



MONTENEGRO

ASSESSMENT OF THE QUALITY OF THE PPP LEGISLATION AND OF THE EFFECTIVENESS OF ITS IMPLEMENTATION

2011

I- PPP Legislative Framework Assessment (LFA)	Compliance of the PPP legal framework with PFI Guide recommendations ¹ and Best Practice		
Core Area		Rating	Assessment
1- PPP Legal Framework	Existence of specific PPP law or a comprehensive set of laws regulating concessions and other forms of PPP and allowing a workable PPP legal framework	14/18	
2-Definitions and Scope of the Law	Existence of a clear definition of the boundaries and scope of application of the concession legal framework (e.g. definition of "PPP", sectors concerned, competent authorities, eligible Private party) limiting the risk of a challenge to the validity of PPP contracts, irrespective of whether the act is specifically targeted at PPP	22/24	
3-Selection of the Private Party	Mandatory application of a fair and transparent tender selection process. Limited exceptions allowing direct negotiations, competitive rules for unsolicited proposals and the possibility to challenge illegal awards.	39/45	
4-Project Agreement	Flexibility with respect to the content of the provisions of the Project agreements which should allow a proper allocation of risks without unnecessary or unrealistic/not bankable/compulsory requirements/interferences from the Contracting Authority (obligations, tariff, termination, compensation).	16/27	
5-Security and Support Issues	Availability of reliable security instruments to contractually secure the	11/18	Medium Compliance

¹ UNCITRAL *Legislative Guide on Privately Financed Infrastructure Projects*, 2001 (hereinafter the "PFI Guide")

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	assets and cash-flow of the Private Party in favour of lenders, including "step in" rights and the possibility of government financial support, or guarantee of, the Contracting Authority's proper fulfilment of its obligations.		
6-Settlement of Disputes and Applicable Laws	Possibility to obtain proper remedy for breach under the applicable law through international arbitration and enforcement of arbitral awards.	9/15	
General LFA Rating		72,8%	High Compliance
II-Legal Indicators Survey (LIS)	Effectiveness Assessment : How the PPP law works in practice		
Core Area		Rating	Legal Indicator Survey
7- Policy Framework	Existence of a policy framework for public private partnerships	7/24	
8 Institutional Framework	Existence of an institutional framework for public private partnerships	5/15	
9- PPP Law Enforcement	Award and implementation of PPP projects in compliance with the Law	18/24	
General LIS Rating		45,7%	Low Effectiveness
OVERALL RATING		59,3%	Medium Compliance/Effectiveness

Local Expert²: Law office Maric, Malisic&Dostanic, correspondent of GLN

² The Local Experts in charge of each country have been consulted for the elaboration of the responses to the Checklist in their capacity of well recognized established law firm in the country but the Local Experts as well as EBRD are in no way responsible for the responses given to any question in this Checklist as the Consultant was free to use any other sources of information for its final determination.



3.

RATING: Key for assessment of Each Question

✓ ✓ ✓	Yes	3 points
✓ ✓	Yes, with reservations	2 points
✗ ✗	No, with Limited compliance / redeeming features	1 point
✗ ✗ ✗	No	0 point
N/A	Not applicable	0 point// Not included in total

Key for Assessment of Each Core Area and for Overall Assessment

≥ 90%	Very High Compliance/ Effectiveness
≥ 70%-89%	High Compliance/ Effectiveness
50%-69%	Medium Compliance/ Effectiveness
30%-49%	Low Compliance/ Effectiveness
< 30%	Very low Compliance/ Effectiveness

TERMINOLOGY

So as to keep answers consistent and avoid ambiguity, we set out below some brief definitions of the terminology used in this questionnaire. Any definition is provided solely to clarify some of the terminology used below. The reader should note that any such definition does not correspond with any given definition under best international practice (which does not provide for any standardized PPP legal definitions recognized worldwide) neither should it be interpreted that we recommend the adoption of such definitions under actual documentation, but they are included in the interests of clarity for the completion of this questionnaire, and we should be grateful if you could adopt such definitions for the purposes of completing the questionnaire.

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4.

- **"Public Private Partnership" -"PPP" or "PPP project"** includes all types of long-term arrangements between public authorities and private institutions , including but not limited to; Concessions , BOT and derived forms, PFI and Institutional PPP. For the purposes of this questionnaire, PPP excludes the sale of public assets or of public company shares which are part of a privatisation process and also excludes public works, services or supply contracts which are subject to public procurement rules.

The following types of Public - Private Partnership Agreements may be adopted by a Contracting Authority for undertaking infrastructure projects. These are solely indicative in nature and the Contracting Authority may seek to adopt a combination of the different contractual arrangements, which incorporate some of their elements or combine elements.

- **"BOT"** - (Build-Operate-and-Transfer) - and derived forms : a contractual arrangement whereby the Private Party undertakes to finance, design, construct under a turnkey risk basis, operate and maintain an Infrastructure project for a specified period after which period the project facilities are transferred to the Granting Authority usually without payment of any compensation.

The Private Party has the right to collect contract or market based tariffs or fees from the users of the infrastructure project, as specified in the PPP agreement, to recover its investment and operating and maintenance expenses for the project. A BOT type of PPP arrangement may provide for all the implementation and operational efficiencies of the private sector, together with new sources of infrastructure capital. Derived forms of BOT contractual arrangements exist such as Build-Own-Operate-and-Transfer (BOOT) similar to the BOT agreement, except that the Private Party owns the Infrastructure project during the specified term before its transfer to the Contracting Authority or its designee, or such as Build-Own-and-Operate (BOO) which is a contractual arrangement similar to the BOT agreement, except that the Private Party owns the Infrastructure project and no transfer of the project to the Contracting Authority or its designee at the end of the fixed period is envisaged. Derived forms incorporating Lease right rather than Ownership or dealing with rehabilitation or extension rather than construction which extend the possible combination which for the purpose of this questionnaire will all be hereafter referred to as BOT for simplification purpose except where legal specificity requires specific treatment.

- **"Concession"**: is an act attributable to the State whereby a Contracting Authority entrusts to a third party the total or partial management of public services for which that authority would normally be responsible and for which the third party assumes all or part of the risk.
- **"PFI"** (Private Finance Initiative) : a form of cooperation and partnership between public authorities and Private Parties which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of service to the infrastructure without the delegation of the public service itself. It is a contractual arrangement whereby the Private Party



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undertakes the financing and the construction of an infrastructure project and after its completion transfer it to the Contracting Authority or its designee. This arrangement may be employed in the construction of a public service facility for which the public service must be operated directly by the contracting authority for whatever reason but the operation and maintenance of the facility remain the responsibility of the Private Party for the entire duration of the PPP agreement. The contracting authority will reimburse the total project investment on the basis of a rent based of an agreed schedule with the payment starting from the date of commencement of operation and pay for the services rendered to the facility on a performance basis.

- **"IPPP"**(Institutional PPP): a structural or corporate form of PPP which provide for the cooperation between public authorities and a Private Party through a joint venture or mix (public-private shareholding) company in which case all reference to the selection process refers to the selection of the Private Party.

Other definitions:

- The **"Law"** or **"PPP Law"**: a law regulating any form of PPP including but not limited to Concession, BOT, PFI, IPPP and including, for the purpose of this questionnaire, the set of rules applicable to any PPP in the absence of a specific PPP law. The Law for the purpose of this questionnaire also includes any implementing regulation and any form of governmental act regulating PPP.
- **"BOT Law"**: a law regulating a BOT type of PPP in their multiple forms.
- **"Concession Law"**: a law regulating a Concession form of PPP.
- **"Contracting Authority"**: a public authority empowered to award a PPP and enter into Project Agreements
- **"PFI Law"**: a law regulating a PFI form of PPP.
- **"PPP unit"** : specialized institution/agency/ministerial department established to promote and take care of PPP.
- **"Private Party"**: Private Party or other entity in the form of a special purpose company to which a Project Agreement in general has been awarded. *[The word Private party will be used for the sake of this study even in case the PPP regulation allows PPP business partner to be a mix company or even a public entity.]*
- **"Project Agreement"**: an agreement(s) between the Contracting Authority and the Private Party regulating their respective rights and obligations with respect to the PPP project.



REFERENCE TO BEST PRACTICE

- UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, 2001 (hereinafter the "**PFI Guide**") and UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, 2003 (UNCITRAL Model Legislative Provisions).

- EC - Commission Interpretative Communication on Concessions Under Community Law dated 12 April 2000; together with additional EU major documents/decision /recommendation on concessions including Directives 2004/18/EC and 2004/17 EC of 31 March 2004; Green Paper on Public Private Partnerships and Community Law on Public Contracts and Concessions dated 30 April 2004; Report on the public consultation on the Green Paper (SEC(2005) 629- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (Brussels, 15.11.2005.COM(2005) 569) European Parliament resolution on public-private partnerships and Community law on public procurement and concessions (2006/2043(INI)); European Commission Guidelines for Successful Public-Private Partnerships (2003).Commission Interpretative Communication Brussels, 05.02.2008 C (2007)6661on the application of Community law on Public Procurement, and Concessions to Institutionalised Public-Private Partnerships (IPPP);

- EBRD Core Principles for a Modern Concessions Law – selection and justification of principles Prepared by the EBRD Legal Transition Team.2005;

- UNIDO Guidelines for Infrastructure Development through Build Operate Transfer (BOT) Projects, 1996 (UNIDO BOT Guidelines); and

- OECD Basic Elements of a Law on Concession Agreements, 1999-2000.



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OVERALL ASSESSMENT MONTENEGRO 2011

Montenegro has a single act dealing with concessions, enacted in 2009 (the “Concession Law”). The public procurement laws are not applicable to concessions therefore awarding PPP projects are regulated by the Concession Law and other sectoral laws relating to the “product” of the PPP in question. Currently there is no special PPP Law incorporating all forms of PPP.

Granting of concessions are generally awarded through a competitive tender process with principles of transparency, non-discrimination and competitiveness clearly stipulated in the Concession Law. An approval of the Government and/or Parliament is required for the exceptional cases of awarding a concession without a public tender process. The obstacles that can be detected in the process of awarding concessions mainly relate to the control of the project’s implementation and to the overlaps of competencies between the institutions participating in the projects.

Montenegro is one of the very few countries in the region (if not the sole following the recent ratification by Serbia and Moldova) not to have ratified the Washington Convention (ICSID) which is not a good sign to investors.

Although currently there is no PPP agency in Montenegro, there is a Commission of Concessions within the Ministry of Economy. To date concessions have been successfully implemented in the field of mining and geology and in October 2010 a BOT concession has been awarded in relation to a PET/CT health centre.



ASSESSMENT & LEGAL INDICATOR SURVEY

1. LEGAL FRAMEWORK

1.1 Existence of different forms of PPP legal framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the country have a single act dealing specifically with Concessions or a generalised act incorporating the legal framework for PPP, including Concessions?	✓ ✓ ✓		<p>Montenegro has a single act dealing specifically with concessions, i.e. the Concession Law (“Official Gazette of the RM”, No. 08/2009). Under this law, definition of concessions encompasses both Concessions and BOT types of PPPs in their multiple forms, as defined in this questionnaire.</p> <p>There is no special PPP Law incorporating all forms of PPPs.</p> <p>Also, the previous law replaced by the Concession</p>



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			<p>Law, i.e. the Law on participation of private sector in performance of public services (“Official Gazette of the RM”, No. 30/02 and 08/09) remains applicable for public services operated through leasing and management agreements.</p> <p>In addition, the following sectoral laws may be applicable to the realization of PPP projects: Law on Waters, Law on Financing of Water Management, Law on Geological Investigations, Law on Forests, Law on Harbours, Law on Financing Local Municipalities, Maritime Law, etc.</p>
2. Does the country have an act that allows BOT or derived forms such as BOOT, BOO or other forms either as part of a specific act or as part of a general PPP Law?	✓ ✓ ✓	2	Yes. It is the above mentioned Concession Law.
3. Does the country have an act that allows PFI, either as part of a specific act or as part of a general PPP Law?	✓ ✓	2.5	As defined in the Concession Law, the term concession can be interpreted as covering certain PFI arrangements. However, in order to determine whether the Concession Law could be applied, details of each separate PFI project would have to be analysed.
4. If the answer is <i>No</i> to any of the three first questions concerning a specific form of PPP does the Constitution or other general act (ex: the Civil Code, sectoral law) recognise the basic	N/A		



principles of the concerned PPP and regulate its granting?			
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For our general information: Is a new PPP Law or an amendment to the existing Law being prepared, or considered, in the country?

If so, at what stage of the legislative process is such new PPP Law or amendment to the existing Law?

In informal conversation with officials of the Ministry of Economy, we have been informed that the drafting of a new PPP Law has been initiated, and that the legislative process is in an early stage of development. Also, amendments to the already existing Concession Law are planned in the near future.

1.2 **Specificity and integration of PPP legal framework**

5. If the country has a Public Procurement Law, to what extent does the Public Procurement Law apply or not to the granting of a PPP?	✓ ✓ ✓	3	Montenegro has a Public Procurement Law ("Official Gazette of the RM", No. 46/2006), Article 3 of which explicitly sets out that this law is not applicable to the procedure of granting concessions. Therefore, these laws should exclude one another.
6. If the country has sectoral laws regulating PPP in specific sectors, is it clear which law is applicable to the granting of PPP for each particular sector?	✓ ✓	67	There are a few sectoral laws that set out specific rules for granting concessions, such as the Law on Ports, Mining Law, Law on Geological Research etc. The Concession Law provides that provisions of these sectoral laws will not apply if they contradict with the Concession Law.



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<p>7. Does the country have a Law allowing the Institutional form of PPP (IPPP) which regulates IPPP participation to PPP?</p>	<p>××</p>	<p>21</p>	<p>The Concession Law neither explicitly allows nor explicitly forbids the IPPPs.</p> <p>Article 21 of the Concession Law, however, indirectly requires the identification, as one of elements to be included in the public notice/invitation to bidders “the amount and type of stake and share of the Contracting Authority in the ownership structure of the concession company”.</p> <p>Even with the above, however, it is still unclear whether an IPPP could be operated under the Concession Law, i.e. if the Concession Law would be interpreted by the competent authorities as covering IPPPs. The law does not provide for specific rule for the selection of the private partner nor for the entitlement to compete in a PPP tender.</p>
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2. DEFINITIONS AND SCOPE OF THE PPP LAW(S)

2.1 PPP definition³

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>1. Does the Law define one or several term(s) (<i>i.e.</i> "PPP", "Concession", "BOT", "Partnership" <i>etc. and/or respective agreements</i>) for the arrangements to be regulated by the Law which specify the limits of application of the Law?</p> <p>For our general information: <i>please provide the given definition(s), if any.</i></p>	✓ ✓	4, 6	<p>Under the Concession Law, a concession is defined as the right to:</p> <ul style="list-style-type: none"> - Use natural resources, goods in general use and other goods of general interest, which are state owned, or performing activities of public interest, with payment of concession fees by the concessionaire or the provision of financial compensation or other assistance to the concessionaire for the achievement of adequate public interest, - Funding, research, design, construction or reconstruction, use, maintenance, revitalization and delivery of the objects, devices or facilities, within the agreed period, in the grantor's property, including other similar forms.

³ PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and Commission Interpretative Communication on Concessions Under Community Law dated 12 April 2000; together with additional EU major documents/decision /recommendation on concessions including Directives 2004/18/EC and 2004/17 EC of 31 March 2004; Green Paper on Public Private Partnerships and Community Law on Public Contracts and Concessions dated 30 April 2004; Report on the public consultation on the Green Paper (SEC(2005) 629- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (Brussels, 15.11.2005. COM(2005) 569) European Parliament resolution on public-private partnerships and Community law on public procurement and concessions (2006/2043(INI))



			<p>The Concession Law does not contain a specific definition for PPP, BOT, or Partnership.</p> <p>The Concession Law contains a broad definition of a Concession and lists the areas that could be the subject of granting a concession (e.g. research and/or exploitation of mineral resources, use of forests, use of shores of rivers and lakes etc.). There are no provisions explicitly excluding the application of the Concession Law for certain fields or regions.</p> <p>The Concession Law only limits its application by ways of indicating that the subject of a concession can be: “the use of any other natural wealth, goods in common use and other goods of general interest in state property, in accordance with the law, as well as performance of other activities designated by the law as activities of public interest.”</p>
2. Does the Law apply to all contracts entered into that fall under the definition(s) given above, irrespective of the name given to such contract (<i>concession, license, usufruct right, lease, etc.</i>)?	✓ ✓		Awarding concession is a strictly formal procedure, outcome of which should be the signing of the Project Agreement. The Concession Law is applicable to all agreements following the prescribed procedure, irrespective of the name given to such agreements.
3. Does the Law make a clear distinction between a PPP agreement (<i>such as a Concession</i>) and a	✓ ✓ ✓	19, 51	Yes, such distinction has been made in the legislation.



license (i.e. an authorisation to operate by a public authority)?			
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2.2 Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law identify (or allow clear identification by reference to other laws or regulations) the public authorities ("Contracting Authorities") that are empowered to select projects, prepare for, and award PPPs and enter into Project Agreements ?	✓ ✓ ✓	4, 9	<p>The authorities empowered to award a concession are the Government, the Parliament and the municipal authorities. In some exceptional cases, concession is approved also by the Concession Commission.</p> <p>The initiative and the concession documents and procedural steps are prepared by the so called competent body, i.e. the administrative body competent for concessions within the Contracting Authority's administration (the "Competent Body")</p> <p>The process of public tender is carried out by an ad hoc tender commission, nominated by the Competent Body.</p> <p>There are also few administrative state/local bodies involved in the process of awarding a concession, which are identified by sectoral laws.</p>

For our general information: *If yes, which of the following authorities are identified:*



Contracting Authorities are:

- *National authorities (e.g.: the government, ministries, and independent agencies);
National authorities are: the Government and the Parliament of Montenegro (depending on the value of the subject concession), for property which is subject to a concession and where the mentioned authorities exercise their property rights and powers over such property.
Also, the Concession Commission is authorized to grant certain concessions which are awarded outside the public tender procedure (e.g. extension of the concession term).*
- *Regional/state-level authorities;
No regional/state-level authorities.*
- *Local or municipal authorities; or State owned companies?
Local and municipal authorities are: local self-government, the Capital City and the Old Royal Capital City (“Priještonica”), for property which is subject to a concession and where the mentioned authorities exercise their property rights and powers over such property.*

2.3 Private Party and Project Company

QUESTION	ANSWER	ARTICLE	COMMENTARY
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<p>5. Is it possible for a PPP be awarded to a foreign company, a Private Party or to a domestic company with foreign participation in the share capital and/or management (<i>without discrimination</i>)?</p>	<p>✓ ✓ ✓</p>	<p>3, 4, 51</p>	<p>Under the Concession Law, a concession can be awarded in accordance with the principle of non-discrimination to “all domestic or foreign companies or other legal entities, entrepreneurs and physical persons, a consortium or other form of business association regulated by a mutual agreement”.</p> <p>The Concession Law sets out the obligation of a concessionaire to “establish and register a company or other legal entity with its seat in the territory of Montenegro, for performing the concession activity or to widen its registration for performing concession activity”.</p>
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For our general information: *can a PPP be awarded to public entities or to entities jointly owned by private and public entities (IPPP)? Are there restrictions imposed on such contracts?*

There is no explicit stipulation on awarding PPP to a public entity or on creating and operating IPPP.

The Register of Concession Agreements held by the Concession Commission contains agreements awarded to public enterprises, which in fact supports the interpretation that a PPP project, i.e. a Concession in the case at hand, can be awarded to public entities.

IPPPs are not explicitly mentioned in the Concession Law. However, given the wording of the Concession Law (please see commentary in section 1.2, point 7), such IPPPs seems to be allowed. In informal contacts with the Concession Commission of Montenegro, we have been informed that IPPPs is not yet implemented in practice.

2.4 Concerned sectors⁴

⁴ For further information on the concerned sectors please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and 4.



QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law identify (<i>or allow identification by reference to other laws or regulations</i>) the sectors and/or types of infrastructure and/or services in respect of which a PPP may or may not be granted?	✓ ✓ ✓	6	<p>The Concession law contains a general reference to the following sectors where concessions may be awarded:</p> <ul style="list-style-type: none"> - minerals and raw materials; - water use; - forestry; - radio frequencies; - railways; - highways; - airports; - telecom; - oil; - educational projects; - gambling.
7. Do the sectors eligible for PPP correspond to an open-ended one (<i>as opposed to being exhaustive</i>) allowing (<i>or at least not preventing</i>) PPP to be granted in numerous sectors”?	✓ ✓ ✓	6	The list of sectors eligible for granting a concession is an open-ended one.
8. Do the sectors eligible for PPP includes non commercial activities such as the provision of government services (<i>such as schools, hospitals,</i>	✓ ✓ ✓	6	health and education institute buildings as well as structures of public utility services, for the delivery of public utility services are listed.



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9. <i>prisons, defence and housing</i>) in addition to the merchant sectors of the economy (<i>energy, transport, water, oil and gas</i>).			prisons and defence are not explicitly listed.
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For our general information: Please indicate the restrictions if any imposed by the Law on the sectors eligible for PPP:
N/A.



3. SELECTION OF THE PRIVATE PARTY⁵

3.1 General Considerations

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law require, in principle, the Contracting Authority to select Private Parties through a competitive tender process?	✓ ✓ ✓	20, 21, 26, 29-34, 38	Yes, there is such a requirement.
2. Is there reference in the Law to the principles of transparency, equal treatment and proportionality?	✓ ✓ ✓	3	Granting of a Concession is based on principles of transparency, non-discrimination and competitiveness. The proportionality principle is not referred to in the Law.
3. Is there a provision in the Law concerning the publication of information related to the competitive procedures in the country media and in the international media (<i>for large projects</i>)?	✓ ✓ ✓	21, 6	The Concession Law sets out that the information related to the competitive procedure are to be published in the following media: <ul style="list-style-type: none"> • Official Gazette of the Republic of Montenegro; • At least one daily printed media distributed on

⁵ For further information on the selection of the Private Party, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 14 to 39 included.



			<p>the whole territory of Montenegro,</p> <ul style="list-style-type: none"> • on the internet site of the Competent Body, and • when the subject of a concession is of strategic importance for Montenegro for subjects of a concession mentioned in Article 6, paragraph 1, points 7 and 8 (infrastructure and energy), the publication us also made in a reputable international economy media, printed edition.
<p>4. Are there provisions within the Law or any special manual or recommendations governing in detail the selection of the Private Party (<i>i.e.: the pre-selection of bidders, the procedure for requesting proposals or other procedure such as competitive dialogue/two stage procedure</i>)?</p>	<p>✓ ✓ ✓</p>	<p>23, 27-30, 37-40.</p>	<p>The Concession Law sets out the criteria for participation in a tender procedure for granting a concession, the formal requirements of validity of the offer, as well as the non-exhaustive material criteria for ranking of bidders. Moreover, the special rules of two stage and competitive dialogue procedure are also included, as well as the general manner of determining the pre-qualification criteria within such procedures.</p> <p>In addition, a special by-law, called the. Regulation on the manners of conducting a public tender in an open and two stage procedure of granting a concession (“Official Gazette of RM”, No. 67/09) further elaborates in detail on the provisions of the Concession Law.</p>



<p>5. Does the Law provide that if the Contracting Authority rejects an applicant at the time of pre-selection or disqualifies a bidder, it must make public the reasons for the decision (<i>or inform the rejected bidder thereof explaining the reasons for rejection</i>)?</p>	<p>✓ ✓</p>	<p>31-32, 36, 42 of the Concession Law 6, 8, 24 of the Regulation on manners of conducting a public tender in an open and two stage procedure of granting a concession</p>	<p>According to the Concession Law, the ranking of bidders is to be published on the internet site of the Competent Body, and each bidder can have, upon its written request, an insight into the documents on ranking of the bidders (containing the reasoning of the decisions made), as well as the right to object to such documents to the Concession Commission.</p> <p>In addition, the above mentioned Regulation provides that all bidders failing to meet the pre-qualification criteria must be notified on the rejection of their offers and their exclusion from further procedure. There are no explicit provisions on the content of such notification, i.e. it is not clear whether such document has to contain the reasoning for rejection.</p>
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3.2 Award of PPP

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>6. Does the Law provide that all proposals are ranked solely on the basis of a predefined</p>	<p>✓ ✓ ✓</p>	<p>29,30, 38,39</p>	<p>Yes, the law provides for such criteria.</p>



evaluation criteria set forth in the pre-selection documents/ request for proposals?			
7. Does the Law provide for the publication of a notice of the award of the project, identifying the Private Party and including a summary of the essential terms of the project agreement?	✓ ✓ ✓	36	<p>Within 5 days as of rendering a decision on granting a concession, the Contracting Authority informs all the bidders in written form on the results of the tender.</p> <p>Also, the decision on granting a concession is published in the Official Gazette of the Republic of Montenegro and on the internet site of the Competent Body.</p>
8. Does the Law provide that the Contracting Authority or any other public authority maintain records of key information pertaining to the selection and award proceedings?	× ×	30, 33 of the Concession Law, 14 of the Regulation on manners of conducting a public tender in an open and two stage procedure of granting a concession	<p>The tender commission keeps detailed minutes on the whole process of opening, controlling, reviewing and evaluation of bids, which are signed by its members and delivered to the Contracting Authority together with all other documents needed for rendering a decision on granting a concession.</p> <p>The law does not contain any specific provision with respect to the length of time for what documents have to be archived and for centralization of the archives .</p>



<p>9. If the answer to the previous question is <i>Yes</i>, does the Law provide that such record is accessible to the public, or at least to interested parties?</p>	<p>✓ ✓</p>	<p>31</p>	<p>Each bidder has a right to ask for an insight into such documents, upon its written request, and within 8 working days from publishing the ranking list of bidders on the internet site of the Competent Body.</p>
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3.3 Final negotiations

QUESTION	ANSWER	ARTICLE	COMMENTARY
10. Does the Law contain provisions regulating final negotiations (i.e. post contract award) so that transparency, equal treatment and competition are preserved?	✓ ✓	34 43 (3-5)	No detail given about final negotiation except time limit for signature of the contract but the principles of transparency remain with due control
11. Does the Law provide that the Contracting Authority has the authority to terminate negotiations with the invited bidder if it becomes apparent that the bid will not result in an agreement and start negotiations with the second ranked candidate?	✓ ✓ ✓	35	



3.4 PPP Award without competitive procedure

QUESTION	ANSWER	ARTICLE	COMMENTARY
12. Does the Law provide that the Contracting Authority has the authority to award a PPP without a competitive process? Is this only in limited/ exceptional circumstances?	✓ ✓ ✓	20	Yes, this is only in exceptional cases, when the public tender procedure can be excluded.
13. Does the Law provide for a procedure, set of rules or principles to be respected when awarding a PPP without a competitive process?	✓ ✓	20	<p>There are certain rules laid down in the Concession Law, stipulating mandatory approval of the Government and/or Parliament for awarding concession without the tender procedure.</p> <p>In certain cases (e.g. extension of the concession term) the concession is granted by signing the annex to the already existing Project Agreement, with prior consent of the Concession Commission and the decision of the Contracting Authority.</p>

For our general information, please specify the conditions which would allow such direct negotiations?

The competitive process is exceptionally, can be excluded in the following cases:

1. *Extension of the concession term;*
2. *Extension of the location for performing the concession activity, and which, due to technical-technological conditions, cannot be determined as a special exploitation field for implementing concession activities by another concessionaire;*
3. *Use of other mineral resources, as supporting resources on an already approved exploitation field, given that the concession term cannot be longer than the term determined in the Project Agreement for exploitation of the primary mineral resource on that exploitation field;*

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4. *If the competitive process would endanger national defence and security;*
5. *Offers containing technical-technological solutions and other elements based on which the public interest and economic feasibility of realizing infrastructure and other needs of strategic importance for Montenegro can be perceived, for subjects of concessions from Article 6, paragraph 1, points 7 and 8 of the law, which are not determined by the plan from article 7 of the law, and this manner of granting a concession would speed up realization of the project, and*
6. *Realization of a concession performed based on international agreement, i.e. agreement concluded between Montenegro and one or more states or international organizations, determining joint realization of a concession by the signatories of the agreement.*

3.5 Special case of unsolicited proposals

QUESTION	ANSWER	ARTICLE	COMMENTARY
14. Does the Law provide for an adequate framework for the Contracting Authority to manage unsolicited proposals/private initiatives (i.e. a proposal relating to the implementation of a PPP that is not submitted in response to a request or solicitation by the Contracting Authority) that ensures transparency and equal treatment and does not distort competition?	✓ ✓ ✓	41	Under the Concession Law, interested party can submit an initiative for initiation of the procedure for awarding a concession, but there are no provisions on how to handle unsolicited proposals/private initiatives, raised during the procedure of awarding a concession.



3.6 Review procedures

QUESTION	ANSWER	ARTICLE	COMMENTARY
15. Does the Law allow the bidders who claim to have suffered, or that may suffer loss or injury, to seek review of the Contracting Authority's actions or failure to act?	✓ ✓ ✓	31,32, 42	Each bidder has a right to object the valuation of offers and the ranking list of bidders to the Concession Commission. Against the decision on awarding a concession, each bidder has a right to initiate an administrative court dispute.

4. PROJECT AGREEMENT⁶

4.1 Model or list of provisions

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law give flexibility to the negotiation of most terms of the Project agreement and if it	✓ ✓ ✓	43	The Concession Law contains mandatory material provisions of a model Project Agreement.

⁶ For further information on the project agreement definition, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 12 and 40 to 68 included.



<p>contain (or refer to): (i) a model PPP agreement it is an optional template agreement for guidance only or (ii) a list of mandatory material provisions which must be included in the agreement, the content of such provisions is left for negotiation)?</p>			
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4.2 Duration and extension of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>2. Does the Law provide that the duration of the Project Agreement should depend on the length of time taken for the amortisation of the Private Party's investment and an appropriate return on the capital?</p>	<p>✓ ✓ ✓</p>	<p>8</p>	<p>Duration of the Project Agreement depends on the specific public interest, the subject of the concession, time necessary for the return of investment and realizing appropriate profit.</p>
<p>3. Does the Law provide that the renewal or extension of the Project Agreement should be limited and depend on exceptional circumstances (<i>such as Contracting Authority default or an event of force majeure</i>)?</p>	<p>× ×</p>	<p>8, 57</p>	<p>The Project Agreement may be extended for half of the term envisaged under it, but the Concession Law does not specify the grounds for its extension.</p> <p>Rights and obligations set out by the Project Agreement</p>



			shall be suspended in case of force majeure or exceptional circumstances which halts the performance of the concession activity, until such circumstances cease to exist.
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For our general information, please provide the given minimum and maximum duration (if any)

If the concession was awarded by the Government, maximum duration of the Project Agreement may be 30 years (excluding the extension) and if the concession was awarded by the Parliament, maximum duration is 60 years (excluding extension). Renewal is limited and may be granted for (maximum) half of the originally approved term.

4.3 Termination of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law leave open to the Project Agreement negotiations the list of possible ground for termination and the content of to the termination provision?	✓ ✓	53	<p>Apart from the grounds set out by the Project Agreement, the Project Agreement shall be terminated <i>ex lege</i> in case of:</p> <ul style="list-style-type: none"> • Expiry of the term envisaged by the Project Agreement; • Withdrawal of the concession (7 grounds set out by the Concession Law); and • Signing the agreement on termination.
5. If the answer to the previous question is <i>No</i> does the Law provide for a list of grounds of termination which does not affect the balance	N/A		



between the parties rights and obligations (<i>one sided provisions</i>) or the stability of the contractual relation under the Project Agreement (e.g.: <i>too large or non exhaustive list</i>)?			
6. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for losses incurred as a result for termination on the grounds of public interest for losses incurred as a result of public authority acts?	✓ ✓	53	The Concession Law does not prevent compensation for losses incurred as a result for termination on the grounds of public interests except in case it is the performance of the concession activity which endangers the environment and human health or the legally protected areas and objects, provided that it may not be prevented by some envisaged measures. In such a case, even if it could not be predicted at the time of signing the Project Agreement, the Private Party is not entitled to the compensation.
7. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for all cases of early termination (<i>including in case of serious breach or failure by the Private Party</i>), for fair value after depreciation of the assets financed by the Private Party?	✗ ✗	47	The Concession Law does not regulate this matter. However, it is assumed that the parties may agree in the Project Agreement in a compensation of the Private Party for all cases of termination, including a termination due to a serious breach or a failure of the Private Party.

4.4 Tariff setting, service standards

QUESTION	ANSWER	ARTICLE	COMMENTARY
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8. Does the Law provide clear guidance on all aspects of interaction between the bodies that have the power to award PPP and the bodies that regulate tariffs and service standards?	× × ×		No guidance is provided by the law.

4.5 Financial responsibilities of the Private Party and Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
9. Does the Law provide that the Private Party can collect tariffs or fees for the use of the facility or its services?	✓ ✓	43	<p>The Concession Law does not regulate this matter nor prevents it. It is no specifically mentioned which entity is allowed to collect the fees.</p> <p>The criteria and methods for determining fees, i.e. tariffs of goods and/or services for end users has to be determined in the Project Agreement.</p>
10. Does the Law provide for the possibility of fixed and/or consumption-based payments to the Private Party by the Granting Authority or other public authorities (<i>in the case of Power Purchase Agreement , shadow tool or PFI for instance</i>) ?	✓ ✓		The Concession Law does not regulate/prevent this matter.





5. SECURITY AND SUPPORT ISSUES⁷

5.1 Security Interests

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law provide for (<i>or does not specifically prevent</i>) a Private Party to create security interests over the project assets, rights and proceeds or other valuable guarantees related to the project?	XX	43, 50	<p>The Concession Law neither specifically allows nor specifically prevents the Private Party to create security interest over the project assets and rights.</p> <p>The Private Party only has the right to use the means and assets of the Contracting Authority in accordance with the Project Agreement, and has to transfer the subject assets (if granted with such type of concession) used for performing the concession activity to the Contracting Authority unencumbered.</p>
2. If the answer to the previous question is <i>Yes</i> , does the Law clearly state which types of security can be provided and include some of the most common type of guarantees in project financing (such as those listed in the request for general information below)?	N/A		

⁷ For further information on support and financial securities, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 13, 49, 57 and 60.



For our general information, please can you confirm whether a Private Party may pledge or assign by way of security:

- *the proceeds and receivables arising out of the PPP;*
- *the assets for which it has rights of use under a project agreement;*
- *its property;*
- *shares of the Project Company;*
- *the project agreement; or*

obtain other valuable guarantees (please specify)?

5.2 Government support

QUESTION	ANSWER	ARTICLE	COMMENTARY
3. Does the Law provide for (<i>or does not specifically prevent</i>) the public authority to provide support to the Contracting Authority and a guarantee for the proper implementation of the PPP by the Contracting Authority?	✓ ✓		The Concession Law does not specifically prevent the public authority to provide support to the Contracting Authority and a guarantee for the proper implementation of the project by the Contracting Authority.
4. Does the Law provide for (<i>or does not specifically prevent</i>) the Public Authority to provide financial or economic support for the	✓ ✓	4, 21	The public authority can provide financial or other type of support to the concessionaire for realizing public interest. Thus, the Ministry of Finance is empowered to,



implementation of PPP?			on the basis of the relevant Decree, to postpone tax and non-taxable claims for a period of 6 months or to allow the payment in 12 proportional monthly instalments. However, this does not apply to the concessionaire's liabilities towards local municipalities.
5. If the answer to the previous question is <i>Yes</i> , does the Law clearly state which public authorities may provide such support and which types of support can be provided? (i.e. <i>tax and customs benefits; foreign exchange protection (convertibility and transfer guarantees; subsidies; equity or loan participation)</i>)?	✓ ✓	21	<p>The Concession Law sets out that the public invitation to tender may contain an offer of financial support to the concessionaire, for performing a non-profitable or insufficiently profitable activity of public interest. There is no clear provision identifying the public authority that may provide the support.</p> <p>Manners of support are not precisely defined, and some of them are listed <i>exempli causa</i>, such as: payments for performing the activity, giving guarantees, tangible benefits, donations and similar.</p>



5.3 Lenders' rights

QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law provide for the Parties to arrange the financing with reasonable flexibility under the Project Agreement without strict time constraints or other constraints (<i>except with respect to security package and government support</i>)?	✓ ✓	43	<p>Under the Concession Law, there is no strict time or other constraints for arranging financing of the project except time constraint for signature of the Project Agreement with out consideration for financial closing .</p> <p>All rules related to the manner and terms of providing funding of the concession activity are stipulated in the Project Agreement.</p>
7. Does the Law provide, in the event of the default of the Private Party for the lenders to “ <i>step-in</i> ” or substitute the Private Party with a qualified new Private Party without initiating a new tender process?	✓ ✓	52	<p>The Law provides for the possibility of assignment of contract to another concessionaire with a prior consent of the grantor; provided that a new concessionaire meets at least the same requirements as the concessionaire.</p> <p>The Concession Law does not contain explicit <i>step in</i> provision allowing th substitution of the Private Party at the request of the lenders; therefore it is unclear if such scenario would be allowed without initiating a new tender procedure.</p>



6. SETTLEMENT OF DISPUTES AND APPLICABLE LAWS⁸

6.1 Settlement of disputes

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law permit the Contracting Authority to enter into a Project Agreement that is subject to international arbitration?	× ×	43	<p>The Concession Law does not specify this issue (neither prevents nor allows).</p> <p>Also, the Concession Law sets out that the Project Agreement stipulates the manner of resolving disputes and applicable law but the doubt about the legality of foreign arbitration provision may be increased by the fact that Montenegro is one of the very few countries in the region if not the sole not to have ratified the Washington Convention (ICSID)</p>
2. Has the government of the country ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) (1965)?	× × ×		<p>⁹ Montenegro is still a non-member state as the Convention signed by Serbia and Montenegro has not been ratified.</p>

⁸ For further information on the settlement of disputes, please refer to: PFI Guide, Consolidated legislative Recommendations, Recommendations 57, 69 and 71.

⁹ <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDataRH&reqFrom=Main&actionVal=ViewContractingStates&range=A~B~C~D~E>



3. Has the government of the country ratified the New York Convention on recognition and enforcement of foreign arbitral awards (1958)?	✓ ✓ ✓		¹⁰ Montenegro is a signatory state.
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¹⁰ <http://www.newyorkconvention.org/new-york-convention-countries/contracting-states>



6.2 Applicable laws

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>4. Does the Law permit (<i>or does not prevent</i>) the Contracting Authority) to enter into side agreements to the Project Agreement (such as <i>a direct agreement with the lenders to the project or a support and guarantee agreement in respect of the Project Agreement</i>) that is governed by foreign law.</p>	<p>✓ ✓</p>		<p>The Concession Law does not specifically prevent the Contracting Authority to enter into side agreements to the Project Agreement that is governed by foreign law.</p>
<p>5. Has the country ratified any international convention for the protection of foreign investments?</p>	<p>✓ ✓ ✓</p>		<p>Numerous bilateral agreements.</p>



II- EFFECTIVENESS ASSESSMENT: HOW THE LAW WORKS IN PRACTICE:

(Please comment based on the previous 2006 effectiveness general assessment)

7. POLICY FRAMEWORK

7.1 Existence of PPP Policy Framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a general/national policy framework (explicit or implicit) for PPPs for infrastructure or public services?	XX		<p>No. Concessions are mentioned within certain strategy documents of the Government related to foreign investments and regional development, as well as within a document called Economic Policy of Montenegro for 2011.</p> <p>In addition, a draft Plan for granting concessions for detailed geological research and exploitation of mineral resources for 2011 has also been adopted by the Government.</p>
2. Is there any administrative guidance or printed information edited by the government or the PPP Unit concerning the legal framework for PPP projects in the country?	XX		<p>The Government has formed a working group in order to produce a Concession Policy Overview for April 2011. Such policy has unfortunately not been made available to us.</p>



3. Is there a municipal/regional policy framework (explicit or implicit) for PPPs in infrastructure or public services?	×××		There is not any general policy framework.
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7.2 PPP Awareness and Sustainability

4. Is there a national and/or municipal /regional long term programme for PPP promotion and awareness?	×××		
5. Are there PPP training programmes on a national and/or municipal/regional level for public servants and other PPP concerned people?	×××		
6. Are there PPP courses as part of university curriculum or specialist departments and faculties in universities teaching PPP?	×××		Not to our knowledge.



7.3 Obstacle to implementation of PPP Policy

<p>7. Are you of the opinion that there are no social/political obstacles to implementing PPP in the country (e.g. grass roots opposition, policy measures against private sector participation in public infrastructure/services, etc.)?</p>	<p>✓ ✓ ✓</p>		<p>We are not aware of any political obstacles in this respect.</p>
<p>8. Are you of the opinion that there are no legal obstacles to implementing PPP in the country (e.g. non-publication of a decree provided under the Law and necessary for such law to become effective, etc.)?</p>	<p>✓ ✓</p>		<p>We are not aware of any legal obstacles in this respect except the non ratification of ICSID convention and clarification to be given to arbitration and security issues.</p>



For our general information, please describe the existing impediment and obstacles if any with respect to the two previous questions

8. INSTITUTIONAL FRAMEWORK

8.1 Existence and role of PPP Central Units/Agency

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a specialised institution/agency/ministerial department established to promote PPP and to serve as Central PPP Unit?	XX		<p>There is no specialized body that would be engaged in all aspects of PPP projects, their development and promotion. However, the Concession Law establishes a Concession Commission, with certain (limited) functions.</p> <p>When the new PPP Law is enacted, it is to be expected that the administrative support for PPPs shall be significantly improved.</p>
2. Is such Central PPP Unit composed mainly of specialists recruited from the business community and not exclusively composed of civil servants coming from different public ministries?	N/A		
3. Is the role of such Central PPP Unit comparable to a "task force" assisting in the development of	N/A		N/A



projects in general and not limited to promotion of PPP?			
4. Is the consent or recommendation of such Central PPP Unit necessary for the development and granting of most PPP projects (<i>except small or local PPP</i>)?	× ×		<p>The Concession Commission is not authorized to award Concessions, but only to decide on objections raised in the procedure of granting concessions.</p> <p>Apart from that, the Concession Commission approves the implementation of the procedure on: (i) extending the concession term, (ii) extending the area for performing concession activity, and (iii) granting concession without tender procedure for use of other mineral resources, as supporting resources on an already approved exploitation field.</p>
5. Is one of the roles of the Central PPP Unit to assist in building capacity namely of the public sector with respect to PPP?	N/A		The current Concession Commission does not have such a role.

For our general information, please name such establishment and specify its place in public hierarchy, format and key functions (regulatory, operational, know how collecting, etc. or a combination thereof).

The Central PPP Unit is the Concession Commission, established by the Concession Law as an independent body, funded through the state budget. The Concession Commission has a President and 8 members, appointed by the Government, among the candidates nominated by several different ministries (President and 4 members), Parliament (2 members), Employers Union (1 member), and the Association of municipalities (1 member). In practice, the Concession Commission does not consist of PPP and other experts, but is mainly made up by public servants. If needed, the Concession Commission is authorized to engage experts and expert institutions for certain fields of their work.



The key functions of the Concession Commission are mostly related to decision-making in second instance, for objections raised in the procedure of awarding concessions, providing approvals for certain cases of granting and extending concessions without tender procedure and keeping the Register of Project Agreements. Decisions of the Concession Commission are final, and can be challenged only by initiating an administrative dispute at court.

8.2 Other institutions concerned by PPP

6. Is there any PPP unit/agency or department of the Central PPP unit either at the municipal or regional level?	×××		No, there is no such body.
7. Is there any specific PPP unit department in any ministry (other than the central PPP unit) or at sectoral level?	✓✓		<p>There is a special Commission for Concessions (different from the Government's Concession Commission) within the Ministry of Economy.</p> <p>Also, there are certain bodies involved in the process of awarding concession at sectoral level, mostly designated by sectoral laws, such as the administrative body in charge of ports and entity managing sea good, for port infrastructure and activities. Also some bodies are formed within the competent ministry for ad hoc purposes of awarding specific concessions (such as sectors for sea and railway traffic).</p>
8. Is there either a specific "one stop shop" for PPP authorisations and formalities or a "one stop shop" which services are available to the sponsors of PPP project as well as other	××		<p>There is no specific "one stop shop" for PPP authorisations and formalities.</p> <p>However, there are certain bodies available to provide</p>



investors?			information to interested parties, such as the Commission for Concessions of the Ministry of Economy. Also, for foreign investors, the help of a special Montenegro Investment Promotion Agency (the “MIPA”) could be of use for obtaining information on PPP projects and tenders.
9. Is the division of power between different public authorities involved in the PPP granting process simple and coordinated?	N/A		

9. PPP LAW ENFORCEMENT

9.1 Effectiveness of PPP enforcement and compliance with the Law

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Have any PPP projects in any form ever been awarded in the country on the basis of the Law discussed above? (<i>with or without specific reference to the Law</i>)	✓ ✓ ✓		<p>Based on the Concession Law, two wood concessions have been awarded: Vektra Jakic and Carapidis Bross Co Zabljak from 2008. The general income of wood concessions amounted to EUR 3,394,000 in 2010.</p> <p>In addition, three concessions in the maritime sector have been awarded to Marina Bar, Pomorski poslovi Bar and Jadransko brodogradiliste Bijela.</p>



			No concession has been awarded in the public transport sector. In the energy sector, thirteen concessions concerning the constructions of small hydro plants have been awarded so far, mostly in 2010.
2. Have such PPP projects, if any, been awarded generally following a transparent competitive selection procedure (<i>and only through direct negotiation under exceptional legal circumstances as may be provided by the Law</i>)?	✓ ✓		We believe that forms of PPP Projects in Montenegro are awarded through transparent competitive procedures.
3. Have PPP projects or similar long term agreements (<i>falling under the definition of PPP under this questionnaire</i>) never been awarded on any legal basis different from the Law since the Law has been in force?	N/A		We have been informed that a long term concession project concerning the construction of small hydro plants is in process but we have not been provided with further information on the project.

For our general information, please give example of legal instruments, or reasons used, to bypass the Law and establish a PPP.

9.2 Statistics on PPP implementation under the Law

4. Have most of the awarded PPP projects been successfully implemented and put into operation in compliance with the Law?	✓ ✓		Implementation of projects varies depending on the specific sector in question. According to the information we have, concessions have been successfully implemented in the field of mining and geology. On the other hand, certain problems have been encountered
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			<p>when implementing concessions in energy sector.</p> <p>Based on the official Government's Politic Suggestion on awarding concessions published in 2010, it seems that the main problems regarding PPP implementation are related to the control of realizing concessions and the overlaps between the competencies of the institutions participating in the projects.</p>
5. Has a PPP project ever been awarded and implemented in the country at the local /regional /municipal level in compliance with the Law?	✓ ✓ ✓		Yes.
6. Have PPP project ever been awarded in the country in the non merchant sector (<i>such as Hospital, School, prisons</i>) and not exclusively in the merchant sector (<i>energy, water, transport</i>)?	✓ ✓		<p>Based on our information, a BOT concession has been awarded in October 2010 for the financing, building and use of a PET/CT centre (contract no. 01-697/09 entered between the Ministry of Health and IASON GmbH Austria).</p> <p>The plan related to a waste management concession is currently under preparation.</p>

For our general information:

- Approximately how many PPP projects are presently in operation (figure or order of magnitude) in the country and in what sectors have PPP projects been awarded (energy, water, education, health for example)?

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49.

- Please give some examples of the most significant project awarded:
 - under which legal form have such PPP projects been awarded (Concession, BOT, PFI, other):
 - have such PPP project been granted by (i) central, (ii) sub-sovereign/regional (if applicable) or (iii) municipal government as Contracting Authority;
- when did PPP begin to be awarded in the country: (i) in the last 10 years or before; (ii) in the last 5 years; or (iii) within the past few years only; and
- *please give examples of any PPP projects awarded but not implemented (or not implemented under a PPP form)*
- .are there any PPP/Project Agreements in discussion?

Yes. The traffic sector is currently in reconstruction process. Apart from privatization, the competent Ministry is also contemplating reconstruction of railway systems, ports etc. by ways of awarding concessions.



9.3 Challenge of PPP

7. Are you of the opinion that there is a reasonable chance for an unsuccessful bidder to successfully challenge in the country a PPP awarded under conditions contrary to the Law?	✓ ✓		We are not aware of any cases.
8. If the answer to the previous question is <i>Yes</i> , are you of the opinion that there is a reasonable chance for the plaintiff to get some compensation or for such action to result in the cancellation of the award?	✓ ✓		It is our general presumption that the plaintiff may obtain the adequate compensation for any action that may be the result of an unlawful procedure, i.e. the procedure contrary to the law.
9. Have PPP project been implemented by the parties most generally without serious claims/arbitration by either Party concerning the performance of the Project Agreements under the Law?	✓ ✓		We are not aware of any disputes.
10. If any Project Agreement has been terminated prior to the end of the contractual period by the Contracting Authority, has fair compensation been paid to the Private Party in compliance with the Law?	N/A	53	We have no information on such cases. However, if the concession has been revoked by the Contracting Authority due to reasons set out in the Concession Law, the Private Party does not have the right to compensation of damages.



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For our general information, *can you provide any examples of a successful legal challenge in the courts or otherwise of a PPP award in the country based on the PPP Law? Please describe the matter and, if known, the outcome of such matter.*