests in public procurement and public private partnership, actions have been undertaken in the direction of accomplishment of the identified activities with changes within the Law on Public Procurement by introducing a Statement of Interest for the participants in the procedures and code of conduct in these procedures and according to the latter amendments to the law had been set up a Public Procurement Council that (until 2017) decided upon requests for consent. An integral part of the activities accomplished in this sector were 70%, the introduction of an additional step when there is only

one acceptable bid, in order to meet the high degree of invalidity procedures, so that the tenderer can reduce it within the same procedure first-off price. Nevertheless, the activity remains unrealized making a separate guide to detect corruption and conflict of interest in this area. This question as a need can be further reevaluated, as well as the predicted activity for the development of the Public Bureau Procurement in an Agency that would have competences over concessions and public private partnership. In practically undertaken actions it was changed the approach, so that a new Law on concessions and publicly passed is adopted Annual report on the work of the SCPC for 2014 a partnership in which the European Union directives are introduced and according to which authority of the public private partnership is the Ministry of Economy that has it established a separate registry for awarded public-private contracts partnership. As ongoing activities are the changes in the relevant laws and the preparation of harmonized bylaws for determining compulsory competencies and skills for officials working on public procurement and introduction of an electronic set and their placement with the new Law on administrative officers. The process of training and licensing of the trained people for practical management. The second activity as response to the large number of invalidated and unsuccessful tender procedures provides for transparency in the adoption of public procurement plans for which there is no explicit legal obligation, and what the contracting authorities are targeted to apply it as a good practice by publicly announcing annual plans for public procurement.

6.16.1.3. Report of year 2015

Acting upon reports from unknown inductees regarding abuses and corrupt actions of officials from the municipality of Delcevo regarding the alienation of property and assets owned by the municipality of Delcevo, SCPC filed an Initiative for initiation of a criminal prosecution of G. M., former mayor of the municipality of Delchevo and other responsible officials from the municipality of Delchevo, because in 2013, during the election process in the local elections in the Republic of Macedonia, contrary to the prohibition prescribed by the provision from Article 11 of the Law on Prevention of corruption, concluded a contract for sale and sale of movable property owned by the municipality of Delchevo for an unrealistically low price, reached in direct

agreement with the buyer, thus allowing the legal entity from Delchevo to obtain a property benefit , and caused damage to the municipality of Delchevo. (State auditing office, 2015)

Also, the Mayor and other responsible officials from the municipality of Delchevo undertook illegal actions in the procedure for awarding a contract for the establishment of a public-private partnership service - reconstruction, modernization, monitoring and maintenance of public lighting. Also, during the implementation of the established public-private partnership, the mayor illegally made payments from the Delchevo municipality's budget account in 2013 despite the fact that his mandate was terminated.

In all cases, considerable damage was caused to the municipality, and the possibility of acquiring a significant property benefit was created for other persons, i.e. for itself, and there are grounds for suspicion that the above mentioned officials committed criminal offenses Abuse of official position and authorization from the member 353, paragraph 3 in conjunction with paragraph 1 of the same article and the Unscrupulous work in the service referred to in Article 353-c, paragraph 3 in conjunction with paragraph 1 of the same article of the Criminal Code of the Republic of Macedonia.

6.16.4. State audit office review, from year 2011 along with year 2017.

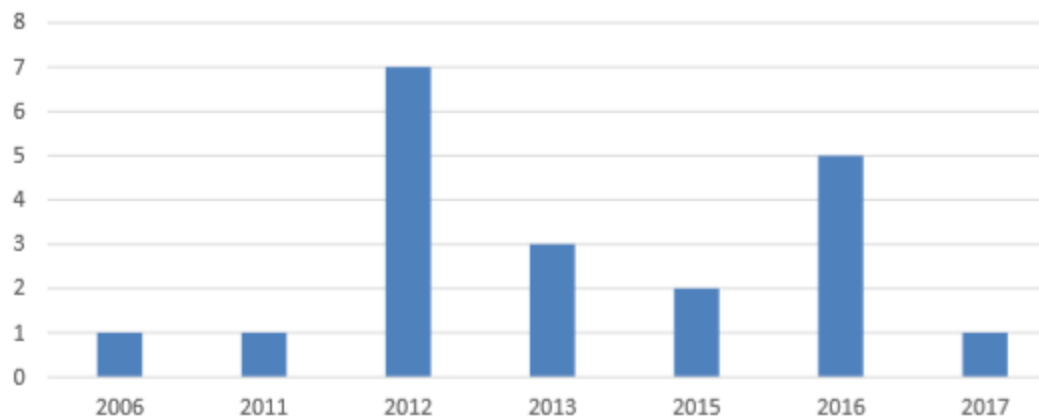
Within the review there are certain conditions that had been spotted which are connected with the administrative capacity or rather the lack of administrative capacity of the department for legal and normative affairs of the Ministry of Economy to guarantee an effective implementation on the Law on concessions and public private partnerships. The council for public private partnership should have an advisory role to the Government of the Republic of Macedonia in the area of public private partnership, to propose projects, I give initiatives with proposals in the public private partnership area. Till today this Council does not function and all the above-mentioned activities are not executed that by all standards gives an effect of ineffective institutional coordination and support for accomplishment of public private partnership projects. There is also temporary updating of the Register of awarded contracts because of the sporadic submission of data by the public partner that falls under article 56. The planning and preparation for the projects that are executed by public private partnership should come from the

Development strategy of the municipality and as a final effect there should be an election and implementation of projects that secure an effective usage of resources and an equal distribution of the project acquisition. (State Audit Office, 2017).

6.17. Conclusion

Macedonia's overall performance in public private partnerships implementation was ranked high in 2012. The country adopted a set of concession, public private partnerships, and sectorial and public procurement laws for public private partnerships at both the national and local levels, which are in alignment with European Union directives on public procurement. The public private partnerships unit located in the Department for Legal affairs, receives policy development support from the Ministry of Economy and assistance for advisory and promotion tasks from the Council on public private partnerships. However, familiarity with technical and practical aspects of public private partnerships remains low in government agencies and experience in risk management is limited.

The current institutional establishment of public private partnerships in Republic of Macedonia and the practical implementation of public private partnerships models partially grant a successful execution of the projects. In order for the implementation of public private partnerships projects to be successful there is a need for the institutional capacity to be enhanced on central and local level as well.



(source> state audit office) Executed public private partnerships on local level per year.

6.17.1. What can Republic of Macedonia learn from the developed countries?

From international point of view, Republic of Macedonia is a baby country because it was formed in year 1991. Therefore, maybe it is expected that we are very behind the developed countries that have been around for a long period of time. Though, Republic of Macedonia is not big in territory and the population is a bit more than 2 million people (2,086,253), in a time frame of twenty-seven years we have accomplished a lot in agriculture, tourism, sports etc. The economy in the country in the past 10 years has been improved due to the fact that factories were open, and foreign capital entered in the Republic of Macedonia, one example is the Cromberg and Schubert factory in Bitola, where more than 7.500 employees work. That been said I think that there is a solid ground for implementation of public private partnerships. What Republic of Macedonia can learn from the developed countries is to strengthen the institutional framework. Republic of Macedonia has an overemployment of administration, the remarks that are repeatedly received by the European Union that the public and state administration need to be reduced to around 70 000 employees. Professor Borce Davitkovski from the Faculty of Law Justinianus Primus, underlines that a reform is needed that will solve the problem in the long run, as in stable democracies, and not, as he said, as in our country where every government begins from the beginning. He proposed to make an academy following the example of the Academy of Judges and Public Prosecutors. (Nova Makedonija, 22.05.2018)

Another question rises, How the Ministry of Economy had only three people working in the Legal department? Within the Legal department of the Ministry, the Laws on concession and public private partnerships are drafted and this department is practically without employees for public private partnerships. When I conducted the interview with Mrs. Olgica Dimova I had an impression that only one person in the Legal apartment does work associated with public private partnerships including drafting the Law on public private partnership.

We can come to a conclusion that there is a deficit of trained workers that have an actual performance and don't just get monthly salaries. And in order for our institutional framework to be functional we need to take active measures with detecting areas where there is overemployment and have regular educative trainings for employees in order to prepare workers for public private partnerships.

6.17.2. What Republic of Macedonia can learn from countries like Republic of Croatia?

As mentioned in Chapter III, Croatia has better record for public private partnership than any eastern country. The reason is the institutional framework. Although, Croatia has not implemented all projects of public-private partnership itself, The Republic of Croatia has the strongest institutional framework for it. Moreover, the country is the only one that had a Public Private Partnership Agency which today is part of the Agency for Investments and Competitiveness as a central state body that coordinates all activities related to public private partnerships projects. Many countries like Lithuania and Slovenia do not have such an agency, but public private partnerships work is done by various ministries, specifically in Lithuania, the Ministry of Economy and Transport, and the Central Office for Project Management.

6.17.3. Recommendations for Republic of Macedonia

In my opinion a systematic approach towards all institutions in Republic of Macedonia involved within the public private partnership is required and a compliance of the institutions with their obligations.

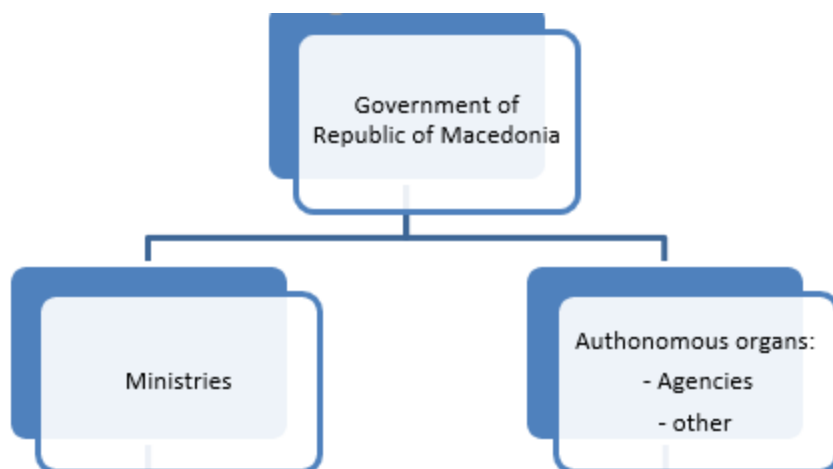
I believe that The Government of the Republic of Macedonia has the following responsibilities:

1. An adjustment of the Law on concessions and public private partnerships is essential;
2. New body for public private partnership that will give opinions, carry the process of public private partnership and control the whole procedure. This body would be responsible to prepare serious acts regarding the following:
 - The strategic plans for public private partnerships;
 - Drafting the Law on public private partnerships
 - Conduct pilot feasibility studies;
 - Define the public private partnerships procedures;
 - Organize serious education trainings and workshops for the public and the private partners where information can be exchanged, and that would raise the knowledge regarding the concepts, procedure and the politics of public private partnerships;
 - Control the actions of the public private partnership parties;
 - Make comparative analyses on public private partnerships.

The Ministry of economy has some of the above-mentioned obligations, but as mentioned doesn't have a legal nor institutional capacity to carry the public private partnerships.

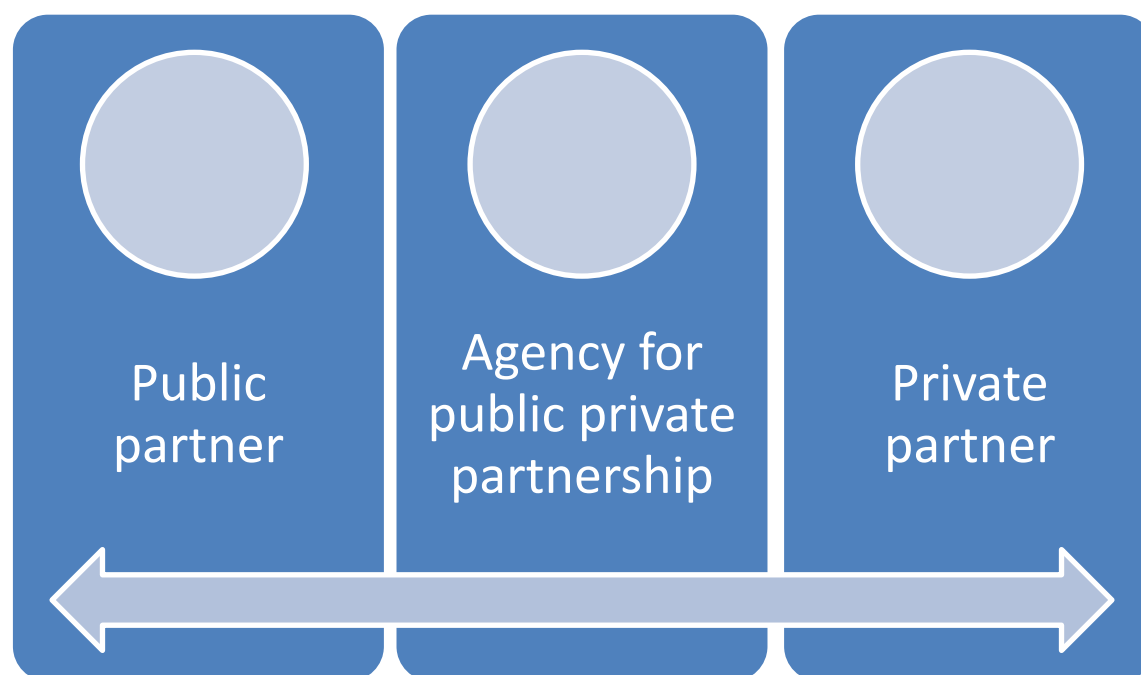
In my opinion, every responsibility regarding public private partnership should be transferred to the new body. This body would function as regulator, facilitator, educator, etc. between the public and the private partner.

It is better that the new body, should be an agency for public private partnerships. An agency would be by vertical structure directly under the Government of the Republic of Macedonia, which means that the agency for public private partnerships will be responsible to the Government of Republic of Macedonia. This way, the submission of the public private partnership agency towards the Ministry of economy or any other ministry will be avoided.



As previously mentioned, the Agency for public private partnerships will be facilitating the relationships between the public and the private partners. At the same time will control both partners implementing the Law on concessions and public private partnerships and the bylaws.

In the following smart art graphic is highlighted the relationship between the Agency for public private partnership and the two partners.



Also, I must emphasize that the Agency should have departments especially for conducting feasibility studies, department for public private partnerships audit and all other usual department like normative, financial, technical department etc.

Additionally more active involvement of the civil sector, especially in monitoring the spending of public money, better implementation of the Law on Concessions and Public Private Partnerships and the fight against corruption at the local level.

SWOT analyses Public private partnerships in Republic of Macedonia



Chapter VII Conclusion of the doctoral dissertation

Public private partnership can be defined as a contractual relationship in which the private partner assumes the responsibility for the executing a part of a public function. By its very nature, public-private partnership is a public and private sector co-operation that brings together partners' resources in order to provide public services or develop public infrastructure. Public-private partnership programs offer a long-term sustainable approach to the promotion of public services and public infrastructure, including an increase and diversity of work activities at the local level.

In combining public and private resources, public-private partnerships contribute to better market valorization of public assets and increase the effects of spending taxpayers' money in order to achieve publicly-targeted goals. (Albert N. Link, 2006)

Public Private Partnership is a cooperation, usually of a long-term nature, of both the public and the private partner in order to achieve general and particular benefits, i.e. it is an agreement between the public partner and a private partner that contributes to increasing the availability and quality of the services of the public partner and which enables the completion of the desired benefits of the private partner. In the public private partnership, the following important features can be identified:

- Public-Private Partnership is a governance reform, an innovative tool that can enhance the delivery of public services in order to increase their quality and reduce the cost of the public service;
- Public Private Partnership enables the involvement of public sector managers in a market competition, also contributes to the shift of risk, but also on the distribution of the realized funds between the public and the private sector;
- Public-Private Partnership is a modern model for financing the public sector, by which the public authority, with the help of the private partner, overcomes the gap in the financing of larger capital investments;
- The basis of the partnership between the public and the private sector is to establish mutual cooperation for achieving common goals, especially in investing and taking the risk, in order to make the public service more accessible, with better quality and cheaper to the taxpayer;
- Public-Private Partnership is an arrangement of public and private sector, in which different partnership models emerge, from which public-sector financing with the involvement of the private sector is only one part. The rest of the sections on which the public private partnership is based are: designing, constructing, using and maintaining public infrastructures and services, with which the public and private sector aspire to stimulate economic growth and development in order to achieve their goals in a jointly defined responsibility the partners. (World Bank group, 2016)

The basis of the partnership between the public and the private sector is to establish cooperation between the public and the private sector, especially in the segments like: joint investment approach, joint contractual allocation of risk and division of responsibility for functioning, in which the public sector keeps quality control, the amount, price and availability of the public service.

Public private partnership does not mean a privatization, which is often confused due to the transfer of ownership from the public to the private sector. Privatization is the transfer of rights that arrive from a public property to the private sector for an agreed period. Also, public private

partnership is the introduction of the private sector in the construction, modernization, financing and management of public services with two-sided interest - both public and private sector - according to long-term contracts with which public the sector maintains control and responsibility for the functioning of the composition. This means that there is no legal turnover of private sector ownership of the public sector.

Public private partnerships are differently approached by developed and developing countries. On one side developed countries use the public private partnership in order to get better services for the value of their money because in developed countries the capitalism is on a higher level and there are large private companies that have much bigger earnings than public companies and therefore have better know how. On the other side in developing countries the public private partnerships are introduced as a tool for saving money. By using the money of the private partner, a public infrastructure object is built that the private partner can manage for a certain period as long as the contract lasts, latter the private partner transfers the ownership to the public partner.

Within the European continent, Great Britain is a country with the largest infestation in public private partnerships, concept that is implemented trough the model of PFI and PF2. There is no particular Law for PFI and PF2 and there is a strong institutional framework that can execute the projects successfully. However, as published in the previously mentioned newspapers, the PFI and PF2 were not exactly as introduced. Hence as was showed in the SWOT analysis public private partnerships have serious weaknesses and need previous detailed analysis. Therefore, bigger transparency of public private partnerships da create debates and more analysis is the field that is a subject of corruption is always welcome.

As mentioned in the previous chapter the law on public private partnerships must go hand in hand with the institutional framework. Good Law on public private partnerships does not necessarily imply good institutional framework, for example in Republic of Macedonia the law on concessions and public private partnerships in my opinion is good from general point of view, but the institutions don't have enough qualified employees to implement it. According to the Minister of information society and administration Mr. Damjan Manchevski, the administration

in Republic of Macedonia has overemployment. (Denesen, 19.11.2018) However, whenever one addresses to public institutions in Republic of Macedonia, one is always at the impression that there is a lack of employees that can address the particular matter. Therefore, the logical conclusion about the public institutions would be that there is an overemployment of people but underemployment of qualified workers. In order for the working process to run smoothly, institutions need qualified employees. That being said, there is also a need to make some additions within the Macedonian legislation, providing a new Law on foundation of agency for public private partnerships or Law on the foundation on agency for public procurements and public private partnerships. With the introduction of the Law on public procurances in year 2007, a foundation was prepared for bigger control on public procurements that are usually a target for corruption in Republic of Macedonia. The Law on public procurements was amended 18teen times and on February 1st 2019 a new Law on public procurements was published in the official gazette of Republic of Macedonia No. 24, that will be implemented since April 1 year 2019. That shows how the previous and today's Governments of Republic of Macedonia want to have bigger control on public procurements and avoid the irregularities of the tender procedures. But as I previously mentioned, a good law is just the first step and a serious implementation of the law must be the second step otherwise the law would be a piece of paper that does not produce real consequence.

Republic of Croatia is a good example of a legal and institutional framework for public private partnerships that can be implemented in Republic of Macedonia. Republic of Croatia is the only country in Eastern Europe that has separate body uncharged for public private partnerships with all rights and obligation towards the public private partnership procedure.

I believe that Republic of Macedonia should follow the example of the Republic of Croatia. Since the proclamation of independent Republic of Macedonia in 1991 the Republic of Macedonia has changed three different laws on public private partnerships, which shows that Republic of Macedonia has interest in improving this particular Law in order to use public private partnership as a tool for cheaper, faster, better services. As I previously mentioned in my judgement a new body in a form of public private partnership agency that can be in charge of public private

partnerships in the Republic of Macedonia is the most important step towards better institutional framework. This new body may be merged with bureau for public procurement.

I think that an agency for public procurements and public private partnerships should be founded, with seriously educated administrative workers. The agency would have a vertical jurisdiction over the parties within public private partnership contracts and parties within public procurement contracts, what is more important the agency would respond directly to the Government of Republic of Macedonia. This way, the government would have bigger control over the Agency for public procurements and public private partnerships and the Agency would have control over the public and the private partners in public private partnerships contracts and contracting authorities and economic operator in public procurement contracts.

To summarize, the contribution of my doctoral dissertation Public private partnerships policy, legal and institutional framework in developed Vs. developing countries (Cases of United Kingdom, Republic of Croatia with special emphasis on Republic of Macedonia) will be in the emphasizing out the importance of the cohesion between the legal and the institutional frameworks in Republic of Macedonia. Furthermore, the formation of Agency that would directly regulate and control public private partnerships in Republic of Macedonia.

I consider that with my doctoral dissertation I provided policy recommendations for further researchers on the subject.

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