



# Summary Report

**on national frameworks related to broadband  
development in rural areas  
and  
public private partnership legislation**

**PPP4 Broadband Project**

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**Project title:**

Tackling the »Broadband Gap« in SEE Rural areas through PPP model

**Project acronym:**

PPP4Broadband

**Reference number:**

SEE/D/0082/3.2/X

**Date of the Report:**

June 2013

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# EXECUTIVE SUMMARY

## Motivation

The aim of PPP4Broadband project is to improve the development of the virtual accessibility in the rural areas of SEE countries using models of public-private partnership (PPP models). This will be achieved through various project activities. The first step in this process is this Summary Report. The purpose of the Summary report is to outline the framework of broadband development in rural areas and to summarize the existing PPP legislation in partner countries. Based on the information from the Summary Report partners will be able to identify key similarities, differences and issues regarding the two mentioned subjects in the SEE area and to use the information later on in developing PPP models and establishing national centres of excellence.

## Methodology

Summary Report is divided into two parts. The first part deals with information on broadband development in rural areas, while the second part focuses on PPP legislation in partner countries and provides information on the institutional frameworks of PPP. Most of the data in the Summary Report is based on information provided by project partners for a survey carried out by ICT Technology Network Institute project partner for the purpose of the project.

## Summary

The aim of the report is to offer a summary of data and not to analyse them in detail. The reason for this approach is the fact that due to different methodologies used the results would not show the real picture.

When referring to broadband countries define the term differently and generally speaking there is no unified definition. Furthermore, even within countries the term broadband is defined differently in different strategic documents. The PPP4Broadband project focuses on rural areas. Most countries follow the OECD concept of regional typology for classification of statistical regions (NUTS 3). However, in defining rurality we can see that countries use other factors that address the problems and contexts of individual countries. Thus, Austria defines rural according to the OECD but also within the context of the country's own issues. Also, white areas – in terms of broadband access – in some countries appear in the areas that are not considered predominantly rural (e.g. Slovakia). Another interesting case is Slovenia, where a whole country is considered rural according to the OECD typology even though in national documents there are distinctions on a smaller-scale level that help define the rurality, when we speak in terms of broadband access.

The data on broadband coverage in rural areas for EU countries is taken from the study Broadband Coverage in Europe in 2011, while information for Serbia and Former Yugoslav Republic of Macedonia is based on the report from our two partners. The biggest digital divide between total standard coverage and rural standard coverage can be observed in Bulgaria, where total standard coverage accounts for 91.5% and falls to only 32.8% in rural areas. Slovenia follows with a 30% difference between total and rural standard coverage. Greece with 93.2% has the highest rural standard coverage among the partner countries and also the smallest difference between total and rural standard coverage. NGA coverage, however, is less common in all countries and the differences between total and rural are even bigger. In Slovakia, for instance, there is no rural NGA coverage at all, while the highest NGA rural coverage is Austria, but it is still 40% lower in rural areas than total.

Although the percentage of broadband coverage in rural areas might be rising it is still debatable how many users (households, public institutions, private companies) in rural areas are actually subscribed to services offered by broadband network. Not all partners were able to provide information on the penetration rate and even where the information was available, there were no specific data found for rural areas.

The report also contains the information on technologies used in individual countries. In the table below the data for EU member states is presented. In Former Yugoslav Republic of Macedonia, xDSL is the dominant technology, whereas for Serbia no such information is available.

### Rural Coverage by Technology

Countries	DSL	VDSL	FTTP	WiMAX	Standard cable	Docsis 3 cable	HSPA	LTE	Satellite
<b>Austria</b>	81.0%	24.4%	0.2%	12.5%	0.0%	0.0%	92.3%	0.0%	100.0%
<b>Bulgaria</b>	23.5%	0.0%	1.2%	9.6%	6.9%	6.9%	88.3%	0.0%	100.0%
<b>Greece</b>	93.0%	1.0%	0.0%	0.5%	0.0%	0.0%	97.3%	0.0%	100.0%
<b>Hungary</b>	73.7%	0.0%	1.6%	0.0%	45.7%	15.5%	89.0%	0.0%	100.0%
<b>Romania</b>	78.8%	4.4%	1.5%	11.4%	0.0%	0.0%	93.2%	0.0%	100.0%
<b>Slovakia</b>	54.5%	0.0%	0.0%	50.0%	0.0%	0.0%	52.1%	0.0%	100.0%
<b>Slovenia</b>	27.0%	10.5%	1.6%	45.0%	0.0%	0.0%	88.7%	0.0%	100.0%

Source: Broadband Coverage in Europe in 2011

Chapter 2.8 contains descriptions of the main objectives of broadband development in rural areas as planned in official documents of individual countries for the periods 2007-2013 and 2014-2020. Only Slovakia has already adopted objectives also for the period until 2020. Greece with 250 mio EUR has the highest amount of financial support planned for the broadband objective in 2007-2013. Slovakia follows with 113.2 mio EUR, while Slovenia and Romania will invest 85 and 84 mio EUR respectively. Austria is at the bottom with 30 mio EUR, while no information is available for other countries. In the last chapter of the Broadband part case studies are presented.

The second part of the Summary Report focuses on PPP legislation in partner countries and PPP procedures and steps from project assessment to project implementation phases. Legislation framework for PPP is provided within a specific PPP law in Slovenia, Bulgaria, Greece, Romania, Serbia and Former Yugoslav Republic of Macedonia. On the other hand, in Slovakia, Hungary and Austria there is no specific PPP law, thus the legal framework is provided in other laws concerning the procurement procedures carried out by public bodies.

Partners were asked to give information on the types of procurement procedures that are possible for PPP projects in their respective countries and to provide possible legislative limitations. In all countries except Romania and Hungary all four types of procedures are possible but there are national legislative limitations as to which procedure is to be used in certain circumstances. Restricted procedure is not mentioned in Romania. In Hungary, there are three national procedures possible (purchase based on 1 or 3 offers and purchase based on national procedures) and are selected based on the value limit.

Project assessment phase steps vary from country to country depending on national legislation. Below is a summary of main topics discussed in the chapters regarding whole PPP process.

**Project assessment**

COUNTRY	Are there any legally given steps for project identification?	Can any public body be a PPP procurer?	Central governmental body identifying the project?
Slovakia	YES	YES	NO
Slovenia	YES	YES (certain limitations apply)	NO
Bulgaria	YES	?	NO
Hungary	NO	?	YES
Greece	YES	YES	YES
Romania	YES	YES	NO
Austria	NO	?	NO
Serbia	NO	YES	YES
Former Yugoslav Republic of Macedonia	YES	YES	NO

**Contract design and risk allocation included in legislative framework**

COUNTRY	Provisions defining PPP contract structure	Principles of risk allocation	Principles of financial agreements
Slovakia	NO	NO (only recommendations)	YES
Slovenia	YES	YES	YES
Bulgaria	YES	NO	YES
Hungary	NO	NO	NO
Greece	YES	YES	YES
Romania	YES	YES	NO
Austria	NO	NO	NO
Serbia	YES	NO	?
Former Yugoslav Republic of Macedonia	NO	NO	NO

**Project implementation**

COUNTRY	Duration of PPP projects	Monitoring of PPP projects	Dispute resolution mechanisms
Slovakia	Min. 3 years Concession max. 30 years Generally 20-40 years	Not specified	Mediation, arbitration
Slovenia	No definite duration but criteria set	By public partner who is procurer	Arbitration, Court of Slovenia (no other court)
Bulgaria	No	Court of Auditors and Ministry of Finance	Competent Civil Court
Hungary	/	State Audit Office	/
Greece	No	Agreed in the contract	Arbitration In accordance with Greek civil code
Romania	no	Central Unit for the	Nation Council for Solving

## Summary Report

		COOrdination of PPP	Complaints Court of Appeal
Austria	/	/	/
Serbia	Min. 5 years Max. 50 years	Different public bodies	Arbitration Court of RS
Former Yugoslav Republic of Macedonia	Max. 35 years	Agreed in the contract	Not specified in the law, covered in the contract

## Conclusion

We believe that this Summary Report will be a valuable source of information to everyone who seeks data on topics related to broadband development in rural areas and PPP legislation frameworks of nine countries involved in the PPP4Broadband project. We have managed to summarize all relevant points which will also be used in the next project stages when different PPP models will be developed and national centres of excellence will be established.

# 1 INTRODUCTION

## 1.1 Project outline

### PPP4Broadband project

PPP4 Broadband project (Tackling the »Broadband Gap« in SEE Rural areas through PPP model) was selected for financing in the 4<sup>th</sup> call of the South East Europe Transnational Cooperation Programme. Project partners come from nine different countries: Slovakia, Slovenia, Bulgaria, Hungary, Greece, Romania, Austria, Serbia and Former Yugoslav Republic of Macedonia.

The aim of the project is to improve the development of the virtual accessibility in the rural areas of SEE countries using models of public-private partnership (PPP models). Rural areas are still affected by the digital divide with high percentage of population living fully excluded - with no broadband coverage - or with download rate below 256 kbps, which is the limit for classification of broadband based on the EC. The consequences of broadband gap are severe: the areas suffer from negative economic growth and social exclusion. Consequently, there is no interest of private providers in building the infrastructure and public initiatives and activities substituting the private service are missing.

The solution can be found in co-operation of public and private actors – public-private partnership (PPP). Thus, the project aim is to develop transnational tools, methodologies and guidelines targeting mainly public actors across SEE Europe as PPP procurers, which will help reduce the load of public investment and save time in the long process.

The main activities of the project are:

- Identification of national frameworks related to broadband development in rural areas and PPP legislation
- Research of 9 most appropriate PPP models
- Setting-up of National Centres of Excellence, where knowledge and guidance to public actors will be provided
- Realization of 3 investment preparations in testing regions in Greece, Romania and Former Yugoslav Republic of Macedonia.

### Summary Report

The purpose of the Summary report is to outline the framework of broadband development in rural areas and to summarize the existing PPP legislation in the partner countries. Based on the information from the Summary Report partners will be able to identify key similarities, differences and issues regarding the two mentioned subjects in the SEE area and to use the information later on in developing PPP models and establishing national centres of excellence.



### 1.2 Project methodology

#### Structure of the document

The Summary Report is divided into two parts. The first part deals with information on broadband development in rural areas. It includes the description of national frameworks and plans as well as the data on broadband coverage, penetration rates, situation at the market, etc. In the last chapter of the first part case studies of projects, which have already been implemented in partner countries, are presented.

The second part focuses on PPP legislation in partner countries and provides information on the institutional framework of PPP and types of procurement procedures possible for PPP projects. PPP procedures for individual countries are described in detail, as well as all aspects of PPP project implementation, such duration of the project, changes and monitoring of PPP projects, and dispute resolution.

Most of the data in the Summary Report is based on a survey carried out by ICT Technology Network Institute project partner for the purpose of the project. The survey was sent to all project partners who then provided all the information required. The second relevant source of information which the Summary Report draws on are some reports and studies of different organisations carried out for the European Commission. Thus, in the first part of the report, the reference is the report on *Broadband Coverage in Europe 2011* carried out by Point Topic for The European Commission, while in the second part of the report which refers to PPP we use the definitions from two EPEC documents, namely *Broadband, Delivering next generation access through PPP* and *The Guide to Guidance, How to prepare, Procure and Deliver PPP Projects*.

#### Project Survey

The survey needed to gather data on two topics: Broadband development and PPP legislation. The intention was to gather as much information as possible, so the questions were very open and allowed partners for a lot of input.

The questionnaire was developed as two template documents (see appendix 1, appendix 2), for broadband development and PPP legislation respectively, with instructions on how to compile the documents and was sent out to partners. All partners responded.

#### Data integration and issues related

We used all the information provided by our project partners. The result is that sometimes similar type of data (e.g. on degrees of rurality or penetration rate) cannot be compared as the methodological approaches in countries are different. However, we felt it was more important to include all the information as this is a summary report and not an analysis. Still, we do point out different methodological issues and possible discrepancies in individual chapters.

## 2 BROADBAND DEVELOPMENT IN RURAL AREAS

### 2.1. BROADBAND DEFINITION

When referring to broadband different countries define the term differently and generally speaking there is no unified definition. According to the definition of the International telecommunication Union (ITU) broadband refers to technologies at speeds of at least 256 kbit/s, in one or both directions, such as DSL (Digital Subscriber Line), cable modem, high speed leased lines, fibre-to-the-home, powerline, satellite, fixed wireless, Wireless Local Area Network and WiMAX (Manual for measuring ICT access and use by households and Individuals, 2009; [www.itu.int/dms\\_pub/itu-d/opb/ind/D-IND-ITCMEAS-2009-PDF-E.pdf](http://www.itu.int/dms_pub/itu-d/opb/ind/D-IND-ITCMEAS-2009-PDF-E.pdf)). In the study *Broadband Coverage in Europe in 2011*, prepared for the European Commission, DG Communications Networks, Content & Technology by Point Topic a Standard Broadband is defined as main fixed-line technologies which are capable of providing basic broadband of at least 144kbps download speed for end-users, while NGA Broadband includes the technologies which are needed to meet the Digital Agenda 30Mbps objective (*Broadband Coverage in Europe in 2011*).

#### SLOVAKIA

In Slovak strategic documents the expert definition of ITU is used as described above, with the following conditions:

- Permanent, continuous access
- Downstream speed of transmission > 256kbit/s (transmission to the end-user)
- Upstream speed of transmission > 64kbit/s (transmission from the end-user)

Another definition appears in the **National Strategy for broadband access in Slovakia** where general broadband access is defined as access to provided sources and services which does not in a significant way limit the end user in terms of kind, contents, extent and quality of the requested service, i.e. is not a bottle neck in the whole chain between the end-user and service provider and is accessible continuously. The basic parameters are the nominal transmission speed and effective transmission speed of connection of the end-users.

#### SLOVENIA

**Post and Electronic Communications Agency of the Republic of Slovenia** defines broadband as having a capacity equal to or higher than 144 Kbit/s. The definition of broadband is any circuit significantly faster than a dial-up phone line. In **Broadband Network development Strategy of Slovenia** broadband is not defined in terms of speed but in a technical sense as an electronic communication transmission network which uses various transmission media with a wide application frequency range to transmit signals, and which enables the simultaneous transmission of data, speech and image. According to the document technology development usually extends the width of the used frequency band of a transmission medium and thus the maximum data transmission speed, therefore it is impossible to permanently determine the lower data transmission speed limit that still complies with the designation 'broadband'. That is why the definition of the term broadband used in the document is from the viewpoint of end-user experience: broadband networks are all those transmission networks which enable a constant connection and high responsiveness to users in the interactive use of multimedia applications, services and content in practical applications.

During the public tenders for the construction of open broadband networks in rural areas, the threshold was risen to 1Mbps in the first tender in 2008, and to 2Mbps in the second tender in 2010.

There is also a definition in the newly adopted **Law on telecommunications** (ZEKom-1. Article 214), which allows the regulator to impose as part of the Universal Service also the broadband

connectivity, and the broadband speed for this purpose is defined as 80% of the the average connection speed of all national broadband users. Nowadays, depending on the data source, this speed would be between 6 and 7 Mbps. The Regulator hasn't decided yet to include this type of connectivity in USO.

### **BULGARIA**

In Bulgaria broadband is a generally accepted term related to the high-speed Internet and usually to bandwidth above 256 Kb/s despite the fact that download and upload speeds vary.

Access providing voice, data and video services is considered to be called broadband. When connected "on-line" a recommended lower limit speed is 2 Mb/s.

### **HUNGARY**

According to the National Media and Infocommunications Authority in Hungary there is currently no universally accepted definition of what constitutes broadband Internet access. In general, the term implies the following:

- fast Internet access
- an "always on" connection
- a flat monthly usage fee

### **GREECE**

In Greece the term broadband is understood as an advanced and innovative environment, socially and technologically, which consists of fast Internet connections and network infrastructure suitable for the development of new broadband applications and services. This comprises:

- The provision of fast Internet connections to as much population as possible, with competitive prices (in the form of consumer goods), without inherent limitations in transmission systems and terminal equipment
- The adequate network infrastructure: a) allowing the distributed development of existing and future network applications and IT services, b) enabling seamless connection of users to these c) meeting the needs of applications in bandwidth and availability, and d) it is capable of being upgraded continuously and with little additional cost to continue to meet their needs as they grow and are evolving at a rhythm and cost prescribed by the advancement of information and communication technology
- The ability of a citizen to choose a) between matching equipment with its needs, b) between various network applications and c) between various information and entertainment services and possible participation of citizens in providing content, applications and services
- The appropriate regulatory framework consisting of policies, measures, initiatives, direct and indirect interventions necessary to empower innovation, protection of competition and balanced growth

### **ROMANIA**

In Romania "Broadband connection represents that type of electronic communication that, by means of a multitude of available technological options, ensures permanent access to Internet, at a transfer speed of at least 1 Mbps (value increasing progressively) and a monthly availability degree of at least 98%, providing the maximum interactivity and access degree to the full on-line applications and digital content possible to be accessed by Internet."

In order to apply this definition, the following characteristics should be taken into account:

- The minimum transfer rate of 1 Mbps is to be periodically updated in order to allow the use of all applications and digital content possible to be accessed through internet;

- The minimum transfer rate of 1 Mbps is applied for the residential broadband connections. The corresponding transfer rate for the projects developed for the public administration entities/economic operators should be minimum 4 Mbps.

### AUSTRIA

There is no official definition for the term broadband in Austria. The RTR (Rundfunk und Telekom Regulierungsbehörde), a governmental institution which is responsible for the regulation of telecommunication in Austria, defines the term broadband as any internet connection faster than ISDN (more than 144kbit/s). This definition is also used by the ISPA, the Organisation of internet service providers in Austria, in official documents. An official document by the Austrian Ministry of Transport, Innovation and Technology describes broadband as a permanent connection with significantly more bandwidth than dial-up connections.

### SERBIA

In Serbia, the term broadband is used for quick access to the Internet over telephone lines or cables, using wireless technology or via satellite.

### FORMER YUGOSLAV REPUBLIC OF MACEDONIA

In the Former Yugoslav Republic of Macedonia broadband is defined as any internet access speed where the minimum bandwidth is above the range of 144kbps to 512kbps.

## 2.2 THE SITUATION OF BROADBAND NETWORKS IN RURAL AREAS

The PPP4Broadband project focuses on rural areas. Most countries follow the OECD concept of regional typology for classification of statistical regions (NUTS 3). The only measure to define rural areas is the population density, which is distinguished at two hierarchical levels – local and regional. At the local level rural municipalities (LAU 2) are defined as those that have population density below 150 inhabitants per km<sup>2</sup>. At regional level (NUTS 3) territorial units are distinguished by their degree of rurality, depending on the share of the region's population living in rural local units. Three types of regions are used:

- **Predominantly rural regions** with more than 50% of the population living in rural local units;
- **Intermediate regions**, where share of the population living in rural local units is between 15-50%;
- **Predominantly urban regions** with less than 15% of the population living in rural local units

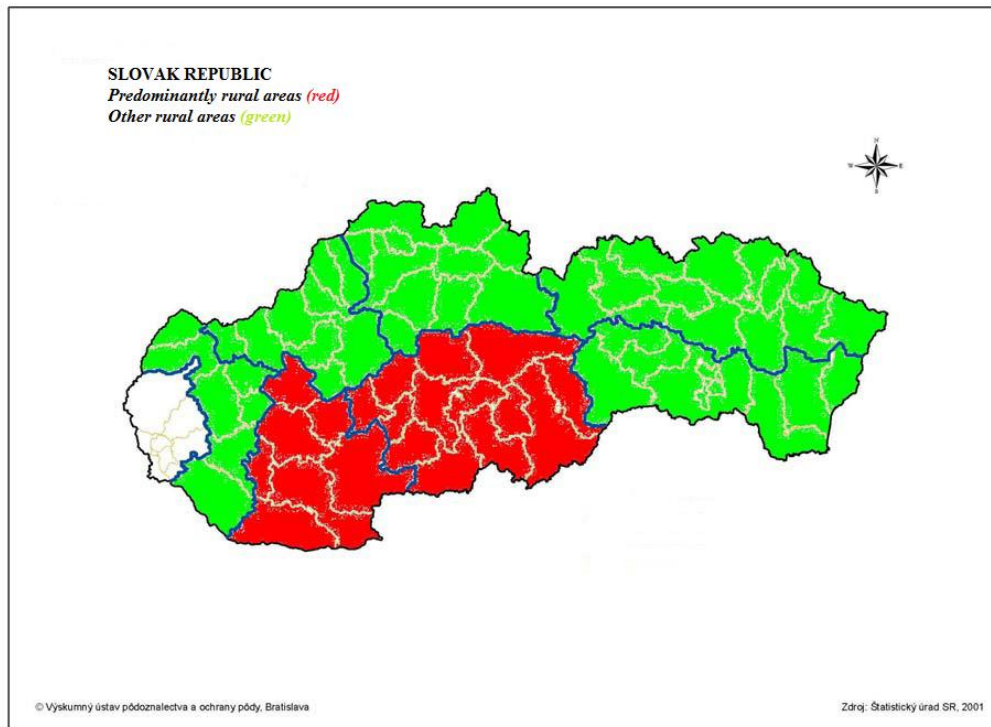
The Summary Report partly draws on the results of the document *Broadband Coverage in Europe in 2011* and for this purpose also the definition for rural from this document is used: *Rural areas are those with a population of less than 100 persons per square kilometer when segmented at the NUTS 5 level (also known as LAU 2, for Local Administrative Unit 2) NUTS 5 or LAU 2 areas are typically the smallest administrative units in regular use in a country.* Some partner countries provided the information on the rurality based on this definition, therefore data in some cases cannot be compared.

However, the above definitions are not the only factor that can be used in defining the rurality, as they hardly address the problems and contexts of individual countries. Thus, Austria defines rural according to the OECD but also within the context of the country's own issues. Also, white areas – in terms of broadband access – in some countries appear in the areas that are not considered predominantly rural (e.g. Slovakia). Another interesting case is Slovenia, where a whole country is considered rural according to the OECD typology even though in national documents there are

distinctions on a smaller-scale level that help define the rurality, when we speak in terms of broadband access; for instance rural = white areas where there is no internet access and no commercial interest in providing such access in the following years.

### SLOVAKIA

According to the OECD typology 40,5 % of Slovak inhabitants live in rural areas. Considering the NUTS 3 level, there are two regions classified as predominantly rural – Banskobystrický region (52 %) and Nitriansky region (51 %). However, the two regions most affected by the broadband exclusion (in terms of number of municipalities without coverage) are the Banskobystrický region and Prešovský region (43 %).



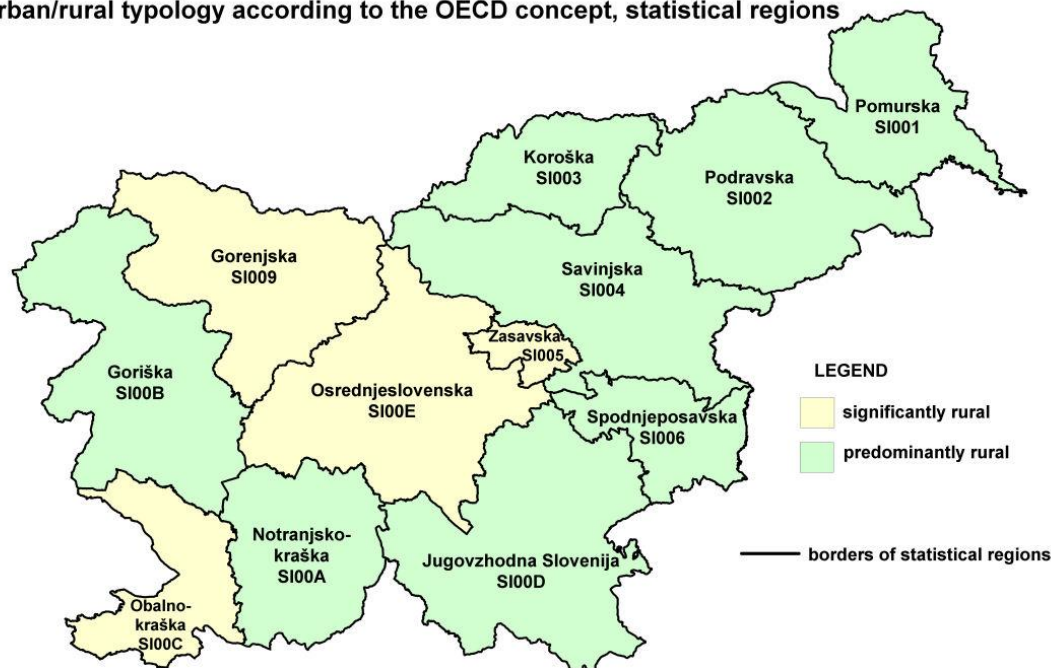
### SLOVENIA

In Slovenia, according to the population density and the share of people living in rural municipalities none of the statistical regions (NUTS 3) is classified as predominantly urban.

However, for the purpose of the construction of open broadband networks project an arbitrary definition of rural as less than 50 inhabitants per km<sup>2</sup> was used.

In practice, there are huge differences among the regions with statistically similar densities due to cultural differences that have led to a different average size of the household. In some regions the average size of the household is almost 4 persons, while in other regions there is less than 1.5 person per household. This impacts the number of needed fixed connections, despite the fact, that the population density is the same in all of these areas.

Urban/rural typology according to the OECD concept, statistical regions



Sources: Eurostat, Statistical office of the Republic of Slovenia, Surveying and Mapping Authority of the Republic of Slovenia

**GREECE**

Greece according to the Rural Development Programme 2007-2013 and the OECD criteria covers an area of 13.196.887 ha, where 97,1% is characterized as rural areas (73,9% main rural and 23,2% intermediate rural), in which 2/3 of the total population of the country is lives (37,2% in the main rural and 27,2% in intermediate rural). According to the Administrative classification of the country in NUTS II, only the Region of Attica is considered a main urban area, and all other regions except Central Macedonia and Thessaly are classified as main rural areas.

**AUSTRIA**

Austria in general also applies the OECD rural-urban regional typology for the classification of regions. However, as the international OECD typology hardly addresses the problems and context of Austrian functional regions, some analyses provided more targeted typologies to the national spatial structure. The Austrian Institute of Economic Research (WIFO) published a study on elements for growth policy in rural regions (Sinabell 2006). In this study some characteristics and benefits of rural regions have been pointed out as follows:

- Trend to low prices for real estates favouring industries and cheap residence
- Natural resources as socio-economic assets (water, forests, attractive cultural landscapes, recreation etc.)
- Sub-regions with a unique and specific cultural heritage

This study emphasises the main objectives for rural development as economic growth and the creation of employment. The driving forces for rural development are considered to be population growth and a closer cooperation and interrelationship with the neighbouring Central and Eastern European new EU member states.

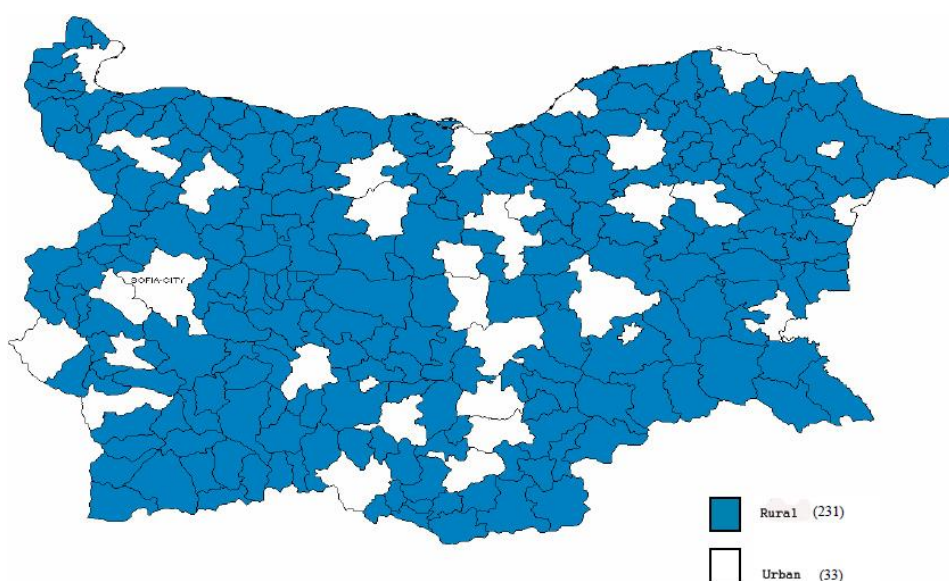
According to data from the Austrian Statistic Agency (Statistik Austria) the number of inhabitants living in predominantly rural regions was 3.579.236 as of the first of January 2012.



### BULGARIA

Bulgaria is located in southeastern part of Europe and has a total area of 111 000 km<sup>2</sup>. The population of the country by the end of 2004 was 7.8 million people. Bulgaria is divided into 6 planning regions (NUTS 2 level European classification), 28 districts/regions (NUTS 3) and 264 municipalities (LAU level 1). Based on the OECD definition of rural areas in Bulgaria there are 20 predominantly rural regions (NUTS 3), 7 intermediate areas and only a predominantly urban area - the capital Sofia. Thus, predominantly rural and intermediate areas cover 98.8% of the country's territory and 84.3% of its population.

National definition defines rural areas as municipalities (LAU 1) in which no settlement has a population of over 30,000 people. This definition is used in the sapard program and was used in the Program for Rural Development for the period 2007 to 2013 for territorial-based interventions. According to this definition, 231 out of 264 municipalities in Bulgaria are classified as rural. These rural areas represent 81% of the territory and 42% of the population.



### HUNGARY

Based on the city population/land area report from Hungarian Central Statistical Office, and using the definition from report Broadband coverage in Europe 2011, 3.3 million persons (32.7%) live on rural areas.

### ROMANIA

In Romania, the definition of rural area provided by the National Institute of Statistics is the same as the definition in the document Broadband Coverage in Europe in 2011. Approximately 44,8% (8.531.607) of the total population (19.043.767) live in the rural area according the last census 2012.

### SERBIA

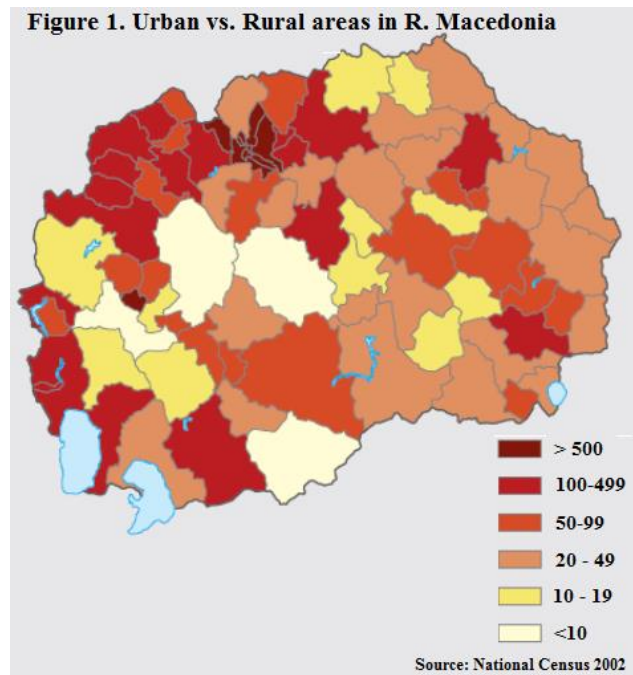
Serbia does not have an official definition of rural areas due to the fact that there is still no compliance with NUTS3 regionalization. The criteria applied by the Statistical Office does not include standard indicators of rurality that are encountered in international practice (population density, population, the share of the agricultural population, etc.), but the rural areas are considered parts of the country which are residual of the urbans. The division of the city/urban and other areas is basically based on the municipal decisions which status of the city gives to the settlement with a general urban plan. The Strategy of Rural Development provides modified categorization until NUTS

regionalization enters into force. In this modified categorization rural areas are all populated territories except for 24 cities, which gained the status under the Law on Territorial Organization of the Republic of Serbia from 2007. In the Statistical Office data bases there is no exact information on what percent of people live in rural areas, due to issue mentioned above.

### FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Rural area in Former Yugoslav Republic of Macedonia is defined “as any municipal township with less than 30,000 residents” as registered by the National Census, or “any area where the population density of less than or equal to 150 inhabitants per square kilometer”. In the case where municipalities are heterogeneous in population density, i.e. made out of areas where the conditions of population density are sometimes met and sometimes not, only the municipal territories which meet the conditions are regarded as rural areas.

According to the last official National Census from 2002, 58 per cent of the population lives in urban areas. It is however impossible based on this number and the definition on rural areas provided in the first paragraph to assess what per cent of the population lives in rural areas.





## 2.3 NATIONAL FRAMEWORKS FOR BROADBAND DEVELOPMENT

### 2.3.1 DOCUMENTS

#### SLOVAKIA

The official name of the document  Prepared by/published by	Period the document refers to	The general framework of the document	A short description of the part that refers to broadband development
<p><b>National strategy of the Slovak Republic for digital integration</b></p> <p><b>Ministry of Finance of SR</b></p>	<p>2008</p>	<p><b>Response to the EU key initiative in the field of information society - the Slovak Ministry of Finance summarizes the situation in digital integration, sets priorities and recommends measures and actions and introduces the steps to be realized in near future.</b></p>	<p>The Slovak government in its policy statement declared its commitment to support the broadband expansion by development of competition, economical use of frequency spectrum and support to build up of fast broadband networks also in rural areas.</p> <p>The solution of problems with broadband coverage in rural areas and less accessible areas can be supported by <b>innovative technologies</b> which enable to build broadband connection with <b>high capacity</b> and thus, will enable the rural areas to skip (omit) more development stages. Development of innovative technologies must be supported at all levels while the role of the state is mainly support the access to the market and assurance of fair competition.</p> <p><b>Proposed measures:</b>  <b>Stimulation of citizens' demand for broadband</b> connection through stimulation of creation of contents services development of public administration applications, e-Health and e-Education;                      Improvement of the broadband connection access through measures taken at local level using the <b>public and private partnership;</b>  <b>Granting access to broadband internet for all</b> citizens and bodies of public administration though support of infrastructure development of broadband access in areas neglected by the commercial providers using the <b>OPIS</b> within the National strategic reference framework.</p>
<p><b>Operational Programme Information Society (OPIS) feasibility study for priority axis 3 = broadband development</b></p>		<p>Study by a consortium of companies.</p>	<p><b>Highlights:</b>                      The mobile networks build up is not supported as these networks are closed and access for various operators is only possible though national roaming. The mobile networks are not counted into the indicators of the broadband internet penetration.                      In long-term perspective, WiFi networks will not be used, yet, they can serve in the transition period for coverage of households. Build-up of WiFi spots will be supported only indirectly so that they temporarily</p>

			<p>complement the parts of areas not covered so far by the access networks and their capacities.</p> <p><b>PPP projects are not applicable for OPIS PA 3.</b>  <b>The feasibility study covers following areas of OPIS PA3:</b></p> <ul style="list-style-type: none"> <li>• <b>Broadband infrastructure build-up</b></li> <li>• <b>Portfolio and availability of services</b></li> <li>• <b>Proposal of standards and methodologies in terms of structural funding requirements</b></li> <li>• <b>Legislation and regulation</b></li> </ul> <p>The study defines so called <b>white, grey and black zones</b>.</p> <p>The study recommends application of technologies assuring following principles:</p> <ul style="list-style-type: none"> <li>• Long-term sustainability;</li> <li>• Technology neutrality – open access of multiple service providers (ISP);</li> <li>• Unlimited competition;</li> <li>• Price effectiveness.</li> </ul> <p>Based on the compliance with the requirements concerning the speed and quality of broadband access, funding of following technologies is recommended:</p> <ul style="list-style-type: none"> <li>• For regional networks development – <b>local optical cables and radio relay links</b></li> <li>• For access networks <b>FTTB, FTTC and FTTH or FWA networks WiMAX, MMDS, MVDS</b> or eventually accommodation of pre-existing metallic infrastructure <b>xDSL</b> and accommodation of pre-existing <b>CATV</b> infrastructure</li> </ul>
<p><b>Information Society Strategy for 2009 – 2013</b></p> <p>Ministry of Finance of SR</p>	<p>2009 - 2013</p>	<p>The Slovak Ministry of Finance, as a central body of state administration for information society, in collaboration with the Government Plenipotentiary for Information Society, will coordinate the measures aimed at achieving the goals of the strategy;</p>	<p>Slovak telecom market has not yet delivered the degree of Internet penetration comparable to the advanced countries. The situation is particularly bad in the less developed areas (rural settlements with low density of population, areas with low industrialisation). In the areas unattractive to the private sector, funds will be made available under the OPIS programme to develop broadband access networks.</p> <p>The broadband penetration in the Slovak Republic ranks among the worst of all EU-27 countries. In order to bring broadband Internet penetration on par with the advanced EU-15 countries, Slovakia defined the third priority axis entitled —Improving access to broadband Internet within the <b>Operational Programme Information Society</b> targeting the least advanced territories of the Slovak Republic. Investments into access networks from the funds allocated for the OPIS should be, for the most part, undertaken at the level of the regional and local administration, as their construction can be substantially accelerated in this manner.</p>

			<p>The funding for projects implemented within the priority areas will be provided from the general government budget while <b>EU Structural Funds</b> represent the most significant source of funding. Other sources of funding may also potentially include funds from the EU Community programmes – in particular the <b>Competitiveness and Innovation Framework Programme</b>. Other sources could include funds from <b>foundations, grants, funds from third-sector activities, international institutions, as well as private investments</b>.</p>
DAE in the conditions of Slovak Republic		Summary of the DAE, pillar 4 is the relevant one for PPP4Broadband project with goals specified for broadband development till 2020.	<p>Provisions proposed by EC for the field of Fast and ultrafast internet:</p> <ul style="list-style-type: none"> <li>• Till 2012 elaborate and implement internal plans for broadband access in accordance with Europe 2020 strategy through public financing respecting the state aid rules (MTCRD);</li> <li>• Accept provisions including legislation to simplify investments into broadband access, e.g. to ensure that potential investors are systematically involved in process of public or private civil engineering networks; clarification of rights concerning the place of conduction of these networks, marked available passive infrastructure suitable for cable conduit and improved cabling and wiring in buildings (MTCRD);</li> <li>• Fully use the structural funds and development funds for rural areas allocated to the investment into infrastructure and ICT services (MF, Central government);</li> <li>• Implement programme of European policy of frequency spectrum in order to ensure coordinated allocation of frequency spectrum needed for 100% internet coverage with 30Mbit/s till 2020 and delivery of recommendations on access networks of NGA (MTCRD).</li> </ul>
National Strategy for Broadband Access in Slovak Republic govt. Resolution no.163/2011		Follow up of the National Policy for electronic communication in 2009 – 2013 approved by the government in May 2009.	<p>Unlike in the previous strategy from 2005 where the focus was put on broadband access of the first generation (256 kbit/s asymmetrically for individual households' connection and 2Mbit/s symmetrically for commercial sector and public administration), now the <b>NGA networks</b> are emphasized.</p> <p>The steps taken to implement the strategy are <b>continuously evaluated</b>, the conclusions as of <b>March 2012</b> are as follows (only relevant priorities mentioned):</p> <p><b>Priority 3:</b> Support to build up of <b>broadband networks</b> with open access from public sources, with use of EU structural funds, in economically disadvantaged regions to eliminate the digital divide. The main instrument of this priority is the OPIS with its priority axis 3. The OPIS is designed to secure the access to broadband connection by completing the so far missing regional infrastructure in commercial unattractive areas, so called "<b>white zones</b>". The funding will be provided as follows – 85% from EU funds, 10% from the national budget and 5% by the own resources of the beneficiary. Another 5 million EUR is available in the <b>Rural development programme</b>. The OPIS counts on one big national project for delivering the backhaul network construction (the network will belong to the National Agency for Network and Electronic Services - NASES.) and demand-oriented projects where municipalities will be the</p>

			<p>beneficiaries.</p> <p><b>Priority 4: Stimulation of demand of broadband services</b>  Goals of the National strategy:  <b>Mid-term goal 1:</b> release of the frequency band 790-862 MHz for the development of broadband services till 2013 (accomplished as of June 2011)  <b>Mid-term goal 2:</b> Ensuring the availability of broadband connection for all citizens with minimum speed of 1 Mbit/s till the end of 2013 (in progress)  <b>Long-term goal:</b> Enabling access to high speed internet connection (30 Mbit/s and more) for everybody till the end of 2020. (in progress)</p> <p><b>Conclusion:</b> Due to insufficient spending of resources allocated in OPIS, there was a <b>re-allocation</b> to another Operational programme – Competitiveness and economic growth. After this reallocation it is necessary to find <b>alternative solutions</b> for the accomplishment of the strategy.  It will be necessary to intensify the efforts of all stakeholders and to get ready for the use of <b>CEF (Connecting Europe Facility)</b> resources and combine it with structural funds or private sector capital..</p>
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**SLOVENIA**

The official name of the document  Prepared by/published by	Period the document refers to	The general framework of the document (e.g. whether it is a main strategic document of a country and how it is related to other documents mentioned)	A short description of the part that refers to broadband development (please point out all important things concerning BB)
<p><b>Operational Programme 'Strengthening Regional Development Potentials' 2007-2013</b></p> <p>Government Office for Local Self-Government and Regional Policy</p>	<p>2007-2013</p>	<p>The programme sets out Community support for Slovenia within the framework of the "Convergence" objective. The main goal is to attain the core objectives defined in the National strategic reference framework, namely fostering the country's competitiveness while ensuring a balanced regional development in the entire country.</p> <p>The operational programme is divided into 5 priority axes: 3 focusing on competitiveness, research excellence, economic-development infrastructure and integration of natural and cultural potentials; one on the development of regions and the last on technical assistance.</p>	<p><b>BB development is included in Priority axis 2: Economic Development Infrastructure:</b></p> <p>Increased access to ICT by enhancing the development of broadband networks; investments into passive infrastructure; encourage the widespread use of ICT and services of information society in public services, SMEs and households, and the availability of e-contents in the Slovenian language. Within the OP framework for strengthening regional development potentials the construction of broadband network will be financed in areas where there is no economic interest shown; e-contents and e-services will be developed within the operational programmes of both structural funds.</p> <p>In order to ensure broadband connections alternative solution of constructing open networks will be implemented. These networks will be financed as public-private partnerships and based on different technologies, such as: optics, ADSL, fixed wireless access (FWS), wireless technologies. In the first step access to broadband services with sufficient speed for users throughout Slovenia will be insured. In the following steps access to greater speeds will be enabled, the final goal being connectedness of most population to high-speed network (possibly optic). The project will be implemented on the entire territory of the state, with the emphasis on accelerated construction of broadband networks in less developed regions, especially in rural areas. High-speed connections (optic fibres) for organizations involved in education, research and culture will also be provided.</p>
<p><b>Strategy for Broadband development in the Republic of Slovenia 2008</b></p>	<p>2007-2013 Valid also for 2014-2020</p>	<p>The strategy is target-oriented in the development of broadband networks. Its direct effects extend into the period until 2013 and concern also the utilisation of all funds from the Structural Funds in the 2007-2013 programming period along with public and private investments in broadband networks. The strategy sets the goal for users to have access to broadband connections in the entire territory of Slovenia, first with a functionally adequate speed, and afterward also with higher speeds. The final long-term</p>	

		<p>goal is to connect the majority of citizens with a high-capacity network. The strategy's indirect effects will be seen after 2013, when access to broadband connections for all citizens in all territorial units</p> <p>The strategy defines Broadband Network development objectives related to the development of broadband infrastructure and services for citizens, educational, research, cultural and scientific areas, as well as for the economy and other parts of state administration and local self-government. It also introduces 2 basic measures to be implemented in order to achieve the objectives: ensuring competition and promotion of development of networks and services. The strategy also includes an action plan.</p>
<p><b>Resolution on National development projects 2007-2023</b></p> <p>Government Office for Growth</p>	<p>2007-2023</p>	<p>The Resolution on National Development Projects for the Period 2007-2023 includes key (large-scale) development investment projects in the realisation of which the state will participate. It concerns those projects whose implementation will concentrate initiatives and funds on the national as well as regional level by means of which the country as a whole will achieve a development breakthrough.</p> <p>It involves a clear linkage between the Slovenia's Development Strategy, the Strategy of Spatial Development, the National Development Plan, national sectoral strategies and operational programmes for securing EU funds.</p> <p><b>3.1.10 National broadband network</b></p> <p><b>Project theme</b></p> <ul style="list-style-type: none"> <li>• Accelerated construction of broadband networks in less developed regions, especially in rural areas and the integration of these networks with national backbone networks</li> <li>• Upgrading of the existing stationary broadband network from the stationary network or wireless broadband networks on the basis of economic eligibility</li> </ul> <p><b>Project objectives</b></p> <p>The implementation of the programme will enable all end users in Slovenia to access the Internet via broadband connections and will lead to a more balanced spatial development of electronic communications networks and services.</p> <p>Target users are private end users, public institutions and the economy as a whole. By the end of 2010, it must be ensured that each citizen can connect to the Internet at a speed of at least 512 kbit/s and at least 90% of citizens at the speed of at least 2Mbit/s. The long-term objectives are to enable 90% of the population to have access to "triple play" services and a speed of at least 20 Mbit/s by 2015 and to enable them to have optical connections to their homes by 2020.</p>

**BULGARIA**

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<p><b>National Broadband Strategy 2012 – 2015</b></p> <p>Ministry of Transport, Information Technology and Communications</p>	<p><b>2012 – 2015</b></p>	<p>The document provides the basic framework for the development of broadband and is supported by specially developed national operational plan, which specifies the planned measures and activities, deadlines, responsible institutions and financial resources necessary for the performance of the activities.</p>	<p>Main activities:</p> <ul style="list-style-type: none"> <li>- analysis of the state of broadband in regions</li> <li>- activities for establishing an appropriate business climate in the communications field, through effective regulatory and legal framework, as well as other support measures</li> <li>- creation and maintainance of a a digital map of existing broadband infrastructure in the country with technical parameters</li> <li>- establishing a gis-based database of the condition of broadband in Bulgaria and the factors that determine the periodical update</li> <li>- research and consolidate the position of private sector and the nongovernmental sector</li> <li>- studying the problems and plans for socio-economic development of regions and coordination with national goals and plans</li> <li>- coordination of the efforts of government agencies involved in the process</li> <li>- development of projects by region</li> <li>- development of a financial framework and selection of financial instruments for the development of broadband in the republic of bulgaria</li> <li>- organization of procedures for the adoption and implementation of projects and other</li> </ul>

**HUNGARY**

The official name of the document  Prepared by/published by	Period the document refers to	The general framework of the document	A short description of the part that refers to broadband development
<b>ACTION PLAN of DIGITAL REFORMATION</b>	2010 - 2014	The Action Plan serves as a guideline for government infocommunications plans for the period 2010-2014. This is the first sector-specific action plan that ensures a standard framework in the field of infocommunications and is built on broad industry and social consensus in Hungary. Disclosed in 23 December 2010.	Main goals related to the infrastructure: - provide broadband access for uncovered areas - increase capacity of existing networks - strengthening the competition - support investments of building of new generation networks - effective spectrum management
<b>Concept of broadband coverage improvement</b>  Ministry of National Development	2011 – 2014	The Ministry of National Development published the Concept of broadband coverage improvement in March 2011, which defines area of development, actions and supported goals for private and public development.	Summary of the current status, groups: NGE + mobile broadband; Basic broadband + mobile broadband; Basic broadband; Areas without broadband coverage. Available/Unavailable services for each group. Identified problems, targets. Action areas, tools: support of improvements of NGA systems, effective spectrum management, modification of regulatory system.
<b>Action plan of Economic Development Operational Programme 2011-13</b>	2010 - 2015	As a part of the New Hungary Development Plan it sets the priorities and goals of Economic Development for the period of 2011-13	Action Plan 3: Business environment. Goal 1: Improve the ratio of the household with broadband coverage.
<b>Radio-spectrum Strategy of National Media and Infocommunications Authority</b>	2012 – 2015	The paper sets out the key strategic directions and spectrum management tasks, showing the influence of regulatory and spectrum management in the wider economic and technological environment. At the same time, it informs the operators about National Media and Infocommunications Authority's spectrum management related goals and their means of delivery.	In accordance with the first two documents, the broadband related goals: - identify at last 500MHz new frequency range for further utilization - until 2015 reach at least 98% indoor coverage for mobile broadband



**GREECE**

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<b>The Greek Digital Strategy</b>	<b>2006-2013</b>	<p>The Greek Digital Strategy was the first integrated approach for a National strategy in the field of ICT. It was firstly introduced from the <b>National Committee for Informatics</b> at 2005 and from the year 2008, when the Operational Programme “Information Society” ended, has started its second phase of implementation. At this moment, there were hundreds of ICT actions which had been implemented covering all the aspects of digital economy and at the same time there was the beginning of the new Operational Period 2007-2013 when a new Programme called “Digital Convergence”, with a total budget of 2 billion euros has started. The new Programme followed a new, human-centered orientation, for the development of the new activities of ICT sector.</p>	<p>The Greek Digital Strategy 2006-2013, consisted from two basic directions and six targets:</p> <p>Direction 1. Improvement of the production with ICT                      Target1.1 Promotion of ICT to businesses                      Target1.2 Digital Services for businesses                      Target1.3 Enhancement of ICT sector contribution                      Target1.3 Promotion of Entrepreneurship</p> <p>Direction 2. Improvement of the Quality of Life with ICT                      Target2.1 Content, Services and promotion of ICT                      Target2.2 Digital Services for the Citizens</p> <p>The Greek Digital strategy had the initial target of raising the awareness and activity of the citizens and businesses but also to free the potential of them in a specific time plan. It recognized the individual characteristics or demands of each citizen and it was attempted to exploit the specific capabilities of each citizen for the common welfare and progress.</p> <p>The role of the public sector is gradually transformed from the role of the Guide to the role of the Open Government that offer many possibilities or opportunities, leaving the selection or choice to the citizens and businesses. Each citizen should have the right to choose the decisions that affect the development, quality of life and evolution within the environment that he lives.</p>
<b>The Greek e-Government Strategy (2012)</b>		<p>The main aim of this strategy is to be in line with the European Digital Agenda but also to adapt its objectives in the particular needs of the Greek society and Governmental policies. The specific objectives of the strategies were the increase of the Public incomes and reduce of public spending, the improvement of the services for the citizens (G2C) and businesses (G2B) and to find invest o</p>	

		<p>opportunities.</p> <p>The Greek e-Government Strategy is consisted of four basic Activities that divided in several axes:</p> <p>Activity1. Easy and Safe use of ICT</p> <p>Activity2. ICT services that produce benefits</p> <p>Activity3. Infrastructures</p> <p>Activity4. Social Development &amp; ICT</p> <p>The successful implementation of the Greek e-Government Strategy is taking under consideration a series of parameters like the harmonization with the EU strategies (Digital Agenda 2020), the simplification of the processes and structures, the policy development for different thematic areas, the evaluation of the country according international standards, the exploitation of the existing financial mechanisms and the sustainability of the activities that will be developed.</p>	
<p><b>Operational Programme “Digital Convergence”</b></p>		<p>The Development Vision for the new Programming Period of the Operational Programme (OP) “Digital Convergence” constitutes the “Digital Leap in Productivity – Digital Leap in Quality of Life”. The strategic objective of the Programme is the “Digital Convergence of the country with the European Union by utilising Information and Communication Technologies (ICT)”. The achievement of the strategic objective is attained through the three Priority Axes set by the Operational Programme.</p> <p>Priority Axis 1: Improvement of Productivity by Utilising Information and Communication Technologies</p> <p>Priority Axis 2: Improvement of Quality of Life</p> <p>Priority Axis 3: includes action plans for project preparation, application, monitoring and supervision as well as plans for evaluation and research.</p>	

**ROMANIA**

The official name of the document  Prepared by/published by	Period the document refers to	The general framework of the document	A short description of the part that refers to broadband development
<p><b>Governmental Resolution 444/2009 regarding the approval of the Government Strategy to develop broadband electronic communications in Romania for the period 2009-2015</b></p> <p>Document issued by the Government of Romania. Document Published in Official Gazette of Romania "Monitorul Oficial " no. 525 of 30 July 2009.</p>	<p>2009-2015</p>	<p>The main <b>strategic</b> document of Romania related to broadband is based on data in the Diagnosis Analysis – Report on communication services in broadband (Roland Berger 2006) and on those supplied by the National Authority in Communications concerning coverage with electronic broadband communications.</p>	<p>The document contains:</p> <ul style="list-style-type: none"> <li>-Definition of broadband communications</li> <li>-Anticipated advantages for the development of broadband communication services</li> <li>-Overview on the existing situation on broadband communication services market</li> <li>-SWOT analysis</li> <li>-Strategic objectives and general principles and monitoring indicators</li> <li>-Action plan</li> <li>-Strategy's organizational implications</li> <li>-Methodology and monitoring of strategy implementation</li> <li>-Financial demand and option for the development program of broadband communication services</li> <li>-Financing means</li> </ul> <p>The <b>development</b> of broadband in Romania is based on the strategy's general objectives, namely:</p> <ul style="list-style-type: none"> <li>•Growth of the penetration rate at the level of households, of broadband connection services up to 40% in 2010 and up to 80% in 2015;</li> <li>•Growth of the rate of access to electronic broadband communication services at the level of the population up to minimum 100% until 2015</li> <li>•Connection and increase in the use of broadband services at the level of SMEs;</li> <li>•Growth of the penetration rate of electronic broadband communication services in disadvantaged areas from the access point of view.</li> <li>•Growth of on-line services offer for government and business sectors.</li> </ul> <p>The specific objectives of the strategy refer both to demand stimulation and electronic broadband services offer for the public and private sector:</p> <ul style="list-style-type: none"> <li>•Connection of public institutions (public demand aggregation)</li> <li>•Increase in use at the level of the public field</li> <li>•Connection and increase in use at the level of SMEs</li> <li>•Increase in services' availability</li> </ul>

			<ul style="list-style-type: none"> <li>•Development of content and applications</li> <li>•Education of consumers and inclusion of disadvantaged groups of users.</li> </ul>
<p><b>Government Programme 2013-2016</b></p> <p>Prepared/published by Romanian Government</p>	<p><b>2013-2016</b></p>	<p>Governmental programme coordinating all activities for the next 4 years.</p>	<p>The general objective is to improve the availability of services of broadband for citizens and rural area through a broadband infrastructure (distribution networks) in order to obtain a good coverage and use of EU standards.</p> <p>There are mentioned the governmental initiatives :</p> <ul style="list-style-type: none"> <li>-developing a set of normative and legislative acts that encourages the development of broadband infrastructure and insures a competitive environment;</li> <li>-providing a single institutional framework to enable the effective coordination of investment in the communication infrastructure in which all relevant stakeholders are involved.</li> <li>-upgrading broadband networks (NGA – FTTH) which aims to improve all broadband communication networks, to ensure technical requirements imposed by the new set of applications generated in the accordance with the Digital Agenda 2020.</li> </ul>
<p><b>Digital Agenda –Action General Framework version 2.0/24/10/2011</b></p> <p>Prepared/published by Ministry of Information Society</p>	<p><b>2010- 2020</b></p>	<p>Ministry of Information Society, as the main responsible of Digital Agenda for Europe implementation in Romania has provided a general version of this European document as a frame for Romanian citizens and stakeholders.</p>	<p>The personalised Digital Agenda for Europe to Romanian conditions contains the main features, statistics and implementation plans of main actions to Romanian framework among which, the Pillar 4, Broadband Internet.</p> <p>The main frame actions with indication of Romanian institutions responsible in the implementation:</p> <ul style="list-style-type: none"> <li>- The adoption of a common Broadband Strategy at EU level A national Broadband Strategy was developed and approved by Governmental <b>Resolution 444/2009</b></li> <li>- High-speed broadband founding</li> <li>- The program European spectrum policy</li> <li>- Encouraging the development of next generation access networks (Next-Generation-Access network NGA).</li> <li>- Development of national plan for the broadband communication.</li> <li>- Facilitating of the investment in broadband communication networks.</li> <li>- Structural <b>Funds</b> for the development of high speed communication networks.</li> <li>- Implementation of the European programme regarding the politics in radio frequency spectrum area.</li> </ul>
<p><b>Law 154/2012</b></p>	<p>2012 on</p>	<p>This law transposes the provisions of art. 11</p>	<p>This law establishes the conditions, under which access is granted on public or</p>

## Summary Report

<p><b>Electronic communications networks infrastructures</b></p> <p>Prepared/published by Romanian Parliament In Romanian Official Gazette "Monitorul Oficial" no. 680/2012 Partea I.</p>		<p>and 12 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), published in the Official Journal of the European Communities, Series L, no. 108 of 24 April 2002.</p>	<p>private property in order to install, maintain, replace or relocate the electronic communications networks or necessary infrastructure elements to sustain them, the use of shared infrastructure elements, and some measures of construction of electronic communications networks.</p>
<p>Actions Plan 2013 National Authority for Management and Regulating in Communications</p> <p><b>Prepared/published by National Authority for Management and Regulating in Communications</b></p>	<p><b>2013</b></p>	<p>ANCOM is the main institution that protects the interest of users of communication in Romania, by promoting competition in the communications market, management of the limited resources, encouraging the efficient investments in infrastructure and the innovation.</p>	<p>Major project Inventory of the electronic communication networks and associated infrastructure elements, creating a data base that includes the access conditions and contracts on public property or state administrative units and developing a standard contract for private property access for installation, maintenance, replacement or relocation of public electronic communications networks or infrastructure elements.</p> <p>In addition, to support all those affected by law 154/2012 - Electronic communications networks infrastructures- that network providers, owners and public authorities, ANCOM will run an information campaign on the major changes brought by the new legislation on access the property and shared use of infrastructure.</p> <p>In 2013 it will be finalized the efficient cost calculation for the interconnection services.</p> <p>It will be finalized the implementation of two projects: Online application for comparison of bids for communication for final users (European funded), Online application for measurement of technical parameters for Internet access services.</p> <p>Development of a Guide on the establishment of distance contract having as object the provision of publicly available electronic communications which aims to provide suppliers with guidance on how to interpret and apply the legal obligation specific to electronic communications in practice.</p>
<p><b>Government Emergency Ordinance 111/2011</b></p>	<p>2011 - onwards</p>	<p>This law is generated by the <b>Broadband Strategy</b></p>	<p>This law aims at: -- establishing a general framework for the activities for electronic</p>

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<p><b>On electronic communication, approved by Law 140/2012</b></p> <p>Prepared/published by Romanian Government Romanan Parliament Published in i In Romanian Official Gazette "Monitorul Oficial" no. 505/23.07. 2012</p>			<p>communication networks and services, the system authorisation for these activities, as well as specific rules governing competition in the electronic communications networks and services;</p> <p>--establishing the framework for relations between operators, providers of electronic communication services, between operators and providers of electronic communication services in terms of access to pubic electronic communication networks and associated facilities and services.</p> <p>-- determining the rights and obligations of operators and persons applying for interconnection or access to the installed networks, operated, controlled or provided by them or to the facilities or services associated with such networks;</p> <p>-- establishing the framework for relations between providers of electronic communications networks and services, on the one hand and the end users, on the other hand;</p> <p>-- ensuring the right of end-users to access the services included in the universal service (defined as the minimal set of services provided by this law, of a specified quality, which is available to all users regardless of geographic location and at an affordable price).</p>
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### AUSTRIA

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<b>Breitbandstrategie 2020 (BBS_2020)</b>	2013 -2020	National Programme	It is the main initiative for broadband development in Austria in the next years
<b>Breitbandinitiative Austria 2013 (BBA_2013)</b>	2007 - 2013	Related to the european strategy for broadband development	Main Broadband Initiative in 2007-2013
<b>Austrian Electronic Network</b>	2013	National funding (FFG)	Only a minor part of the programme is related to broadband
<b>Digitale Dividende</b>	2010 (LTE)	Mobile carriers had to buy the permission to use frequencies, this money is used to finance the building of faster broadband infrastructure.	One part of the project is to find out the about the influence of mobile broadband usage on radio and tv signals.

**SERBIA**

The main strategical document concerning broadband was Strategy for Development of Broadband in Serbia, together with its Action Plan for implementation which expired by the end of 2012. New Action Plan for The Strategy for Development of Information Society will be developed for the period of two years. Public dialogue on this document was terminated on the 4th of March, and its adoption is expected during March 2013.

The official name of the document  Prepared by/published by	Period the document refers to	The general framework of the document	A short description of the part that refers to broadband development
<p><b>Strategy for Development of Information Society</b></p> <p>Ministry of Foreign and International Trade and Telecommunications</p>	<p>2010 – 2020</p>	<p>Defines the main objectives, principles and priorities of the development of information society and the activities which should be undertaken in the period covered by this strategy. Together with The Strategy for Development of Electronic Communications this Strategy makes the Digital Agenda in Serbia.</p>	<p>Strategy stipulates that the minimum flow rate for broadband access should be 4Mb/s for the fixed network, and 512 Kb/s in the case of mobile access. Next-generation broadband access is based on optical fiber as the main technology for connecting users, including households, allowing speed of more than 100 Mb/s. With the proposed broadband, household has the ability to simultaneously receives and sends, multiple audio and video of high definition in real time, including the reception of radio and TV programs, video conferencing, voice and a variety of interactive services which include transmission of audio and video. An important segment of the broadband is mobile broadband which enables access to the Internet from mobile devices and laptops regardless of the user's location. Through the development of broadband access it is necessary to achieve the rates and terms of Internet access in Serbia get close to the EU average for all flow rates.</p> <p>Action Plan for implementation of The Strategy will be adopted every two years. Next Action Plan, which includes development of the broadband will be adopted in the next few weeks.</p>
<p><b>Strategy for Development of Electronic Communicatons</b></p> <p>Ministry of Foreign and International Trade and Telecommunications</p>	<p>2010 – 2020</p>	<p>The Strategy aims to identify the current situation and to indicate the impediments for the development of electronic communications. In this sense, Strategy sets the framework for improving electronic communications, identifying the main activities to be undertaken in order to achieve the policy</p>	<p>Strategyfor development of electronic communication networks should provide high data flow on the main roads and across the transport network, as well as broadband Internet access to every user. Transfer of information with large flow should provide fast development of interactive and multimedia services, accessed by the user regardless of their location. Broadband access has been pointed as an important link in the development of rural and remote areas, development of industrial zones and as well as for connecting economic regions of the state. National broadband network will provide:</p> <ul style="list-style-type: none"> <li>- Consolidation of all network resources such are optical networks and acces to them, regardless of the technology,</li> <li>- Design of the electronic communication network which provides the basis for the</li> </ul>

		<p>objectives by 2020. The Strategy should define measures that will enable the use of new technologies, and as a result there will be achieved an increase of the total value of competitiveness index of Serbia, ensured availability to electronic communications infrastructure and expanded set of services that can be offered to residential and business users.</p>	<p>implementation of any service based on IP technology.</p> <p>Investment program includes joint venture of telecommunications operators, and competing companies in the development of local fiber optic network, which prevents that one operator holds a monopoly over an optical network in some areas. The commitment of the Republic of Serbia for the liberalization of the telecommunications market in all its segments will provide lowering of the prices of renting electronic communications infrastructure, both wholesale and retail, and the development and provision of a broader set of services to the end user. The development of modern telecommunication networks of public administration will enable the effective communication between different state authorities. This simplifies the procedure for the issuance of certain documents, reduces the costs of state administration and increases transparency etc.</p> <p>The convergent nature of broadband technology arises as a new task ensuring of the interoperability in the level of networks, devices and services. Interoperability at the level networks can be provided through development of the traffic exchange centers (Internet Exchange Center), which through joint ventures can be developed by Internet operators.</p>
<p><b>Strategy for development and usage of broadband in Autonomous Province of Vojvodina</b></p>	<p>2012 – 2015</p>	<p>Strategy defines the framework necessary for achieving broadband access, as well as encouraging its efficient usage. It was based on an assessment of the current situation, the experiences that characterized the development of broadband access in the past and possibilities of applying new technologies. Proposal for the development of broadband refers to all segments of society and economy, and insists on balanced development in all parts of the Autonomous Province</p>	<p>The Government of AP Vojvodina adopted this strategy with the objective of coming closer to European and regional goals by the end of 2015: broadband for at least 50% of households, as well as increasing the speed of access to 8Mbit/s for all users, and for more than 50% of users increase to 30 Mbit/s.</p>



**FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The official name of the document  Prepared by/published by	Period the document refers to	The general framework of the document	A short description of the part that refers to broadband development
<p><b>National Strategy for Developing of the Information Society and Action Plan</b></p> <p>Ministry of Information Society and Administration</p>	<p>2005-2010</p>	<p>A main national document articulating the strategy of the country in the past period with specific measures for introducing sustainability on the long run.</p>	<p>The document contains two parts.</p> <ol style="list-style-type: none"> <li>1. Strategy and Action Plan for developing Information Society comprised of seven priority areas: Infrastructure, E-business, E-Government, E-education, E-health, E-citizen, Legislation.</li> <li>2. List of Public and Private Sector Reforms with priority areas for achieving sustainability of the Strategy on the long run.</li> </ol>
<p><b>National Strategy for Developing of the Next Generation Broadband</b></p> <p>Ministry of Transport and Communications</p>	<p>2009-onwards</p>	<p>Current National strategy for development of the broadband to some extent based on the National Strategy for developing of the Information Society but with a scope on broadband technologies, legislation and regulation</p>	
<p><b>National Strategy for Developing of Electronic Communications with Information Technologie</b></p> <p>Ministry of Transport and Communications / Ministry of Information Society and Administration</p>	<p>2008-2010/2012</p>	<p>A National Strategy - result of the Law on Electronic Communications (Official Gazette of RM 13/2005).</p>	<p>National strategy focused on the development of communications infrastructure as a unique technological platform for the emergence of information society (e-Government, e-Education, e-Business, e-Health, etc.)</p>
<p><b>National Strategy for e-inclusion</b></p> <p>Ministry of Information</p>	<p>2011-2014</p>	<p>Current National strategy outlining the priorities of the Government focused on bridging the digital divide in the country.</p>	<p>An important government document outlining the strategy for inclusion of all citizens in the Information Society.</p>

## Summary Report

Society and Administration			
<b>Five Year Regulatory Strategy of the Agency of Electronic Communications</b> Agency for Electronic Communications	2012-2017	Regulatory strategy based on the National Strategy for Developing of Next Generation Broadband and the National Strategy for Developing of Electronic Communications with IT.	An important government document outlining the regulatory strategy and action plan for the broadband market

### 2.3.2 ORGANISATION RESPONSIBLE FOR THE INFORMATION SOCIETY AND PARTICIPATING IN DAE IMPLEMENTATION

In different countries different organisations at national levels are responsible for the information society and the implementation of the DAE.

#### **SLOVAKIA**

In Slovakia, the Ministry of Finance covers the field of information society in general, whereas the Ministry of transport, construction and Regional development of the Slovak Republic is responsible for the fields of ultra-speed internet and broadband. Two other organisations involved are the National Agency for Network and Electronic Services (NASES) and the Telecommunications Regulatory Authority of the Slovak Republic.

#### **SLOVENIA**

Slovenia has two organisations responsible for the development of the information society; Directorate for the Information Society as a part of the Ministry of Education Science and Sport and Post and Electronic Communications Agency of the Republic of Slovenia.

#### **BULGARIA**

In Bulgaria, Ministry of Transport, Information Technology and Communications is responsible for the information society.

#### **HUNGARY**

In Hungary two institutions are involved, namely the Ministry of National Development and the National Media and Infocommunications Authority

#### **ROMANIA**

The Ministry of Information Society is responsible for the implementation of information society and implementation of the Digital Agenda for Europe in Romania

#### **AUSTRIA**

The main supporters for information society and innovations in Austria are the Ministry of transport, innovation and technology and the FFG (Forschungsförderungsgesellschaft – Research funding corporation).

#### **SERBIA**

Serbia as a candidate country does not participate in the DAE implementation, so the Ministry of foreign and internal trade and telecommunications (Directorate for Digital Agenda within it) is responsible for the information society only.

#### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

At the moment two institutions have shared responsibilities for DAE 2020: the Ministry of Information Society and Administration, and Agency for Electronic Communications.

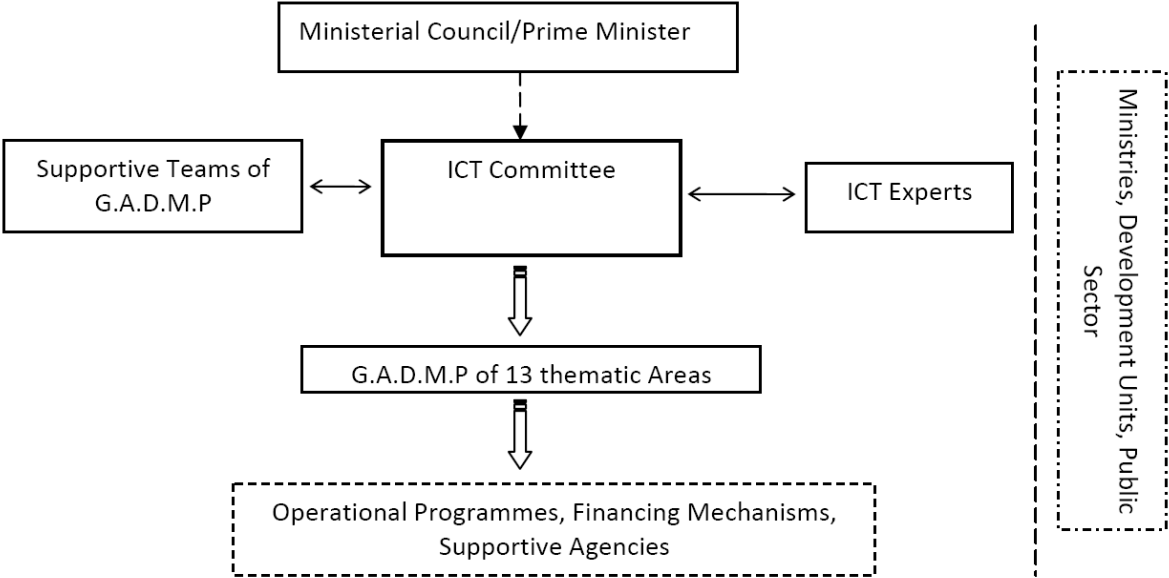
#### **GREECE**

Greece was the only country that outlined and emphasized the fact that the field of information society (development of the National Strategy for ICT and e-Governance) in the country has multiple dimensions and is divided among several public bodies, thus causing fragmentations of responsibilities of various ministries, general and special secretariats and implementing agencies.

**Summary Report**

This creates difficulties in coordinating the formulation and implementation of a single national strategy. However, with the introduction of the new e-Government Law (3979/2011) new instruments are predicted such as coordinating role the Interministerial Committee on Electronic Government in the Ministry of Administrative Reform and e-Governance. Structures are already in operation with different roles in strategy such as the Informatics Development Service and the Special Service Strategic Planning, Coordination and Implementation of Programs, the Special Secretariat for Digital Planning of the Ministry of Development, Competitiveness, Infrastructure, Transport & Networks. In terms of financing there are the Special Secretariat for Administrative Reform YPDiMID and the Special Service for the management of OP “Digital Convergence” and the Ministry of Development, Competitiveness, Infrastructure, Transport & Networks. In terms of project implementation there are the Information Society S.A., The General Secretariat of the Ministry of Communications Infrastructure, Transport and Networks, the General Secretariat for Information Systems of the Ministry of Finance and the General Secretariat for Research and Technology, Ministry of Education, Lifelong Learning and Religious Affairs which have a significant contribution to the implementation of eGovernment.

In the next organization Chart the organization structure of the main entities that influence and develop the ICT policy in Greece is presented.



The **ICT Committee** is responsible for the strategy of Development, Monitoring and Exploitation of the ICT in all the sectors of governmental policy and it is linked directly with the Prime Minister office. For the monitoring, fast and efficient development of each ICT project the ICT Committee is consisting **Groups for Administrative Development and Monitoring of ICT Projects (G.A.D.M.P)**. The G.A.D.M.P for the fulfillment of their mission undertake all the appropriate measures and resolve all the problems during the implementation period of the projects, providing to the ICT Committee all the necessary information for legislative interventions.

### 2.3.3 DIGITAL CHAMPION

A Digital Champion is a person appointed by each Member State; they work with citizens, communities and businesses to exploit the growth potential of the digital economy. They meet at least twice a year, and more often virtually (<https://ec.europa.eu/digital-agenda/en/digital-champions>).

All partner countries, except Greece, Austria and Serbia have appointed a digital champion. Below is the list of Digital Champions along with some basic information on their work and their priorities.

#### **SLOVAKIA**

Peter Pellegrini is a State Secretary of the Ministry of Finance of the Slovak Republic. Between 2006 and 2010 he was chairman of the Board for Transport, Posts, Communications and Information Society at the Committee on Economic Policy.

Contact: [peter\\_pelegrini@nrsr.sk](mailto:peter_pelegrini@nrsr.sk)

#### **SLOVENIA**

Digital champion in Slovenia is Aleš Špetič, cofounder of Zemanta, one of the most successful Slovenian startup stories. His goal is to "make everybody in Slovenia use and enjoy digital technology and to build up the usability aspect of ICT, so the services are better used".

Contact: [ales@spetic.si](mailto:ales@spetic.si)

#### **BULGARIA**

Gergana Passy is a founder & president of PanEuropean Union Bulgaria, a politician and a former Minister for European Affairs. According to her »there is a desperate need in Bulgarian schools for e-skills and she will try to make that a reality. Her second goal is to promote that all public spaces become free Wi-Fi zones, as Europeans need guaranteed access to internet«.

Contact: [gerganapassy@gmail.com](mailto:gerganapassy@gmail.com)

#### **HUNGARY**

Digital Champion in Hungary is Istvan Erenyi, Senior Counsellor at Ministry of National Development , His priorities are to increase the usage of internet among the citizens who currently don't use it; to stimulate the enterprises to use the services which are available via internet and to set stronger focus on IT education

Contact: [istvan.erenyi@nfm.gov.hu](mailto:istvan.erenyi@nfm.gov.hu)

#### **ROMANIA**

Paul André Baran is a Director of Biblionet programme, which aims to put free public access computers and internet coupled with a trained librarian in 2,200 public libraries across Romania.

Contact: [pabaran@irex.org](mailto:pabaran@irex.org) , [pabaran@irex.ro](mailto:pabaran@irex.ro)

#### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

Digital Champion is Ivo Ivanovski, Minister of Information Society and Administration.

## 2.4 BROADBAND COVERAGE

For the purpose of comparison the data on broadband coverage in rural areas and the definitions of terms standard coverage and NGA coverage are taken from the study Broadband Coverage in Europe in 2011. However, according to the authors even the data provided in the study are sometimes based on the assumptions made to estimate rural coverage where actual data was not available. Apart from that, the study does not include data for Serbia and Former Yugoslav Republic of Macedonia as the two countries are not members of the EU. Information for Serbia and Former Yugoslav Republic of Macedonia is based on the report from our two partners.

Sometimes the data from the Broadband Coverage in Europe 2011 do not correspond with the information provided by our partners. The reason is mainly that the data from individual countries that were gathered for the purpose of this report are taken from different national sources. We provide both sets of data, however.

The study Broadband Coverage in Europe 2011 also provides information on the proportion of rural areas in individual countries. To be able to understand the coverage data provided in this chapter it is therefore necessary to present the comparable data on the percentage of the rural areas (see table below) calculated according to this study because as we can see in the previous chapter the data on rurality according to the OECD definition differ significantly from the data presented in Broadband Coverage in Europe 2011.

### Demographics for each country

Country	Population	Persons per household	Rural proportion
Austria	8,318,592	2.3	28.6%
Bulgaria	7,640,238	2.4	12.7%
Greece	11,213,785	2.5	22.0%
Hungary	10,045,401	2.6	32.3%
Romania	21,528,627	2.9	44.8%
Slovakia	5,400,998	2.8	30.2%
Slovenia	2,010,269	2.5	24.7%

Source: Broadband Coverage in Europe 2011

The Standard Coverage combination is meant to give an indication of the extent to which homes in each country or region can access fixed broadband service providing at least 144kbps downstream speed. The four technologies which are taken into account to calculate the combination are DSL (which includes VDSL), Standard Cable (which includes Docsis 3 cable), FTTP and WiMAX.

Total standard coverage in Europe is 95,7%, whereas rural standard coverage falls to 78,4%

### Coverage for each country

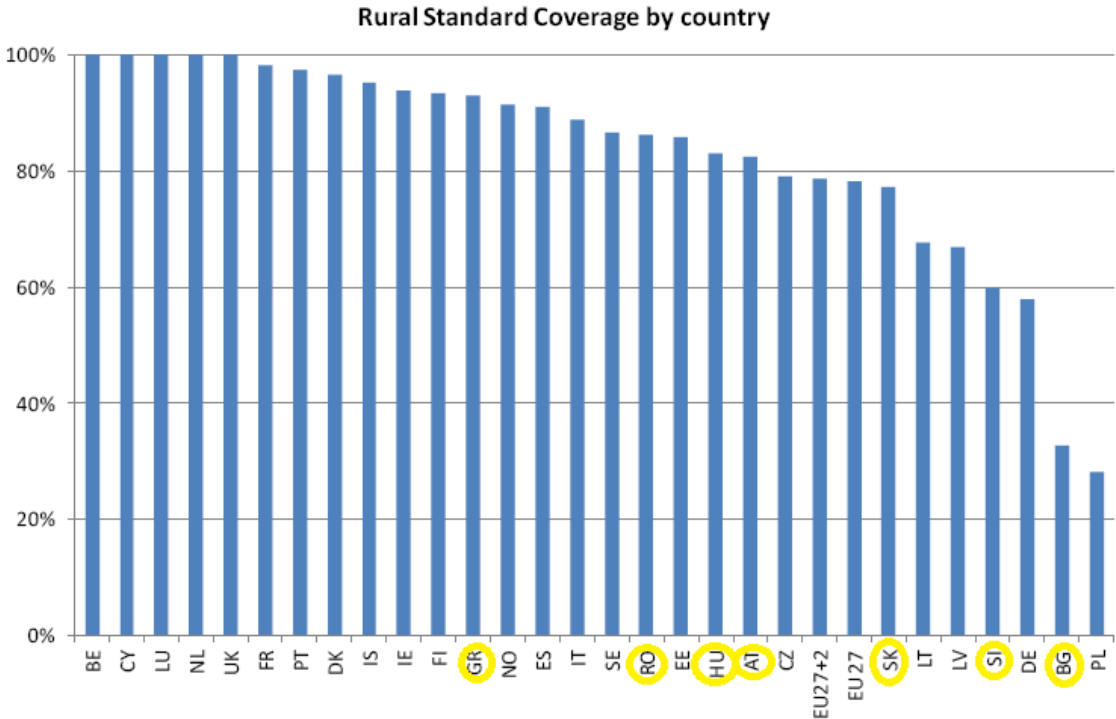
Country	Total Standard	Rural Standard	Total NGA	Rural NGA
Austria	95.5%	82.6%	64.4%	24.5%
Bulgaria	91.5%	32.8%	71.4%	7.8%
Greece	98.5%	93.2%	4.2%	1.0%
Hungary	93.2%	83.1%	54.0%	16.2%
Romania	91.7%	86.3%	42.9%	5.8%

**Summary Report**

Slovakia	91.4%	77.3%	65.3%	0.0%
Slovenia	90.1%	59.9%	67.7%	12.1%

Source: Broadband Coverage in Europe 2011

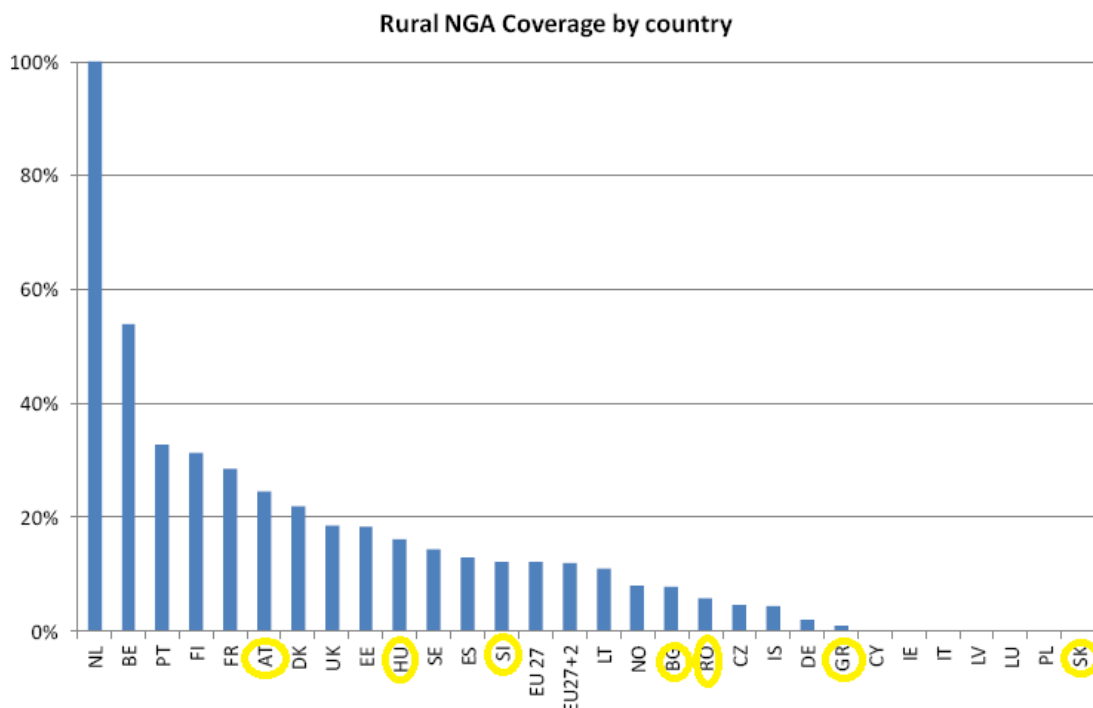
The biggest digital divide between total standard coverage and rural standard coverage can be observed in Bulgaria, where total standard coverage accounts for 91.5% and falls to only 32.8% in rural areas. Slovenia follows with a 30% difference between total and rural standard coverage. Greece with 93.2% has the highest rural standard coverage among the partner countries and also the smallest difference between total and rural standard coverage. NGA coverage, however, is less common in all countries and the differences between total and rural are even bigger. In Slovakia, for instance, there is no rural NGA coverage at all, while the highest NGA rural coverage is Austria, but it is still 40% lower in rural areas than total.



Source: Broadband Coverage in Europe 2011

The NGA Coverage combination is intended to show how far advanced Europe is towards achieving the Digital Agenda objective of access to 30Mbps broadband for all by 2020. It combines the coverage of the three main fixed-line Next Generation Access technologies; VDSL, Docsis 3 Cable and FTTP. All three are capable of delivering the target of 30Mbps downstream, although VDSL will fall short of that capability where a premises is too far from the serving VDSL node.

The gap between total and rural NGA coverage is even greater than the gap for standard coverage. None of the countries' rural NGA coverage exceed 25%, while Slovakia has no NGA rural coverage at all.



Source: Broadband Coverage in Europe 2011

### SLOVAKIA

In Slovakia the areas without coverage, so called “white zones”, comprise 729 municipalities, which makes 25,69 % of all municipalities in Slovakia except for Bratislava region. In the concerned municipalities there are 305 933 inhabitants meaning 6,36 % of inhabitants of SK again except for Bratislava region. The Study on broadband coverage states that the broadband standard combination reaches 77.3% of rural areas. However, the national database of broadband coverage (<http://www.vus.sk/broadband/databaza/broadband.php>) shows a different picture with total of 193 municipalities with completely no access to broadband internet while most of these municipalities are located in the Banskobystrický (75) and Prešovský region (80).

### SLOVENIA

The official estimate (based on a study by Slovenian national operator Telekom Slovenije) is that the number of white areas in Slovenia on a household level is 260,000. This number has been adopted also by the Directorate for the Information Society on a national level.

According to the report published by **Post and Electronic Communications Agency of the Republic of Slovenia** total coverage of Slovenian households is 66,2%. This is the estimate for the whole country, no specific data for rural areas only is available.

### BULGARIA

In Bulgaria the division of towns and villages is based on administrative regions (28) and in particular, on built-up areas (city, village). According to the National Statistical Institutes data taken from the last population census, out of total 7 605 000 people, 28.9% of the population live in villages.

In total there are 5049 villages in the territory of the country. 116 of them are characterized by more than two Internet service providers, 228 villages have two Internet providers, 708 have a single Internet provider and 3997 have no Internet provider at all. This data indicates broadband coverage by settlements based on number of Internet providers. This allows for identification of regions where state aid is admissible.

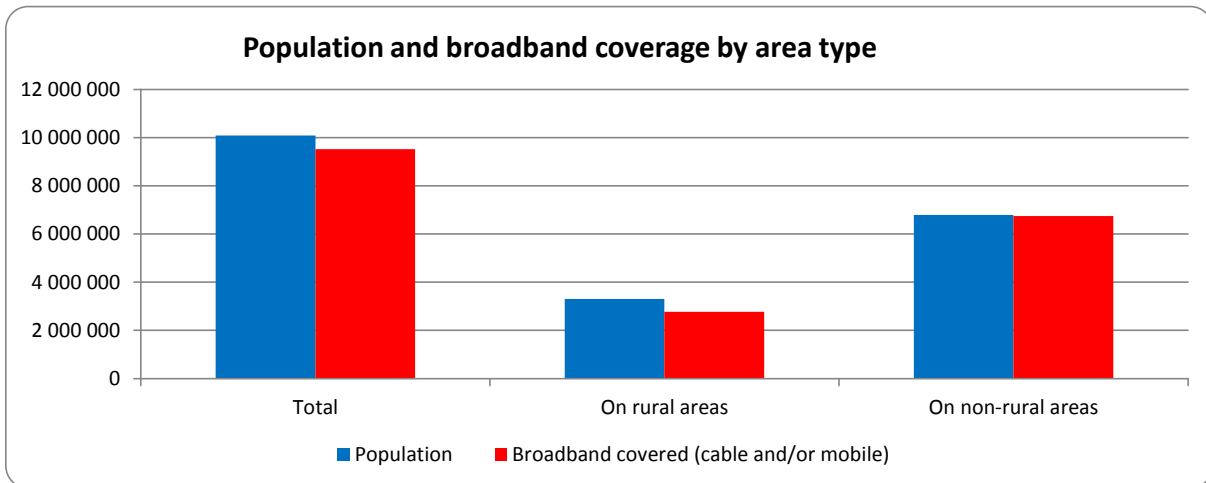


**HUNGARY**

The broadband coverage data in Hungary is based on the actual coverage lists of main broadband providers and the list of rural areas:

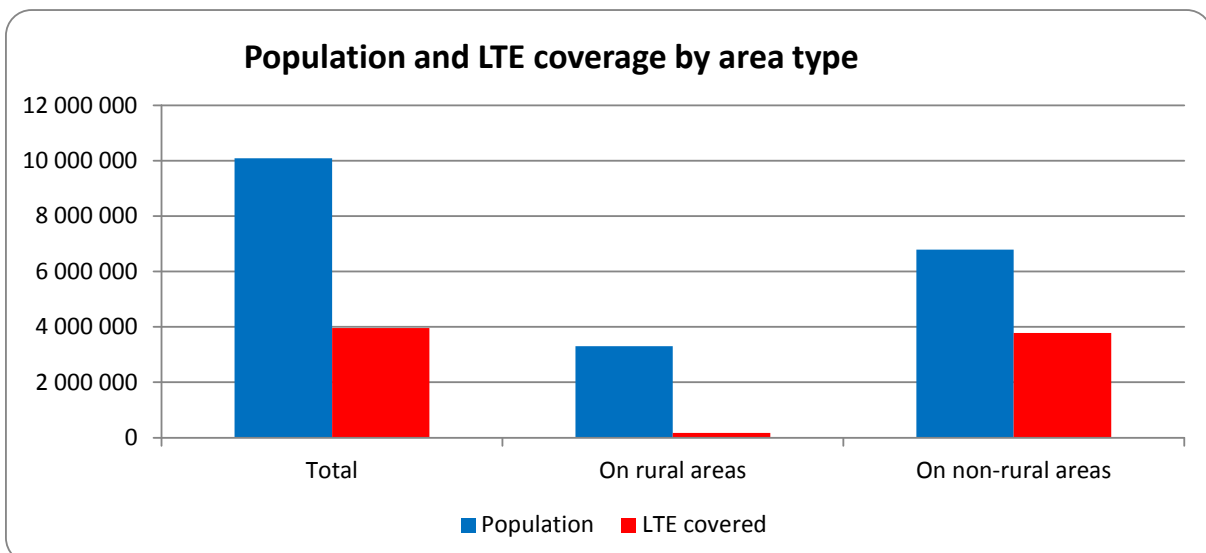
- 9.5 million people have cable and/or wireless broadband coverage (94.35%)
- 2.8 million people who live on rural area have cable and/or wireless broadband coverage (84.09%)

The slowest fixed line broadband service has 5 Mbit/s speed (but the typical minimum is 10 Mbit/s) and on all fixed-line covered areas the 30Mbit/s speed is available.



In 2012 two of the three mobile operators started their LTE service, typically in greater cities. Based on the list of covered cities the LTE coverage is

- 4.0 million people are covered by LTE (39.20%)
- 0.18 million people who live on rural area are covered by LTE (5.39%)



### AUSTRIA

The broadband usage in Austria, based on a Paper of the Austrian Statistic Agency »Statistik Austria«, in 2012 was 77,4% in total. By 2013, the coverage of broadband in Austria with at least 1Mbit/s is 99%. According to Broadband coverage in Europe in 2011 Austria has about average standard broadband coverage. Most of the more rural areas have at least 92%. The exceptions are the two most mountainous provinces in the west of the country, Tiroler Oberland and Ausserfern which have just above and just below 90% coverage respectively.

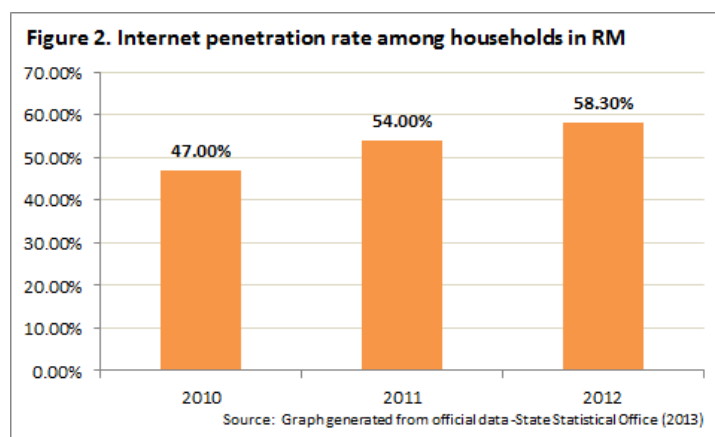
### SERBIA

In Serbia there are no specific data on number of users in rural areas. Only data known is that around 38% of citizens of Serbia have access to broadband networks, majority of them in Belgrade and Vojvodina.

### FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Broadband coverage in the Former Yugoslav Republic of Macedonia is recorded on a household level. Statistical Office of RM reports that 58.3 per cent of the households in the country had internet access in 2012 which makes an increase of 13 per cent from 2010 – Figure 2.

Broadband internet access dominates the milieu with 42.1 per cent of the total households in 2011 and an increase of 16 per cent increase in 2012 - to **58.1** per cent (Table 3). Almost all households connected to internet in the country use a broadband connection.



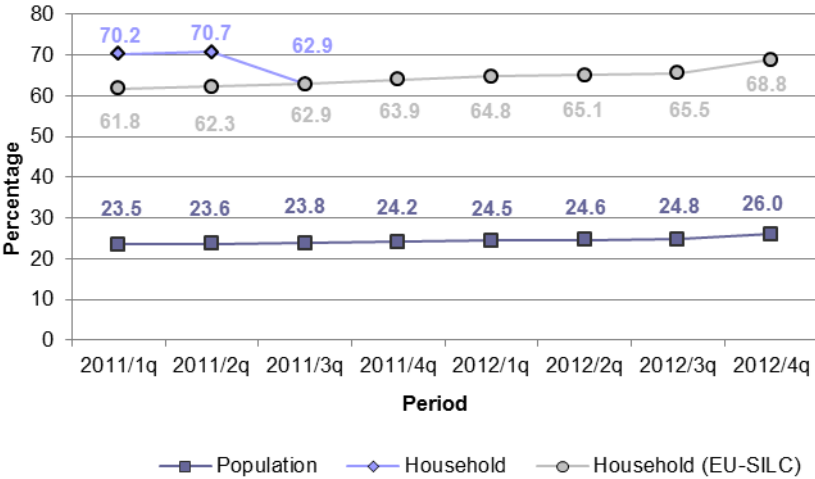
## 2.5 PENETRATION RATE

Although the percentage of broadband coverage in rural areas might be rising it is still debatable how many users (households, public institutions, private companies) in rural areas are actually subscribed to services offered by broadband network. Unfortunately not all partners were able to provide information on the penetration rate and even where the information was available, there were no specific data found for rural areas.

### SLOVENIA

In Slovenia, **Post and Electronic Communications Agency of the Republic of Slovenia** only collects data on the penetration of fixed broadband (mobile internet access is not included). The penetration rate is observed on a household level and it reached 62.9% of all households in 2011 which accounted for 23.8% of the population. The data, however, are not exclusively for rural areas but for households total.

Chart No. 1: Penetration of fixed broadband in Slovenia (Mobile broadband internet access is not included.)



Source: Post and Electronic Communications Agency of the Republic of Slovenia

According to the **Statistical Office of the Republic of Slovenia** there were over 517,000 broadband internet connections (including fixed wireles access), 85% of them used by private users (households) in 2012:

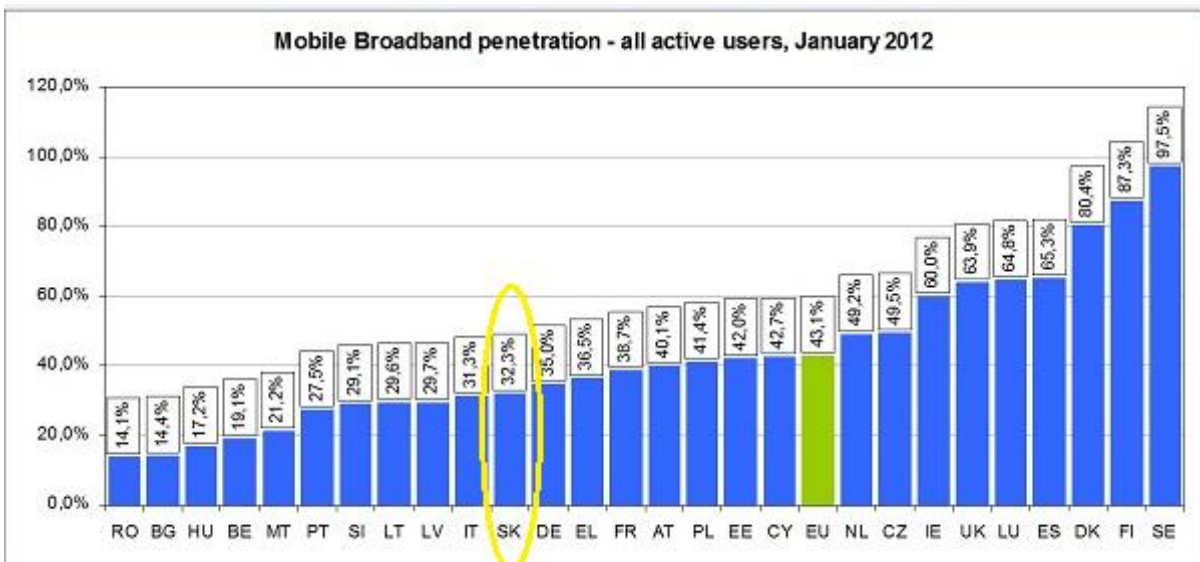
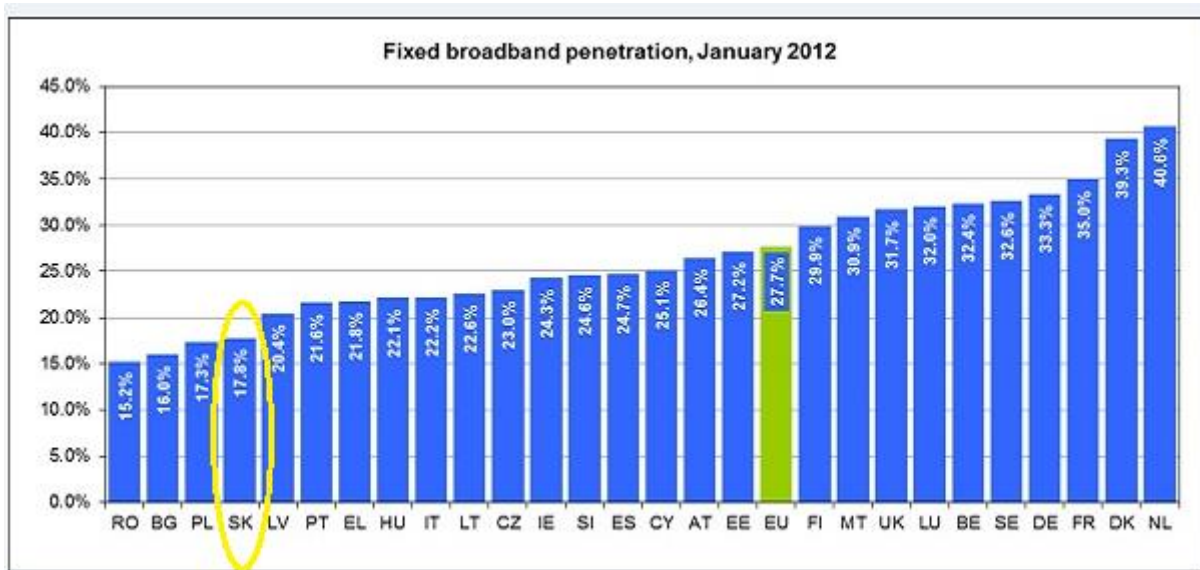
- 51.7% were xDSL connections,
- 28.6% were modem connections,
- 18.3% were optical fiber access connections
- 2.4 % other

No specific data for rural areas is available.

**SLOVAKIA**

In 2012, the penetration rate of fixed broadband is 17.8% of the population, up 1.3 percentage points (p.p.) year-on-year but still 9.9 p.p. below the EU average of 27.7%. Slovakia is in the group of countries (the fourth at the bottom) with the lowest penetration levels, however its penetration growth rate is slightly above the average. (Slovakia has 29.1% of fixed lines providing speeds of 10 Mbps and above. With regards to high and ultra fast speeds, only 15.2% of lines provide speeds between 30Mbps and below 100Mbps and 1.9% of fixed lines provide speeds equal or above 100 Mbps. Most of broadband lines in Slovakia are in the speed range of 2 Mbps and below 10 Mbps (60.3%.) Mobile broadband penetration is 32.3%, up by 4.6 p.p. year-on-year but it is 10.8 p.p. below the EU average penetration level.

The penetration rate is depicted below for both fixed and mobile subscriptions:



Source: <http://ec.europa.eu/digital-agenda/en/scoreboard/broadband-telecom-market-regulation-24>

Speaking in figures, the total number of fixed (wired) broadband subscriptions in Slovakia was 771.638 and the total number of wireless broadband subscriptions was 1.972.551; both as of June 2012 (source: OECD Broadband Portal).

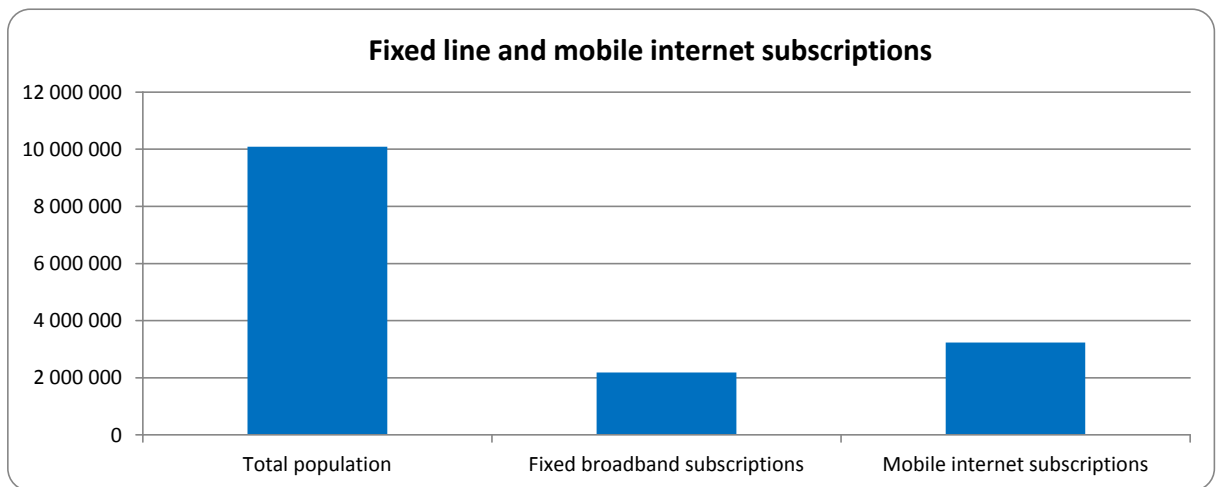
### HUNGARY

The data in Hungary is based on the actual flash reports of National Media and Infocommunications Authority:

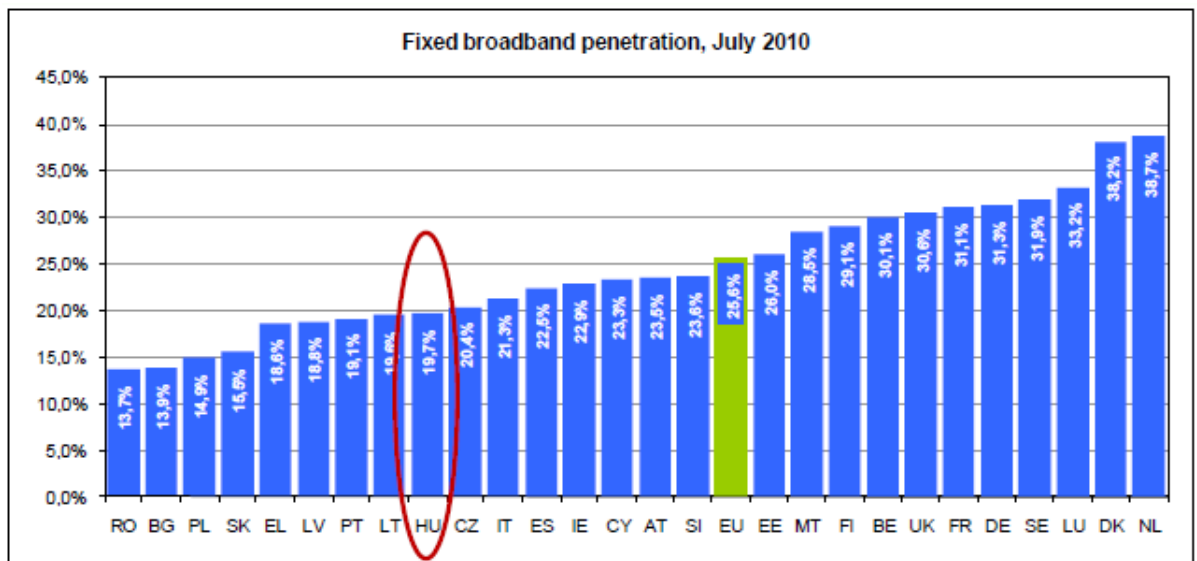
- Number of xDSL subscriptions: 769 649
- Number of subscriptions for broadband via cable: 885 759
  - Of which: number of broadband subscriptions via Docsis 3.0: 274 251
- Number of broadband subscriptions via FTTx: 324 722
- Total number of fixed-access broadband subscriptions (est.): **2 183 000 (21.63%)**
  
- Total number of mobile internet subscriptions **3 233 894 (32.04%)**

## Summary Report

Unfortunately consolidated report of fixed and mobile subscriptions, city based, or customer type based report aren't available currently.



The previous penetration data was:



Source: EU Commission market report June 2010

### GREECE

The broadband market in Greece continued to grow throughout 2011, despite the economic recession. In January 2012, fixed broadband penetration growth stood at 1.84, above the EU average of 1.25. Broadband penetration increased to 21.8% in January 2012, compared to 19.9% a year before, which remains considerably below the EU average of 27.7%.

Total number of unbundled lines (fully and shared) reached 1.665.255 in January 2012 (96.1% of alternative operator's DSL lines being fully unbundled). xDSL is practically the only access technology (almost 100% of the total retail broadband lines). The number of broadband lines based on bitstream

access further decreased in January 2012, representing only 2.2% of new entrant's 'DSL lines (VDSL excluded).

**ROMANIA**

Based on available public data, according the concept paper *Development of broadband infrastructure in Romania*, the fixed broadband penetration reached 13,7% in 2010, compared to 12,3% in 2009, but it is still accounts for the lowest in the EU (the EU average stood at 25,6% in 2010). As regards the total fixed broadband coverage Romania was ranked the second lowest in 2010, with 82% compared to 95% for EU27. A similar situation is encountered for the Rural fixed broadband coverage, Romania having 60% of the rural population being covered to fixed broadband, compared to 82,5% at EU level. In what concern mobile broadband penetration, the situation is better, with 4,3% mobile penetration rate in Romania compared to 7,2% for EU27.

Based on a survey of **National Authority for Management and Regulating in Communications (ANCOM) and Ministry of Information Society (MSI)** on the 13746 localities from 1049 Internet Service Providers (ISP) it was obtained the information that 9315 localities there were no ISP and they were considered a white areas. For further assessing the needs of the 9,315 localities in order to receive broadband services, at MIS request, ANCOM carried out another study in 2010 to identify which of these 9,315 localities were “white areas” in terms of availability of network infrastructure (local loop and backhaul segments) capable of supporting broadband services with the parameters referred to in the National Broadband Strategy (speeds of 1 Mbps for residential users and 4 Mbps for business users).

The questionnaire was sent to all electronic communication network providers in which they had to indicate the localities with backhaul segments, the localities with local loop, dividing the local loop by technology (metallic, cable, fibre or radio) capable of supporting broadband services with the parameters referred to in the National Broadband Strategy and localities with 3 years forecast to provide broadband services according to a feasible business plan. Considering the responses received from the operators resulted that in a number of 3.648 localities there is no broadband infrastructure (backhaul and local loop) and no documented intentions to invest in the next 3 years. The study conclusion is presented in the table below.

No. of countries	Population				Households				Localities			
	"white zones"		Total	%	"white zones"		Total	%	"white zones"		Total	%
41	Rural	Urban	19,494,925	5 %	Rural	Urban	6,531,580	5 %	Rural	Urban	13,746	27 %
	902,384	0			337,298	0			3,648	0		
	902,384				337,298				3,648			

Source: CONCEPT PAPER, STATE AID MEMORANDUM, Development of broadband infrastructure in Romania, (RoNet Project 2011)

According the report, **ROMANIA, 2011, Telecommunication Market and Regulatory Developments** the fixed broadband penetration reached 15.3% in January 2012, compared to 14.0% in January 2011, but it still accounts for the lowest in the EU (the EU average stood at 27.8% in January 2012). As regards the infrastructure used, the Romanian broadband market is characterised by platform based competition. As far as the market structure is concerned, 1,010 operators provide fixed broadband internet access, of which 41 by cable network, 210 by fibre, 215 by radio, 17 by xDSL, 861 by UTP/FTP cable4. The market share of the incumbent in DSL lines stayed at 99.9%, but the incumbent's market share in total broadband lines remained below the EU average, (from 30%, compared to the EU average of 76%).

**SERBIA**

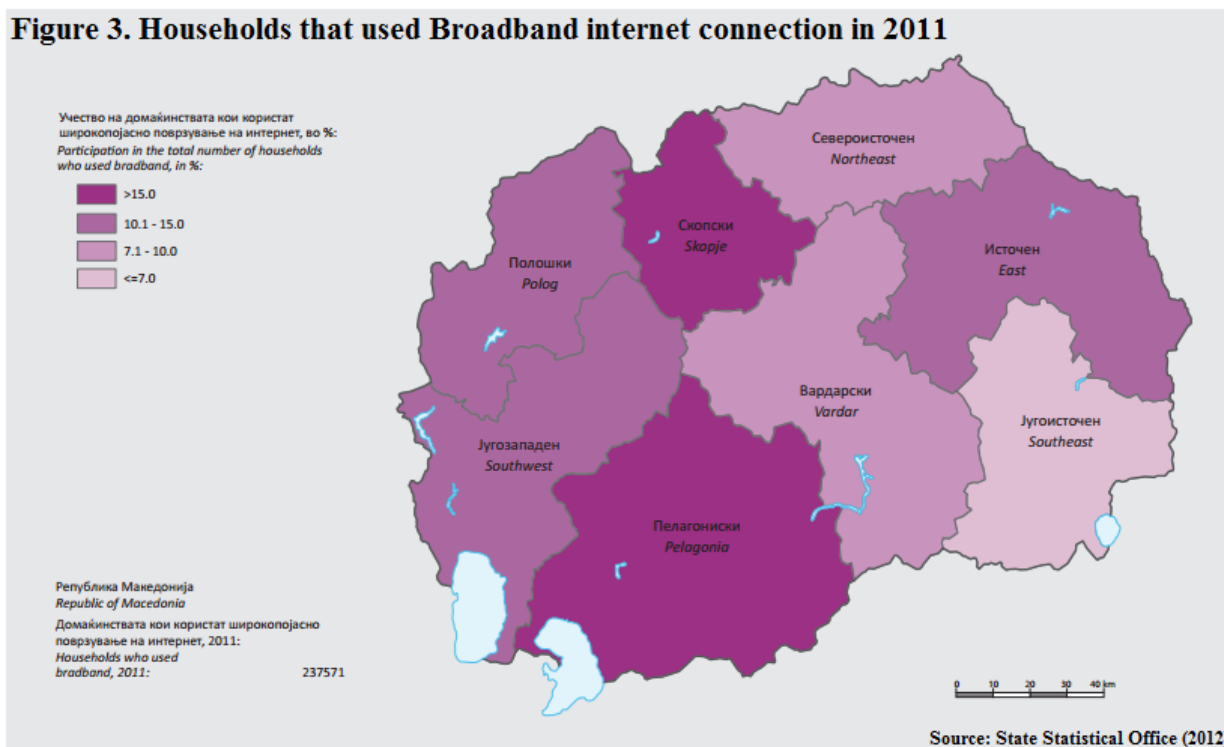
In Serbia there is no specific data on the number of users in rural areas. Only data known is that around 38% of citizens of Serbia have access to broadband networks, majority of them in Belgrade and Vojvodina.

**FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

It is difficult to assess the penetration rate among the rural households in the Former Yugoslav Republic of Macedonia due to the fact that the official statistics takes into account only the urban broadband penetration rate and it does not acknowledge how much of the rest of the households belong to the rural areas. Therefore, any further assertion on the rural rate in this report will be based on the assumption that broadband penetration rate in the rural areas will equal the rate in the rest of the territories.

As a result, the broadband penetration rate among households in rural area can be assessed at maximum 50.5 per cent (most optimistic scenario). The regional broadband penetration according to regions is provided in Figure 3. If one considers data on the location of the rural areas and the data on broadband penetration, one can conclude that the most realistic scenario for broadband penetration in the rural areas in Former Yugoslav Republic of Macedonia is 7-10 per cent. There are no official data on broadband penetration rate among private and public entities in rural areas.

**Figure 3. Households that used Broadband internet connection in 2011**



## 2.6 TECHNOLOGIES USED

For the purpose of comparison the information on technologies used and the explanations are taken from the study Broadband Coverage in Europe in 2011. Where the project partners provided additional information we mention both. Again, the study does not include information for Serbia and Former Yugoslav Republic of Macedonia. We were able to obtain information for Former Yugoslav Republic of Macedonia separately although the data do not allow comparison with the study Broadband Coverage in Europe in 2011. Information on technologies used in Serbia is not available.

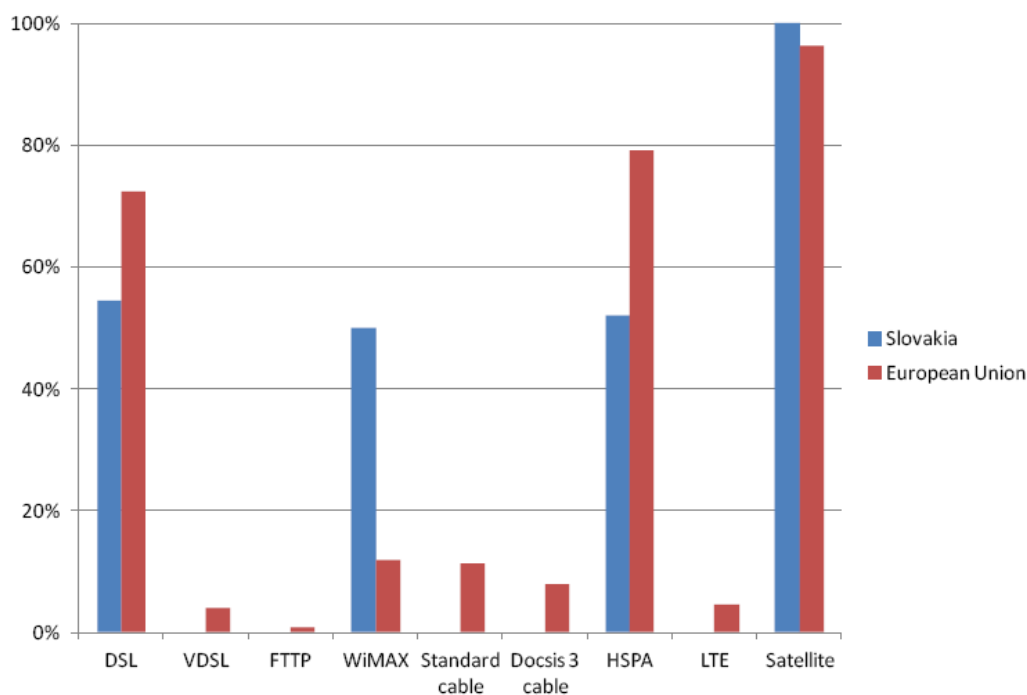
### Rural Coverage by Technology

Countries	DSL	VDSL	FTTP	WiMAX	Standard cable	Docsis 3 cable	HSPA	LTE	Satellite
<b>Austria</b>	81.0%	24.4%	0.2%	12.5%	0.0%	0.0%	92.3%	0.0%	100.0%
<b>Bulgaria</b>	23.5%	0.0%	1.2%	9.6%	6.9%	6.9%	88.3%	0.0%	100.0%
<b>Greece</b>	93.0%	1.0%	0.0%	0.5%	0.0%	0.0%	97.3%	0.0%	100.0%
<b>Hungary</b>	73.7%	0.0%	1.6%	0.0%	45.7%	15.5%	89.0%	0.0%	100.0%
<b>Romania</b>	78.8%	4.4%	1.5%	11.4%	0.0%	0.0%	93.2%	0.0%	100.0%
<b>Slovakia</b>	54.5%	0.0%	0.0%	50.0%	0.0%	0.0%	52.1%	0.0%	100.0%
<b>Slovenia</b>	27.0%	10.5%	1.6%	45.0%	0.0%	0.0%	88.7%	0.0%	100.0%

Source: Broadband Coverage in Europe in 2011

### SLOVAKIA

Slovakia: rural coverage by technology



Source: Broadband Coverage in Europe in 2011



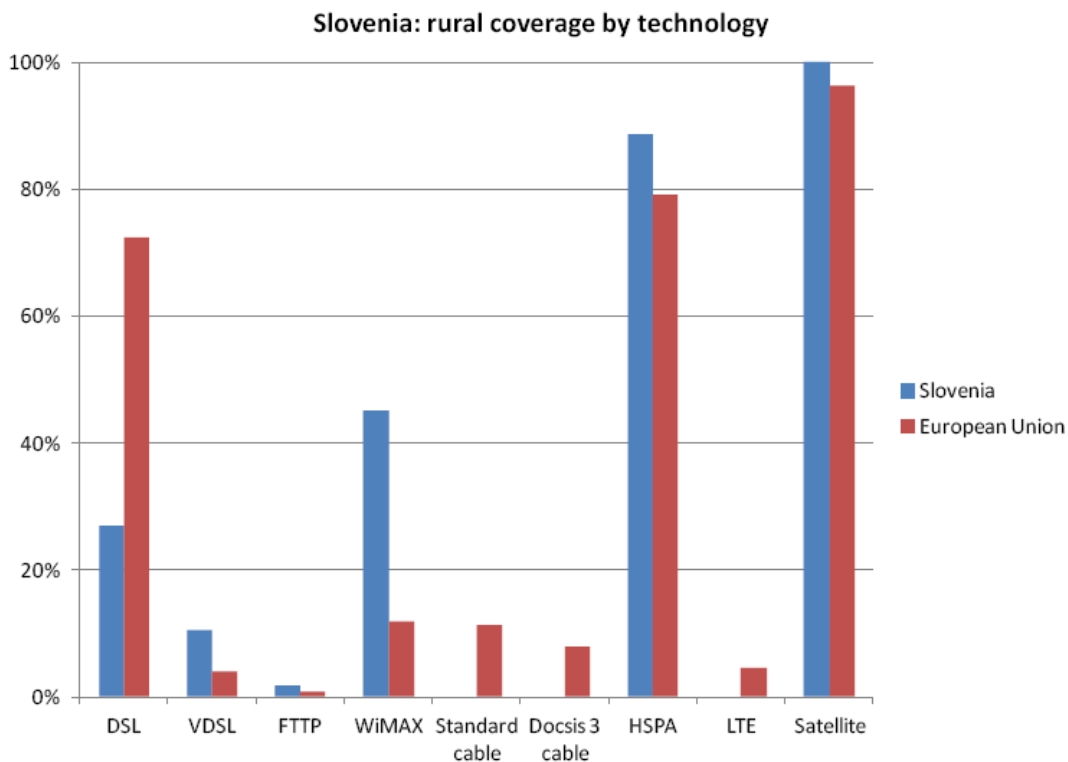
## Summary Report

Rural standard coverage is up with the European average but NGA has yet to reach rural areas. In rural areas, there are also none of the apartment blocks which support the economics of FTTP, the cable networks do not extend to rural areas either and VDSL, which could offer an attractive option in some cases, is not yet developed. As a result, Slovakia is one of the seven study countries which have little or no NGA in rural areas.

According to the information provided by the Slovak project partner, the following technologies are available and their availability is under monitoring in Slovak Republic:

- xDSL
- CATV
- FTTP
- FWA (WiMAX)
- WLAN (WiFi)
- Flash OFDM
- 3G/HSxPA
- satellite

## SLOVENIA



Source: Broadband Coverage in Europe in 2011

Slovenia also has rather better rural NGA coverage than many of its peers, matching the European average at 12%. Slovenia is also making use of a wider range of technologies than some other countries in its area. VDSL, FTTP and Docsis 3 all make a substantial contribution to NGA coverage. FTTP and the cable networks also add significantly to standard coverage. The telephone incumbents are often the providers of FTTP as well as DSL/VDSL so the networks are more likely to be complementary rather than overlapping. WiMAX has wider than average coverage and is deliberately deployed to fill in DSL coverage gaps. All these factors help to maximise the effectiveness of Slovenia's broadband infrastructure.

These factors are also seen at work in rural areas. WiMAX makes a bigger contribution to coverage than DSL and both VDSL and FTTP provide more than average rural access – 11% against 4% and 1.6% against 0.9% respectively.

## Summary Report

According to the information provided by Slovenian project partner, the following technologies are used in Slovenia:

- xDSL
- Cable modem
- FTTH
- Ethernet
- Public access WI FI Hotspots
- WiMAX
- Satellite
- MMDS
- Leased Lines
- Others
- Mobile broadband

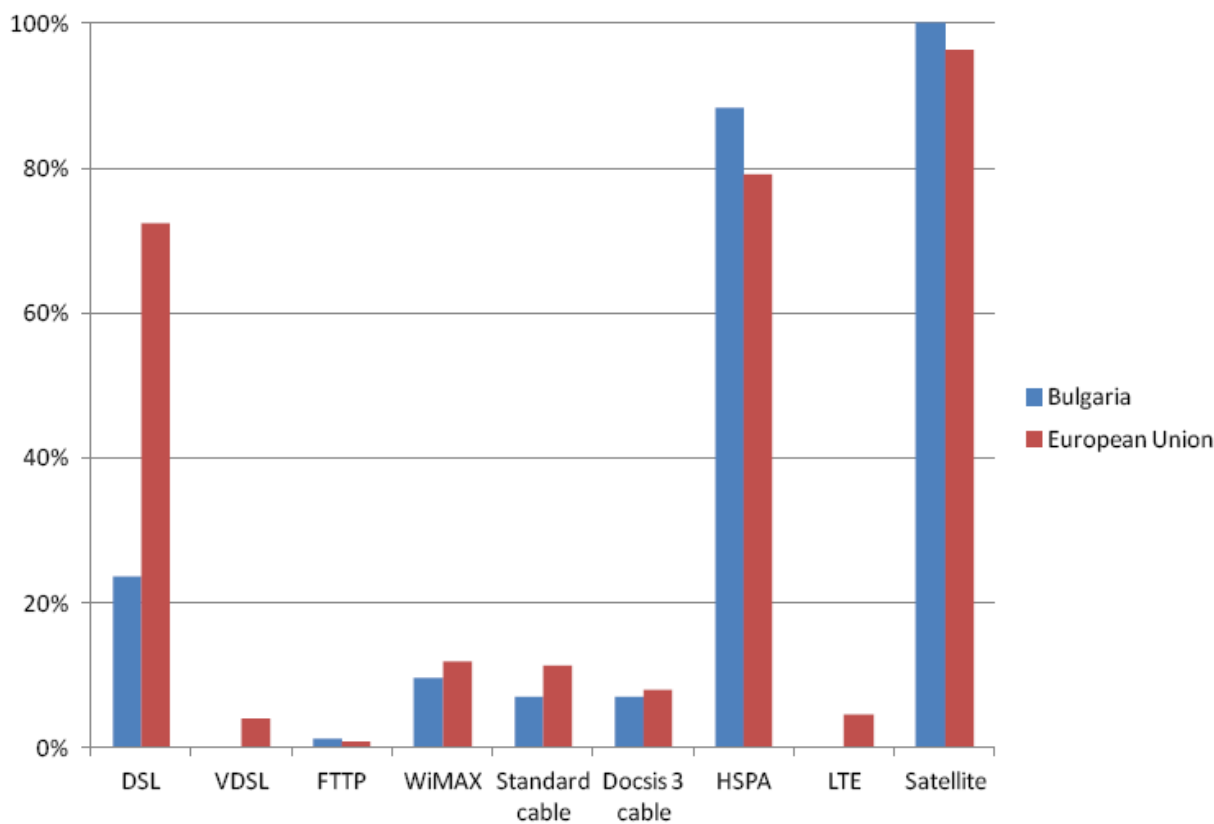
### Technology in Slovenia

	2011/1q	2011/2q	2011/3q	2011/4q	2012/1q	2012/2q	2012/3q	2012/4q
xDSL	57.5	56.7	55.6	54.5	53.4	52.6	52.2	51.7
Cable modem	26.4	26.7	26.8	27.3	27.9	28.2	28.5	28.6
FTTH	14.5	14.7	15.5	16.0	16.5	16.9	17.1	17.3
Other technologies	1.6	1.9	2.1	2.1	2.2	2.3	2.3	2.5

Source: APEK, February 2013

## BULGARIA

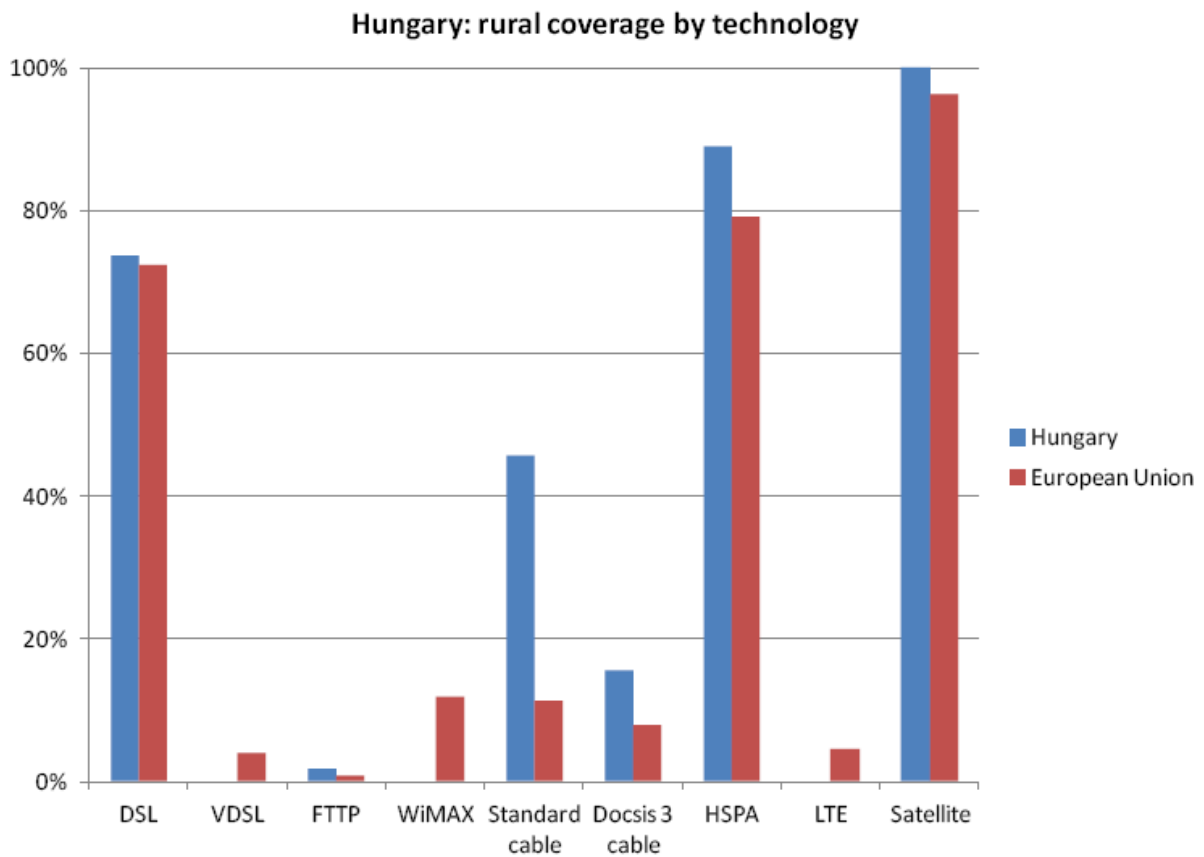
### Bulgaria: rural coverage by technology



Source: Broadband Coverage in Europe in 2011

Bulgaria has the smallest percentage of rural homes (17.2%) of any of the Balkan countries according to the study Broadband Coverage in Europe in 2011 and they are not as yet well served by fixed broadband services. Rural coverage of all these technologies is below average, except for FTTP, which although providing only 1.2% rural coverage is ahead of the very modest Europe-wide figure of 0.9%. HSPA does fill some of the gap, on 88% against a European rural average of 79%.

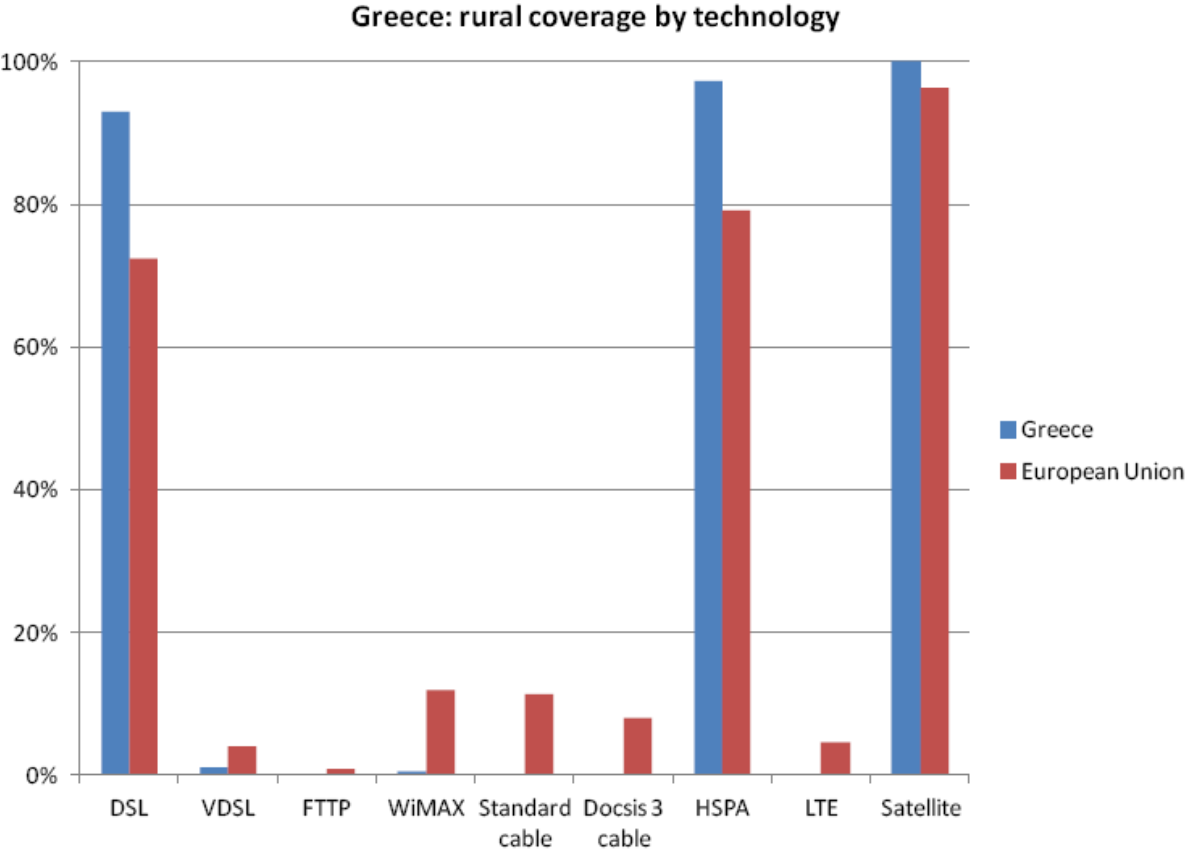
**HUNGARY**



Source: Broadband Coverage in Europe in 2011

Hungary is ahead of all the European averages for rural coverage. DSL and cable combine to provide above average coverage in rural areas, and the presence of Docsis 3 and some FTTP gives above average rural NGA. A planned WiMAX network does not appear to be operational yet but LTE was due to be available from early in 2012.

GREECE



Source: Broadband Coverage in Europe in 2011

According to the study Broadband Coverage in Europe in 2011 DSL provides well above average (93%) coverage of rural areas but VDSL has only a small rural presence so far. Although there are WiMAX networks in Greece they make very little contribution to rural coverage because they are mainly deployed as alternative networks in Greece’s two big cities – Athens and Salonika.

According to the information provided by Greek project partners, the total number of unbundled lines (fully and shared) reached 1 665 255 in January 2012 (96.1% of alternative operator's DSL lines being fully unbundled). xDSL is practically the only access technology (almost 100% of the total retail broadband lines). The number of broadband lines based on bitstream access further decreased in January 2012, representing only 2.2% of new entrant's 'DSL lines (VDSL excluded). The development and coverage of fibre access is still negligible (0%).

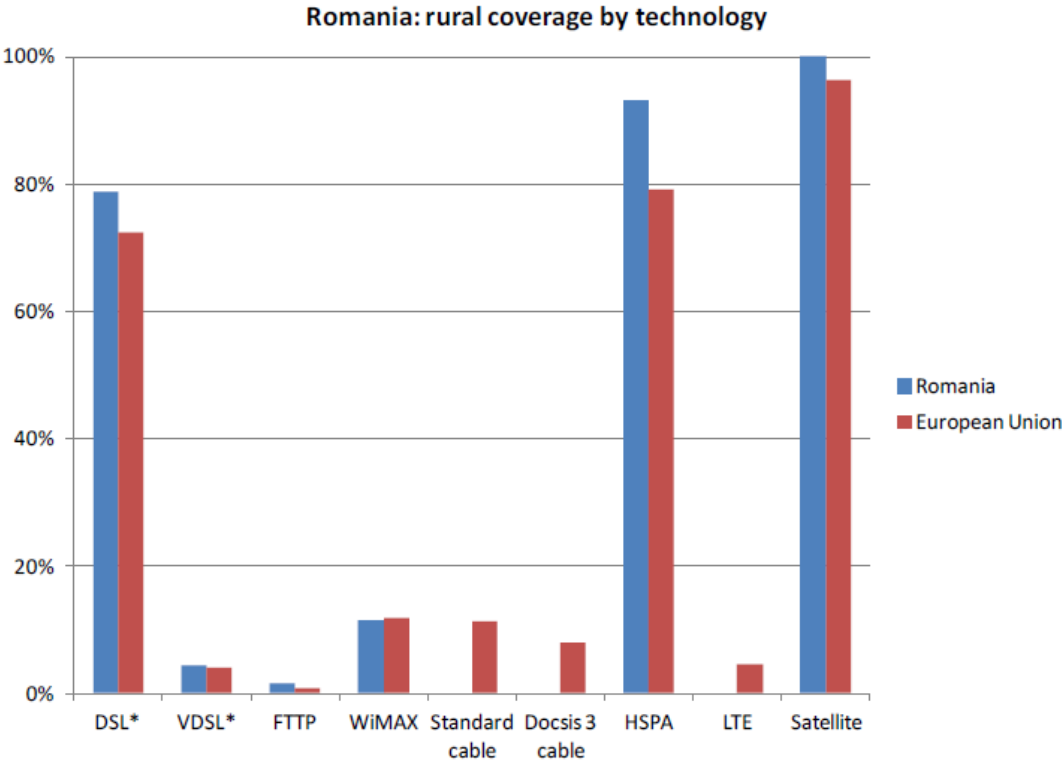
The incumbent's market share of retail broadband connections significantly decreased to 44% in January 2012 (down from 49% a year before) close the European average of 43%. There was no significant improvement regarding the national access speeds of broadband lines. 10 Mbps lines continue to be the most popular amongst Greek end-users (56.2% of the total broadband lines in January 2012), while a considerable number of lines is between 2 and 10 Mbps (43.8%). The percentage of retail broadband lines with speeds above 30 Mbps is negligible.

Mobile broadband in Greece continued to grow but at a very slow pace, reaching a penetration level of 3.7% in January 2012 (calculated as the number of dedicated data services via modems, card, and

USB keys), growing by 0.9 percentage points in one year comparing to a 0.4 percentage point increase in the EU average (7.9% in January 2012).

If all active users are accounted, Greece still ranks below the EU-27 average of 43.1%, with a penetration of 36.5%.

**ROMANIA**



Source: Broadband Coverage in Europe in 2011

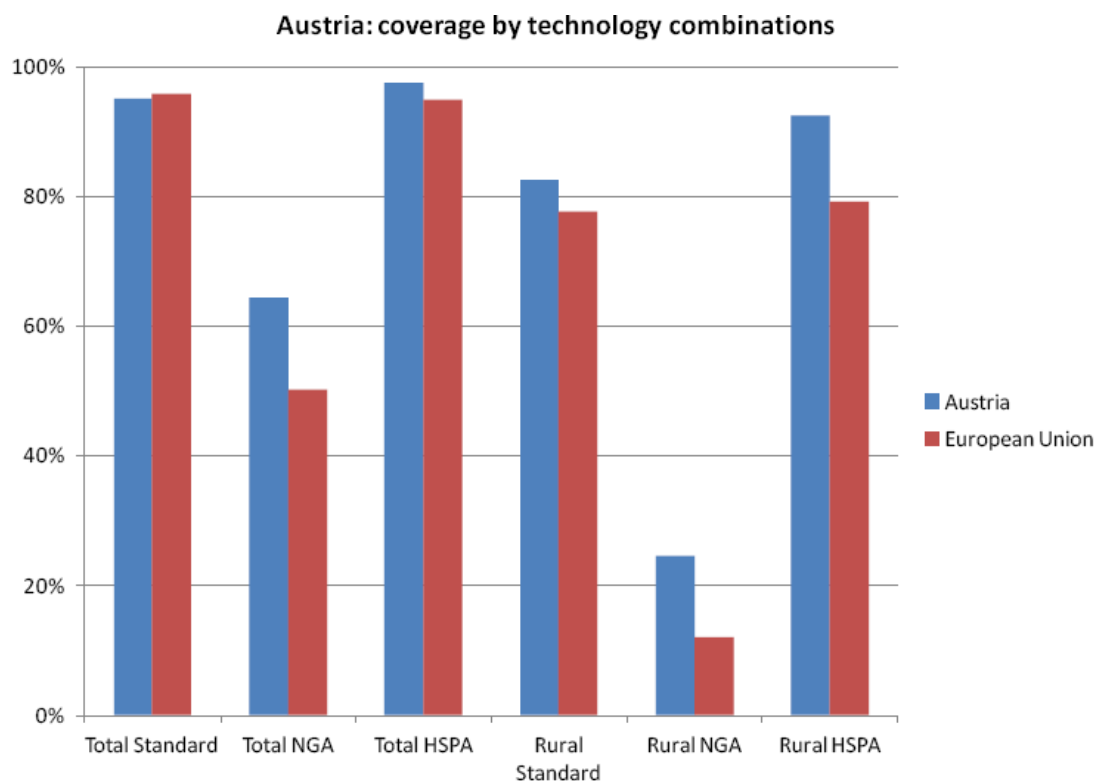
Romania’s broadband profile compares well with other countries in Eastern Europe and is ahead of European averages on Standard and HSPA measures of rural coverage (86% and 93% respectively). It is mentioned that while 75% of urban Romanians live in apartment blocks, 95% of villagers live in single family houses and the pattern of broadband coverage is different. In rural areas the DSL\* (which includes other solutions providing download speeds of less than 25Mbps) is the predominant broadband medium and delivers higher than average Rural Standard Coverage. In the report, the DSL\* is defined as including a variety of solutions, typically involving shared backhaul from LAN or coaxial cable distribution within apartment blocks, which provide download speeds of under 30Mbps. In the same report, the VDSL\* represents solutions offering 30Mbps and above, either by VDSL direct to the end-user or FTTB backhaul from in-building VDSL distribution networks.

It is outlined that the solutions grouped together as DSL\* show higher coverage in rural areas than in total because DSL\* is often the only option in rural areas, while VDSL\* and FTTP are uncompetitive where there are no apartment blocks. The cable networks also have little or no coverage in rural areas.

As generally, the numbers for DSL include VDSL, where it is available, DSL\* does not include VDSL\*, and the two networks are assumed to be complementary rather than overlapping. So, the used definitions for DSL\* and VDSL\* show that Romania has a good spread of technologies within this framework with significant contributions from all the NGA technologies. The DSL\*, VDSL\* and FTTP

tend to be complementary rather than overlapping so that Total Standard Coverage indicator and NGA Coverage are both high. HSPA coverage is good.

### AUSTRIA



Source: Broadband Coverage in Europe in 2011

Austrian rural profile is distinctly better than average at bringing DSL services to rural areas and well ahead in delivering VDSL. WiMAX also makes a significant contribution in the countryside. On the other hand, FTTP and cable services are absent, or available only to a very small extent.

### FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Statistical data for 2012 emphasize a predominance of fixed or fixed wireless broadband among the households in the country – 57.8 per cent of the total number. Only 3.5 per cent use a mobile broadband connection (Table 3). Less than 2 per cent of the households have both connections. The breakdown of technologies used and their penetration rate is provided in detail in Table 3. As one can see, xDSL is the dominant technology.

Table 3. Internet and Broadband penetration rate - households by type of settlement (2012)			
	Total in %	Type of settlement	
		Urban in %	Other/ including rural
<b>Households, total</b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>Internet access at home:</b>	58.3	62.9	50.8
<b>Type of internet connection</b>			
<b>Households with broadband connection (fixed or mobile)</b>	58.1	62.8	50.5
<b>Fixed or fixed wireless broadband</b>	57.8	62.6	50.2
- xDSL (ADSL and others)	32.6	32.8	32.3
- wired fixed (cable, fibre, etc.)	22.4	29.9	10.0
- fixed wireless (satellite, WiFi, WiMax)	6.5	3.7	11.0

<b>Mobile broadband connection (e.g. UMTS)</b>	3.5	4.5	1.8
-mobile phone network at least 3G (e.g. UMTS) via a handset (mobile phone or smartph.)	2.3	2.9	1.4
-mobile phone network at least 3G (e.g. UMTS) via a card or USB key	1.2	1.7	0.5
<b>Households with narrowband connection</b>	0.6	0.6	0.6
Modem (dial-up), ISDN	0.3	0.2	0.5
Mobile narrowband conn.less then 3G (2G+/GPRS), used by mob. Tel. or modem in laptop	0.3	0.4	0.1
<b>Source: State Statistical Office. Information Society (2013)</b>			

At individual and company level, the latest statistical data provide the following breakdown - Table 4.

<b>Table 4. Internet and Broadband penetration rate – Individuals and Companies (2012)</b>		
<b>Type of Broadband/Technology</b>	<b>Individuals</b>	<b>Companies</b>
Broadband internet via mobile network (2G/3G)	364.316	81.972
Broadband internet access (cellular network subscribers not included)	281.234	21.023
Through public communication network xDSL	142.648	13.505
Through public CATV network	96.887	2.832
3 Through the optical network	5.293	872
4 Through public radio communications network	20.253	2.322
5 Trough leased lines	2	834
6 Through LAN	16.151	658
<b>Source: AEK Quartile Report (2013)</b>		

## 2.7 SITUATION AT THE MARKET

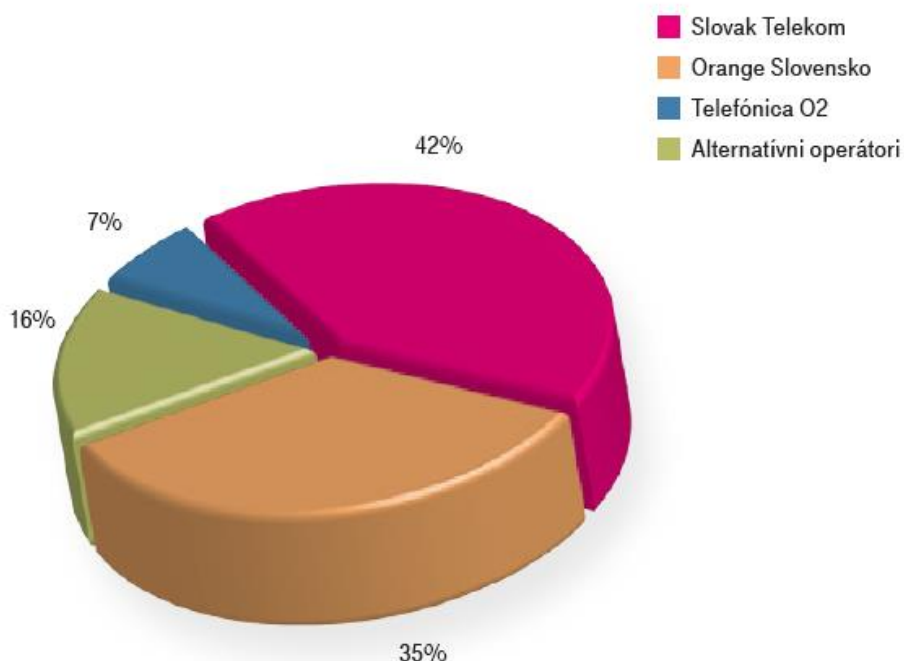
### SLOVAKIA

In Slovakia there are 655 providers of internet access according to the Database of internet access providers (<http://www.vus.sk/broadband/jp/zobrazPoskytovatelov.php?retazec=&technologia=&pismo>).

Key providers are:

- Slovak Telekom – dominant position in the broadband market (part of Deutsche Telekom)
- Orange
- O2
- UPC Broadband Slovakia

Market shares of Individual Telecommunications Operators (Annual Report 2011)



Source: [http://www.telekom.sk/swift\\_data/source/o\\_nas/rocne\\_spravy/2011/en/telecom-market-development.html](http://www.telekom.sk/swift_data/source/o_nas/rocne_spravy/2011/en/telecom-market-development.html)

According to Business Monitor International report from December 2012 Slovakia's telecommunication market is at saturation point, with quarterly subscriber growth of less than 0.5% during the first nine months of 2012. However, the **country's fixed and mobile data sectors present significant growth opportunities with broadband penetration still below 30%**. The data market is expected to mature rapidly over the next few years owing to intense competition among the country's service providers, which include major regional players **Deutsche Telekom, Orange Slovakia, Telefónica O2 and Liberty Global**.

**Key Trends**

Slovakia's mobile operators invested heavily in expanding and upgrading their 3G networks in 2012 as competition shifted away from basic voice and SMS services to advanced 3G-based mobile data services. According to regulatory data, 3G networks covered 35% of the land area and 72% of the population by the end of June 2012. In October 2012, Orange expanded its DC-HSPA+ network to all regional capitals, equivalent to coverage of 50% of the population. In June 2012, Telefonica announced plans to extend 3G coverage to a further 160 locations to take its population coverage to 50%. Meanwhile, the regulator intends to issue LTE licences in 2013, a development that will attract further investment to the mobile broadband sector.

**Digital Media and Broadband Market Insights, Statistics and Forecasts report extract:**

Slovakia's broadband market has shown steady growth in recent years, with access competition s predominately based on infrastructure. The DSL platform remains the dominant access method, while the cable sector is also strong in urban areas. A fast-developing FttX infrastructure and wireless broadband options, particularly from the mobile network operators, add to the mix. Broadband is sold as a platform through which telecom operators provide additional services, such as broadband TV. Increased internet usage is supporting Slovakia's internet society, which has received substantial EU funding to develop and improve access to e-government and other online services.



### SLOVENIA

In Slovenia there are 4 main operators offering **fixed broadband internet access**. According to the data from 2012 their market share was the following:

- Telekom Slovenije 38.5%
- T2 17.4%
- Telemach 13.8%
- Amis 11.7%

Telekom Slovenije is also the leading provider of **mobile broadband internet access** with market share of 42.6%. Lagging behind is Si.mobil with 31.3%, followed by Tušmobil (10.1%), T-2 (7.3%) and Debitel (8.2%).

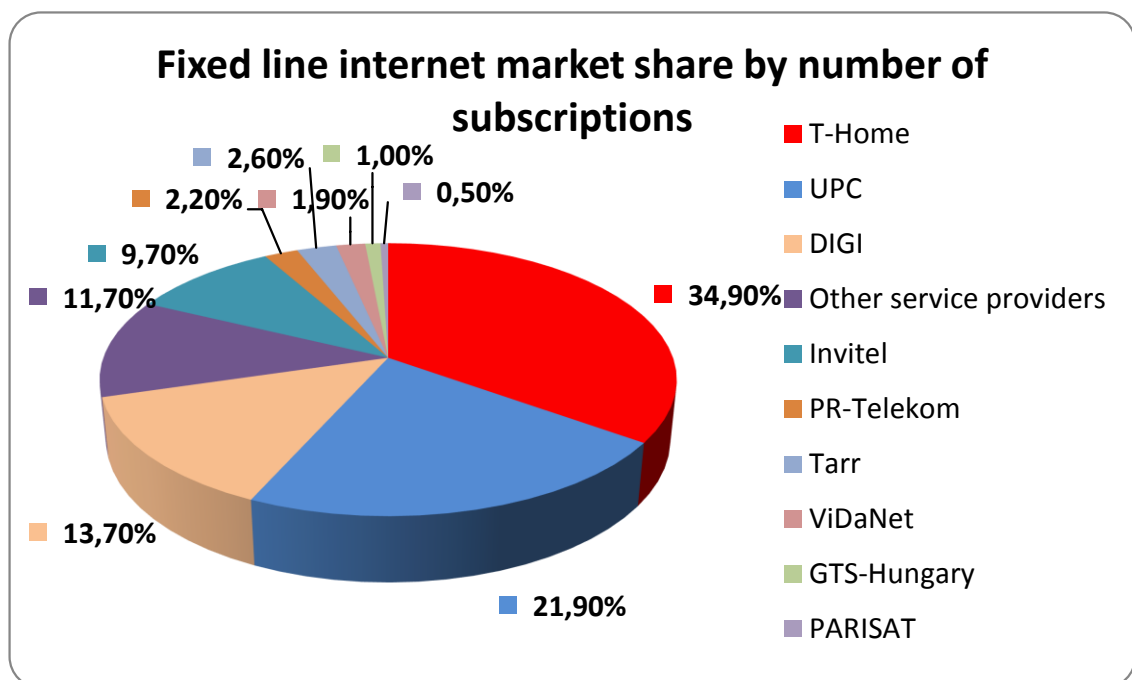
### BULGARIA

In Bulgaria there are 5 main broadband internet service providers. They own approximately 90 % of the total market share. According to the data from 2012 they are the following:

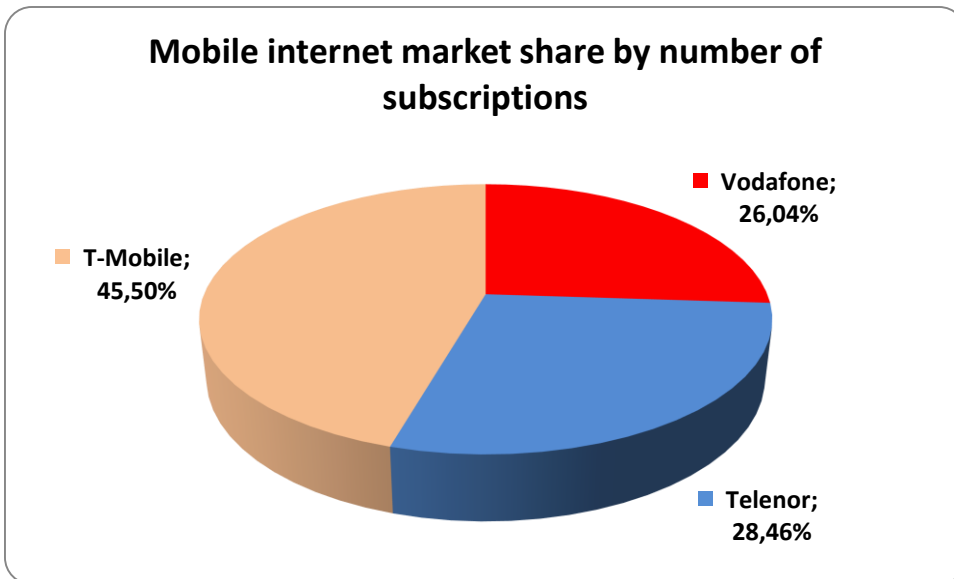
1. Btc
2. Blizoo media & broadband
3. Bulsatcom
4. Mobiltel
5. Max telecom

### HUNGARY

Based on the flash reports provided by National Media and Infocommunications Authority, 2013 January the situation in Hungary is the following:



Source: Flash report on landline service, January 2013, National Media and Infocommunications Authority



Source: Flash report on landline service, January 2013, National Media and Infocommunications Authority

## GREECE

There are approximately 23 internet service providers that operate in Greece. The main operators are:

**Hellenic Telecommunications Organization S.A.** usually known by its Greek initials **OTE**, is the dominant telecommunications provider in Greece. Along with its subsidiaries, it is one of the largest telecom groups in South Eastern Europe. OTE Group offers broadband services, fixed and mobile telephony, high-speed data communications and leased lines services. OTE offers, since 2003, broadband services to the overwhelming majority of Greece. Conn-x, and Conn-x@work are the main broadband products for residential and business customers. Over 95% of existing telephone connections in Greece can have broadband services.

**Hellas On-Line (HOL)**, offers up to 24/1 Mbit/s ADSL2+ & SDSL, connections in districts of Athens, Thessaloniki, Larissa, Katerini, Karditsa, Volos, Trikala, Thiva, Livadia, Chalkida, Patras, Nafplio, Mykonos. HOL merged with Attikes Tilepikinonies in 2007, acquiring an extensive optical SDH and Metro Ethernet network in the Attika region. HOL has the largest (amongst alternative carriers) optical backhaul networks based on DWDM technology. HOL has signed an agreement with Vodafone, according to which it is Vodafone's partner for broadband services in Greece. The partnership has led to a formal relationship with Vodafone acquiring 18,5% of HOL on August 2009.

**Forthnet**, launched its based on LLU offers in early 2007, and was supposed to have covered about 50% of the Greek population by the year's end; however, the coverage wizard on its website has been accused of being inaccurate in its predictions since Forthnet often postpones availability in a telephone exchange from deadline to deadline. It currently covers districts of large cities and offers speeds up to 24/1 Mbit/s.

**Vodafone** started offering ADSL full LLU access (up to 24/1 Mbit/s) in October 2007 as a reseller of HOL's LLU infrastructure. In September 2009, Vodafone sent letters out to all their DSL customers informing them that they will be moving the accounts directly to HOL. As of October 28, no further

information has been given to the Vodafone customers, and even some HOL sales representatives remain uninformed.

**Cyta Hellas** covers the whole country with digital PSTN and ISDN telephone lines and also offers ADSL in all urban areas. Cyta is offering fixed telephony, Internet service (Cytanet) has adopted VSDL technology that allows download speed up to 50Mbit/s and up to 10Mbit/s upload speed, the company is also offering, mobile telephony (Cytamobile-Vodafone) and Pay TV (Cytavision).Forthnet (see above)

**Wind-Tellas**, a subsidiary of Wind Hellas, offers ADSL through its LLU network in districts of Athens, Thessaloniki, Larissa and Crete with speeds up to 12/1 Mbit/s. Tellas, which was the first to provide free national calls through their network, was severely criticized for taking advantage of the 12-month contracts in order to keep their prices high and uncompetitive. Under pressure, Tellas moved from 4/0,5 to 12/1 services in November 2007, but the service is apparently still unstable, as many of the clients complain about problems related to the faster connection and/or to the router. As of March 2008, Tellas offers unlimited phone calls to 38 countries and also 60 minutes of calls to Greek cellular networks. In May 2008, Tellas upgraded their downstream speed to 24 Mbit/s.

### ROMANIA

According the Consultancy Company Point Topic (UK) the main broadband operators in Romania are:

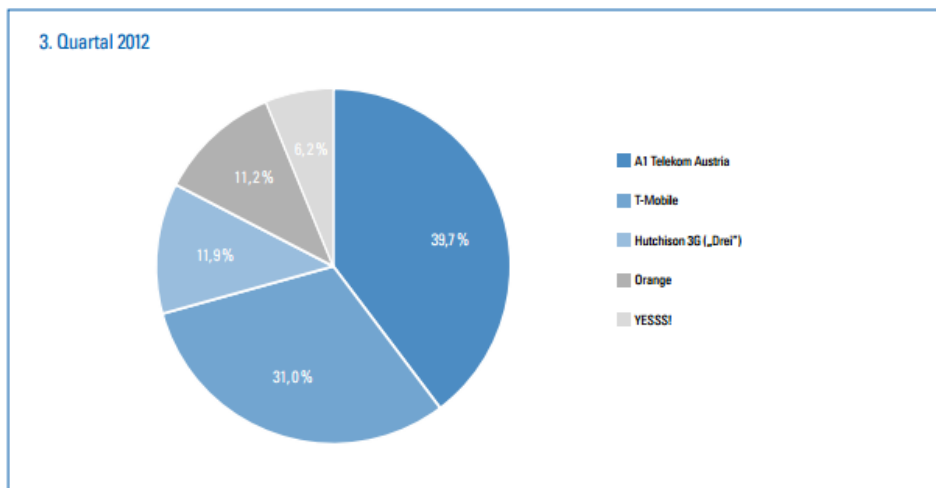
- RCS & RDS
- Romtelecom
- UPC Romania.

### AUSTRIA

The main operators for landlines in Austria are the A1 (former Telekom Austria), UPC and Tele2 (in that order, the marketshare for A1 is > 60%). Most of the users in Austria are cconnected via POTS, and the lines are owned by the former Post and Telekom Austria. UPC and Tele2 are also using cable tv connections (which are hardly anywhere available in rural areas).

According to statistics of RTR, the number of users connected to the internet via broadband connections with landlines, smartphones or mobile data connections is the same (landline 2.11 mio., smartphone 2.33 mio., mobile data connection 2.16mio. by 2012).

The number of users connected to the internet via mobile devices is increasing. As data from the RTR show, the amount of data downloaded via mobile devices has increased from 5000 TB (terabytes) in the last quarter of 2009 to 18000 TB in the last quarter of 2012. The following diagram shows the market shares of the Austrian mobile carriers. Please note that the carrier Orange has been taken over by Hutchinson 3G in 2013.



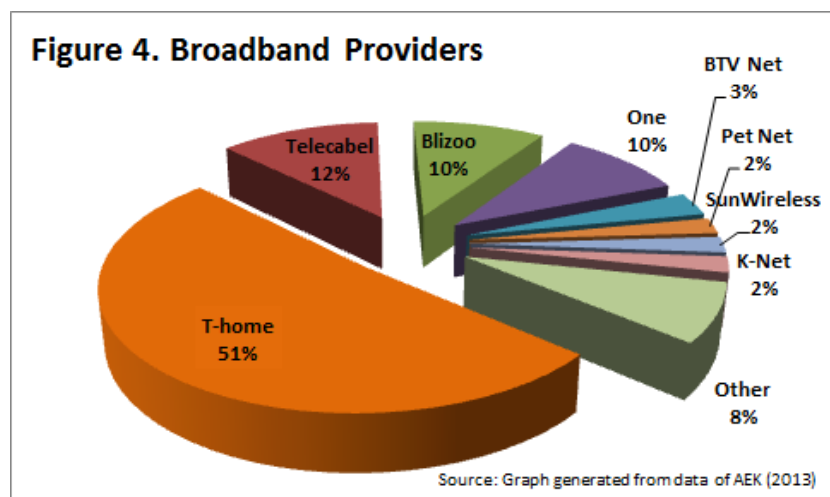
**SERBIA**

In Serbia the main operators are:

- Telekom Srbija a.d.
- Telenor d.o.o.
- Vip Mobile doo
- Društvo za telekomunikacije verat doo
- Serbia broadband - srpske kablovske mreže doo
- Društvo za telekomunikacije Orion Telekom doo

**FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

In Former Yugoslav Republic of Macedonia the Agency for Electronic Communications (AEK) registered 111 public retail entities providing broadband services in the third quarter of 2012. AEK official records as well emphasize that there are 125 notified entities providing broadband in the country. The main players at the market and their market shares are visually presented in Figure 4. Dominant provider of broadband services in the retail



market is T-home. As T-home is the dominant provider of wholesale services, the majority of the retail providers get the access through T-home.

## 2.8 MAIN OBJECTIVES FOR BROADBAND DEVELOPMENT IN RURAL AREAS

### 2.8.1 OBJECTIVES IN TERMS OF COVERAGE AND SPEED

Partner countries were asked to describe the main objectives of broadband development in rural areas in their respective countries as planned in their official documents for the periods 2007-2013 and 2014-2020. Below is the overview of the objectives in terms of providing broadband coverage and speed. Only Slovakia has already adopted objectives also for the period until 2020. Some countries also provided additional information and explanation of their documents and these descriptions are also included in the chapter.

#### Objectives in terms of coverage and speed by country

Country	Broadband coverage and speed	Deadline
Slovakia	<b>National broadband strategy</b> <ul style="list-style-type: none"> <li>Broadband connection with minimum speed of 1 Mbit/s for all</li> </ul>	2013
	<ul style="list-style-type: none"> <li>To ensure availability of high speed internet connection (30 Mbit/s and more) for all while minimally 50% households should have the connection faster than 100 Mbit/s</li> </ul>	2020
Slovenia	<b>Resolution on National development projects 2007-2023</b> <ul style="list-style-type: none"> <li>Each citizen can connect to the Internet at a speed of at least 512 kbit/s and at least 90% of citizens at the speed of at least 2Mbit/s</li> </ul>	2010
	<ul style="list-style-type: none"> <li>To enable 90% of the population to have access to "triple play" services and a speed of at least 20 Mbit/s</li> </ul>	2015
	<ul style="list-style-type: none"> <li>To enable 90% of the population to have optical connections to their homes</li> </ul>	2020
Bulgaria	<b>National Broadband Strategy</b> <ul style="list-style-type: none"> <li>All population should have access to computer and internet.</li> </ul>	2010
	<ul style="list-style-type: none"> <li>Up to 50% of the population should have access to broadband;</li> </ul>	2013
Hungary	<b>Action Plan of Digital Reformation</b> <ul style="list-style-type: none"> <li>100% standard broadband coverage in every household and enterprise with the minimum speed 2Mbps down / 512 kbps up</li> </ul>	2013
	<ul style="list-style-type: none"> <li>To create the opportunity of 1 million new NGA access points, and increase the average, minimal download speed to 10Mbps at households using development political and regulatory tools</li> </ul>	2014
Greece	<b>Digital Agenda Targets 2020</b> Coverage of at least 75% of the population of the rural areas and at least 50% of the areas (including the totality of the settlement with more than 400 inhabitants) <ul style="list-style-type: none"> <li>Class A" services of 30 Mbit/s available for at least 45% of the targeted population, including all residential departments with more than 400 inhabitants.</li> <li>Class B is accepted for the other rural areas but is considered only an intermediate step and Class A services should gradually become available for all areas</li> </ul>	2020
Romania	<b>Strategy for Broadband development 2009-2015</b>	2010

	<ul style="list-style-type: none"> <li>• Growth of the penetration rate at the level of households, of broadband connection services up to 40%</li> </ul>	2015
	<ul style="list-style-type: none"> <li>• Growth of the penetration rate at the level of households, of broadband connection services up to 80%</li> </ul>	2015
	<ul style="list-style-type: none"> <li>• Growth of the rate of access to electronic broadband communication services at the level of the population up to minimum 100%</li> </ul>	
<b>Austria</b>	<p><b>The broadband initiative 2013 (BBA_2013)</b></p> <ul style="list-style-type: none"> <li>• 100% broadband availability in all permanently inhabited areas. All austrian inhabitants should be provided with broadband internet connection with at least 25Mbit/s.</li> </ul>	2013
	<p><b>The broadband strategy 2020 (BBS_2020)</b></p> <ul style="list-style-type: none"> <li>• To increase the connection speed for all users to at least 100Mbit/s.</li> </ul>	2020
<b>Serbia</b>	No information until The Action Plan is adopted by the Government.	
<b>Macedonia</b>	No specific objectives in terms of coverage. <b>National Strategy for Developing of Next Generation Broadband – Broadband Nation (NSDNGB)</b> envisions implementation of next generation network technologies that depending on the implementation method can have bandwidth from 20Mbps-100Mbps. Rrural areas are not specifically mentioned.	

### SLOVAKIA

In Slovakia the deadlines for achieving the objectives are the end of 2013 and end of 2020 respectively; however, they will be affected by the budget cut at the EU level as well as by the reallocation of resources between the OPIS and the OP Competitiveness and economic growth. Currently, the question of financing the mid-term goal and of the long-term one is still open and financial option with involvement of private sector will have to be analysed as the original 113 million EUR is no longer fully allocated to the broadband development within the OPIS.

### SLOVENIA

In Slovenia, the new Operational programme for 2014-2020 where also the goals for broadband development will be define is under development and is not yet available.

The bridging of the digital gap between urban and rural areas was planned in the **Resolution on National development projects 2007-2023** with the project **3.1.10 National broadband network**. The aim of the project is accelerated construction of broadband networks in less developed regions, especially in rural areas and the integration of these networks with national backbone networks. A second goal is upgrading of the existing stationary broadband network from the stationary network or wireless broadband networks on the basis of economic eligibility. The objectives of the project in terms of coverage and speed are mentioned in the table above.

Very similar goal was set in the **Strategy for Broadband development in the Republic of Slovenia 2008** where building of open broadband networks was planned in the white areas, i.e. areas with no commercial interest in building broadband networks, with European funds and funds from the budget of the Republic of Slovenia. An open broadband network means that all service providers offer their services under equal conditions. Local communities according to the Strategy should plan the building of open broadband networks with project financing, public-private partnership, or similar business models. The construction of networks with state aid was is also planned.

Another document referring to the development of broadband network is the **Operational Programme Strengthening Regional Development Potentials 2007-2013**, with defined targets as presented in the table below. Reference to rural areas is made indirectly by setting the number of

additional population covered by broadband access as a consequence of co-financed activities, since only access in rural areas will be co-financed..

2. DP Economic development infrastructure quantified targets		Baseline (last available data)	2013 target	Source
<b>Output</b>				
1	Number of operational business support institutions	12	36	CIS
2	Number of new broadband connections	253.000	increase by 10.000	PECA
<b>Result</b>				
6	Number of additional population covered by broadband access as a consequence of co-financed activities	600.000	increase by 30.000	PECA
	Global broadband population coverage (transmission speed over 256 kbit/s) as a consequence also of non-cofinanced activities	92%	100%	PECA

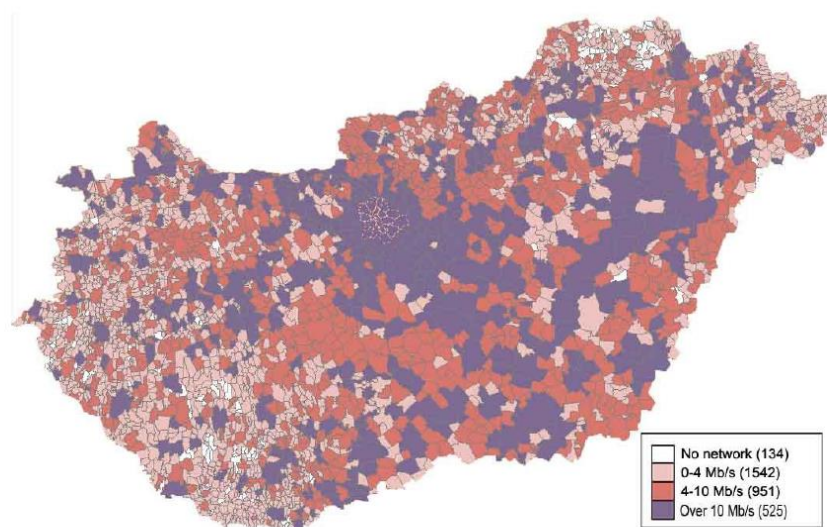
Source: Operational programme Strengthening Regional Development Potentials 2007-2013

## HUNGARY

In the period 2007-2013 big improvements have been made in the broadband coverage in Hungary:

- in 2004 it was below 70%;
- by 2009 it reached over 94% (min. 256 kbps down- and 64 kbps uploading speed). Additional 2-2,5% use mobile internet, generally in settlements with more than 10 000 inhabitants.

Broadband access at the end of 2009 was:



Source: GKleNET

In the **Action Plan of Digital Reformation**, the following steps are identified:

- Solution to provide broadband access to areas previously not yet covered



- Increase the capacity of local networks, strengthen the market competition on local markets
- Installation of missing fiber backhaul network, strengthen the competition on this market
- Facilitate the private developments of fiber or other NGA networks
- Effective spectrum strategy
- Effective usage of digital dividend frequencies to achieve 100% coverage

### GREECE

The objective of the Greek authorities is to provide broadband infrastructure coverage to a substantial part of the unserved areas of the country as well as reliable and affordable connectivity services. The Greek authorities realised that a very severe market failure affects the most remote areas of the country, and therefore a mere financial contribution to the commercial operators would not be sufficient to give enough incentives to the infrastructure rollout. The broad objectives of the Greek authorities with the overall broadband strategy are to contribute to the Digital Agenda 2020 goals by promoting infrastructure penetration targets of 20% in the short-term and up to 35% in the mid-term and providing a basis for a gradual increase to 30Mbps for each prospective customer. The intervention also aims at fostering a competitive market in the targeted areas, preventing that a single operator gains special advantages.

To achieve the mentioned objectives, the Greek authorities intend to develop and operate a public broadband network infrastructure which will be open to all network operators requesting access. While the ownership of the infrastructure will remain public, the construction, management and operation of the network will be awarded to a winning contractor through an open tender process. The winning contractor will only offer wholesale services and will not be able to offer retail broadband services. End users will be served by third party telecom operators or internet service providers, who will gain access to the new network at a fee which will be set and monitored by the Greek National Regulatory Authority EETT.

### ROMANIA

Romania adopted the *The Strategy for Broadband development for the interval 2009-2015*. The strategy's general objectives are:

- Growth of the penetration rate at the level of households, of broadband connection services up to 40% in 2010 and up to 80% in 2015;
- Growth of the rate of access to electronic broadband communication services at the level of the population up to minimum 100% until 2015
- Connection and increase in the use of broadband services at the level of SMEs;
- Growth of the penetration rate of electronic broadband communication services in disadvantaged areas from the access point of view.
- Growth of on-line services offer for government and business sectors.

The specific objectives refer both to demand stimulation and electronic broadband services offer for the public and private sector:

- Connection of public institutions (public demand aggregation)
- Increase in use at the level of the public field
- Connection and increase in use at the level of SMEs
- Increase in services' availability
- Development of content and applications
- Education of consumers and inclusion of disadvantaged groups of users.

There is no specific information and data addressing the rural areas exclusively as they are included in the so called "white areas".



### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

In Former Yugoslav Republic of Macedonia the main strategic objectives for improving the broadband coverage in rural areas are found in the:

1. National Strategy for Developing of Electronic Communications with Information Technologies (NSECIT of RM 2007)
2. National Strategy for Developing of the Next Generation Broadband – 2009
3. National Strategy for e-Inclusion (2011-2014)

Each of the Strategies has a priority area focused on bridging the rural/urban gap.

#### ***National Strategy for Developing of Electronic Communications with Information Technologies (NSECIT of RM 2007)***

NSCEIT from 2007 set an overall aim of achieving the most important ICT indicators at levels:

- 80 per cent of the new EU members average in 2010; and
- 90 per cent of the new EU members average in 2012;

Within the strategy, section II.8. named “The role of local government in enabling private public partnerships between the public and private sector and infrastructure development in rural areas” covers the area of the rural/urban digital gap. The main objectives in this part of the Strategy are identified as:

1. Development of local ICT strategies in a time period of 1.5 year from the adoption of the Strategy;
2. Campaign for raising awareness for the benefits arising from the investment in development of municipal communications networks and the benefits arising from the establishment of public private partnerships in the area;
3. Initiatives for cross-border municipal cooperation especially with municipalities from the EU members;
4. Establishment of e-points in rural areas;
5. Connecting elementary and high schools with internet and ensuring their access to all e-services in the area of education.

#### ***National Strategy for Developing of Next Generation Broadband – 2009***

The NSDNGB adopted in 2009 is the third national strategy covering the area of broadband development. Its main focus is placed on the next generation broadband with special attention placed on broadband development in rural areas.

1. According to (2009) – priority area 3 and 5.1, municipalities in cooperation with AEK are obliged to prepare municipal maps of existing telecommunications infrastructure and all other non-telecommunication channels (water, gas, sewage, electricity, public transport, traffic lights etc..) that can be used for installation of electronic communications networks. The measure aims towards creation of a National e-Register for electronic communications. The existence of the register is seen as a substantial cost saver and an excellent base for any further plans for investments on the whole territory of the country.
2. In the same strategy and under priority area 4 and 5.1, all municipalities are obliged to adopt simple and clear procedures related to investments in new telecommunications infrastructure. Furthermore, municipalities are as well obliged to publically announce at their websites all potential investment intentions in electronic communication networks and facilities.
3. Priority area 5.2. is indirectly focused on broadband development in rural areas through introduction the measure of public-private partnerships (PPP) for reducing the digital gap between the urban and rural areas.

4. The priority area 5.3. identifies the need for creating regional groups of municipalities which could offer to potential investors an access to a larger market. In that way the possibility for an investor to exclude sparsely populated and remote areas from the information society, i.e. access to broadband services, is by far reduced.
5. Priority area 5.4. is focused on measures for developing local content which will provide more publically available information on the developments in the municipality.
6. **Priority area 5.5.** is specifically focused on broadband development in rural areas by arguing that in “absence of market incentives for investment in broadband infrastructure in rural areas, an effective solution would be a publically funded infrastructure that will ensure the availability on acceptable terms”. Measures for approaching the issue involve detailed mapping of available infrastructure, introduction of new technologies which require smaller scope of construction works as “WiMAX, satellite technologies, communication through the infrastructure for electricity transmission and 3G for coverage of the rural and remote areas in the country”.

### ***National Strategy for e-Inclusion (2011-2014)***

The NSDNGB adopted in 2009 is the fifth national strategy covering the area of broadband development. The fourth National strategy covers the e-Government. Its main focus is placed on bridging the digital gap in the country at several levels by considering: age, education, social and ethical background, disability and rural/urban life differences.

The rural/urban digital gap is specifically addressed in Priority No.4– “Using ICT for improving the social and economic life in less developed and difficult to access regions.”

Although the number of rural areas with a free internet kiosks (around 680 access points introduced in the rural areas in 2009-2012) designed to provide basic access to citizens in simple internet search and e-communication, have been successful in the reduction of the digital gap, there is a need for additional measures for ensuring larger citizen’s e-inclusion. Statistical data provided in the first section of the report argue for more effort in this area of the digital divide.

The main strategic objective is identified in enhancing the collaboration between all major stakeholders for ensuring a wider coverage of the rural areas (especially through the use of public private partnerships) and provision of trainings for increasing the skills of rural citizens in using the new technologies.

## **2.8.2 OBJECTIVES IN TERMS OF ACCESS TO SERVICES**

### **SLOVAKIA**

In Slovakia the only difference mentioned in the documents is that 256 kbit/s asymmetrically for individual households’ connection and 2Mbit/s symmetrically for commercial sector and public administration are considered as basically acceptable. However, this held true only for the strategy defined in 2005 and now the focus is put on the NGA networks, partially or wholly optical, with unlimited capacities, high quality and reliability of transmission as compared to the symmetric metallic cabling.

### SLOVENIA

In Slovenia's *Strategy for Broadband development in the Republic of Slovenia 2008* there is a very clear distinction of the objectives related to the development of broadband infrastructure and services for citizens; educational, research, cultural and scientific areas; economy, and state administration and local self-government

Objectives related to the development of broadband infrastructure and services for **citizens**:

- Broadband infrastructure has to provide broadband access to all citizens of Slovenia by 2010.
- Broadband infrastructure has to enable coverage of at least 90% of the population with at least one type of broadband access with the speed that enables more demanding broadband services of minimum 2 Mbit/s by the end of 2010 and 98% by 2012.
- Broadband infrastructure has to enable coverage of 90% of the population with access to triple-play services and at least 20Mbit/s connection speed by 2015.
- Broadband infrastructure has to enable coverage of 90% of the population with fibre to the home (FTTH) or comparable broadband connections of greater capacity by 2020.

Objectives related to the development of broadband infrastructure and services for **educational, research, cultural and scientific areas**:

- 100% broadband connectivity coverage has to be provided to all research and educational institutions, cultural institutions, in particular libraries and museums and all health institutions.
- Employees at research and educational institutions have to have access to services required for work at home using high-capacity broadband access.
- Participants in educational process have to have the option to access educational content on the Internet and distance learning services, as well as other services required for their operation.

Objectives related to the development of broadband infrastructure and services for the **economy**:

- All companies have to have 100% broadband connectivity in 2008 at the latest.
- Technology parks have to be connected with broadband network over optical lines in 2008.
- Services have to enable employees in the economy home at work in a comparable manner or as at the workplace.
- Services have to enable mobile users to establish a mobile workplace.

Objectives related to the development of broadband infrastructure and services for other parts of **state administration and local self-government**:

- All state administration and local self-government institutions have to have a secure connection of sufficient bandwidth to the state information network HKOM.
- State administration and local self-government institutions have to provide their services in electronic form.
- Provision of basic services during natural disasters and in particular support to services like E112, eCall, telemedicine etc. has to be enabled.
- An authenticity and authorisation (certificates) system in the state administration, local self-government, in educational, research, cultural and health areas has to be established.

## HUNGARY

In Hungary, the Ministry of National Development published the **Concept of broadband coverage improvement**, which defines area of development, actions and supported goals for private and public development.

### Overview of the development of broadband infrastructure

Type of development	Area of development	Actions	Supported goals
Private developments	Spectrum strategy	Sell free frequency-blocks (generally in the range 450/900/1800/2600 MHz, later the digital dividend frequencies)	- Reach 100% broadband coverage - Strengthen the competition, use new technologies
	Facilitate NGA network developments	Open existing networks, facilitate shared network developments	- 1 million new NGA network access - Strengthen the competition - Cooperation between providers
Public/Private developments	Cover uncovered cities/areas	Broadband internet access of around 800-1000 cities using GOP EU resources, internet access of public institutions	Provide broadband coverage for - 600.000 citizens and > 15.000 enterprises - 1500-2000 public institutions
Public developments	Consolidating the base network of governments	Consolidating and extending the base network of governments	- "cheaper-state", optimized services

Source: Ministry of National Development

## ROMANIA

In Romania the different objectives for different categories of beneficiaries are included in the **Broadband strategy**.

### Types of indicators used for each strategic pillar and main category of beneficiaries

Strategy's pillars	Individuals	Companies	Public administration
Ensuring access to broadband	<ul style="list-style-type: none"> <li>penetration rate of PC at the level of the population</li> <li>penetration rate of broadband connections at the level of the population</li> </ul>	<ul style="list-style-type: none"> <li>penetration rate of computer at the level of companies</li> <li>penetration rate of broadband connections at the level of companies</li> </ul>	<ul style="list-style-type: none"> <li>% of public administration computers with access to broadband connections</li> <li>penetration of public buildings with broadband connections.</li> </ul>
Providing relevant content	Percentage of the population using on-line services  Number of users of e-learning services	% of companies with their own web site % of companies using e-Business type applications	Number of e-administration services available on each relevant field of activity Solicitations or forms processed on-line
Ensuring information, education and security (pre-) conditions	The degree of digital alphabetization of the population	% of employees with experience in using computers and Internet	The degree of digital alphabetization of the public administration

The deadlines to achieve the proposed targets are presented in the table below.

**Monitoring indicators and related target values (Indicators shall be collected on three distinct levels: urban, suburban and rural)**

INDICATOR		PROPOSED TARGET	PROPOSED TARGET
	2007	2010	2015
Penetration rate of broadband connections at the level of <b>households</b>	8	40	80
Access rate of broadband services at the level of the <b>population</b>	10,5 (2008)	20	100
Percentage of persons that use Internet for interacting with <b>public authorities</b>	2.6	10	50
Percentage of use of e-government type services by <b>natural persons</b> (demand) as a whole	5	20	50
The rate of commercial operation on-line (e-commerce)	1.2	5	40
Rate of available computers at households level	26 (in 2006)	40	60
Percentage of persons that use the Internet for <b>educational and instruction purposes</b>	2.3 (in 2006)	10	40
Penetration rate of broadband connections at the level of companies	59	70	100

**2.8.3 OBJECTIVES IN TERMS OF TYPES OF TECHNOLOGIES**

**SLOVAKIA**

Type of access network	Recommended by OPIS?	Service life
<b>Metallic</b>		
CATV	yes	5-10
ADSL, ADSL 2, ADSL2+	yes	5-10
SDSL	yes	10
VDSL		10
Expand DSL		10
<b>Optical</b>		
P2P	yes	30
AON	yes	10
PON	no	-
<b>Fixed wireless networks</b>		
FWA 10,5GHz, 26 GHz	no	-
WiMAX 3,5 GHz	yes	5-10
WiFi 2,4 GHz a 5 GHz	no	-
MWS 40,5 a 43,5 GHz	no	-
MVDS 11,7-12,5/ 10,65-10,68 GHZ	yes	5-10
RR 6-40GHz	yes	5-10

Source: Own based on the study »Increasing accessibility of broadband internet, OPIS Priority axis 3, Feasibility study – State of art analysis«, pp. 18-19

**HUNGARY**

**Main opportunities of the spectrum strategy**

	450 MHz	900 MHz / E-GSM	1800 MHz	2600 MHz	Digital dividend
<b>Technology</b>	CDMA (maybe LTE later)	UMTS, later LTE	LTE	LTE	LTE
<b>Supported goal</b>	100% broadband coverage	100% broadband coverage	spread NGA networks	spread NGA networks	spread NGA networks on rural areas
<b>Main advantage</b>	Effective broadband coverage	Standard broadband coverage	Increase capacity at city level	Increase efficiency at city level	Effective broadband coverage on rural areas

Source: Ministry of National Development

**GREECE**

The network will comprise both backhauling elements (connection to the regional concentration points) and access segments and will include both passive and active elements in order to ensure that final users are in condition to obtain the desired service. At the access level, bidding operators can propose the technological solution of their choice which is able to achieve the requirements of the Greek authorities. As to the backhauling part, the Greek authorities have concluded that fibre technology will be the only future-proof solution, at least for the biggest rural settlement (i.e. those with more than 400 inhabitants). They consider this in line with the existing practice of the Commission regarding backhaul networks.

In line with the ambitious objectives of the Digital Agenda, the Greek authorities require the network to be able to offer two types of services: "Class A" services of 30 Mbit/s and "Class B" services of 8 Mbit/s. The former should be available for at least 45% of the targeted population, including all residential departments with more than 400 inhabitants. Class B is accepted for the other rural areas but is considered only an intermediate step and Class A services should gradually become available for all areas during the duration of the contract. Overall, the measure aims at achieving coverage of at least 75% of the population of the rural areas and at least 50% of the areas (including the totality of the settlement having more than 400 inhabitants). The competing bidders are encouraged to cover as many areas and population as possible, exceeding the above set thresholds.

**AUSTRIA**

Landlines, fibre channel, NGA Networks, mobile Networks.  
Active and passive broadband infrastructure.

**FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The development and transition towards the next generation of broadband is a strategic objective of Former Yugoslav Republic of Macedonia. Policies that have to ensure a development of the next generation of NGN and NGA, i.e. of the next generation of broadband internet access contain a wide range of initiatives on the market supply (infrastructure development) and on the market demand side (increased use).

NGA electronic communication networks cover high-speed access networks that connect the end-user to the core network. They include significantly modified existing local access infrastructures (part of the cooper access network is replaced with fiber) and/or new fibre infrastructures. The next generation access electronic communication networks enable provision of a wide spectrum of new services of the broadband internet access with significantly higher transmission speed than the current speed.

The **National Strategy for Developing of the Next Generation Broadband – Broadband Nation (NSDNGB)** envisions the development of the following types of technologies at national level:

NGA models:

### **FTTH - Fibre to the Home**

- fibre point-to-point P2P with fibre cable for each end-user and - has an access to entire bidirectional band to the optical distribution frame (ODF) –In the case connection with optical fibre point-to-point (P2P-technology), each end-user has dedicated optical fibre and the end-user has an access to entire bidirectional band to the optical distribution frame (ODF) i.e. to the optical line terminal (OLT).The length of the optical fibre may be up to 80 km and this architecture shall be considered as the most flexible for a long-term period.
- fibre point-to-multipoint - PON where some end-users share the same fibre cable.- In a case of connection with fibre following the principle point-to-multipoint, one fibre feeder shall connect the optical line terminal (OLT) with passive optical splitters (passive PON splitter) that may be installed under the ground or in a small street cabinet and from the optical splitters each end-user shall be connected with dedicated optical fibres. Currently the capacity of such connection is 64 end-users at one optical fibre at a distance up to 20 km.
- FTTB - Fibre to the building – From the technical point of view, the fibre to a building has to be considered as a hybrid solution (fibre to the building and cooper to the end-user) meaning that in the FTTB scenario the DSL technology still shall be used and the current cooper cabling in the building to the end-user.
- Fibre to the Node - In the case of the FTTN, the fibre is installed to the street cabinet. From the street cabinet to the premises of the end-user the current cooper infrastructure shall be used. In the cooper part of the access network DSL technology shall be used. The FTTN technology offers downstream speeds mostly of 20 Mbits/s (the theoretical maximum is 100 Mbits/s) and up to 5 Mbits/s upstream per user depending on the length and quality of the copper sub loops.

### **HFC - Hybrid fiber coaxial (cable broadband technology).**

The architecture of the networks is in a form of branchy tree and it transmits the signal from the main premises of the operator to the fibre nodes via fibre cable and from the fibre nodes to the premises of the end-user via coaxial cable.

For the purpose of provision the broadband internet services in the premises of the end-user a cable modem shall be installed while the cable modem terminating system (CMTS) shall be installed in the premises of the operator. The transmission of the signal between the CMTS and cable model is standardized by the ITU (International Telecommunication Union) as DOCSIS (Data Over Cable Service Interface Specification).

There are two types of hybrid fibre-coaxial networks DOCSIS 2.0 and 3.0. The DOCSIS 2.0 for the end-users usually offers download speed of 20 Mbit/s (that may be compared with the speeds of FTTN), and DOCSIS 3.0 offers speeds of over 100 Mbit/s (that may be compared with the speeds of FTTH).

### **Wireless broadband Internet Access GSM and WiMAX**

Although the wire media have advantages (as the permanent quality of the signal, the huge bandwidth etc.), the wireless medium enables greater flexibility of utilization (nomadic usage, mobility), as well as available implementation in rural and remote areas.

The new technologies enable the development of wireless systems that according the performances seriously are competing the wire systems including bit rate as well. The new generation of mobile systems shall provide bit rates of 100 Mbit/s in movement i.e. 1 Gbit/s on fixed location.

The wireless options that the strategy foreseen are as possible candidates for the next generation of mobile systems that the strategy foreseen that shall be considered are the LTE and LTE-advanced that having been developing by GSMA (the Association GSM), and 802.16 and 802.16m (WiMAX) that having been developing by the IEEE (Institute of Electrical and Electronics Engineers).



## 2.9 FUNDING

We asked countries to give an overview of plans and legal framework according to which broadband development in rural areas is funded in the periods 2007-2013 and 2014-2020. Partners were also asked to give information on the amount of financial support intended for broadband objective.

Country	Plans and legal framework	Period	Type of financial support used	Amount of financial support planned/used
<b>Slovakia</b>	The broadband development was supposed to be funded through the <b>Operational Programme Information society</b> with allocation of 113,2 million EUR and by additional resources from the <b>Rural Development Programme</b> . In mid-2012, yet, there was a reallocation from the OPIS, Priority axis 3 dedicated to broadband deployment in the so called <i>white zones</i> to another OP in order to spend the funds in time and to avoid loss of EU funds meaning that alternative resources must be found. The Slovak strategy mentions e.g. the <b>CEF</b> and the need to get the <b>private sector</b> involved is highlighted in the recent documents	2007-2013	The original plan was to use almost completely public funding for the rural areas to cover the market failure. However, due to the reallocation of resources from the OPIS and also due to the budget cut at the EU level as from the originally planned budget of 9 billion EUR only 1 billion went through which furthermore will not be used for the broadband development but for digital services instead (according to the European Commissioner Neelie Kroes). Therefore, the question of funding will have to be re-considered.	113,2 million EUR but the future of this allocation is questionable at this moment for remaining time of the period 2007 – 2013 (partial re-allocation of funds to another operational programmes).
<b>Slovenia</b>	The legal framework for broadband development and funding in rural areas is the <b>Operational Programme Strengthening Regional Development Potentials 2007-2013</b> . The programme sets out Community support for Slovenia within the framework of the "Convergence" objective. Broadband development in rural areas is included in Priority axis 2: Economic Development Infrastructure. For the areas in which market logic does not apply due to	2007-2013	Two public tenders (in 2008 and 2010) for the construction and operation of open broadband networks in rural areas were published.  They were funded by the ERDF and Slovenian funds.	<b>PLANS:</b> <b>85 million EUR</b> from the financial perspective 2007-2013  <b>1 million EUR</b> (annually) from the action plan and in cooperation with local

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	<p>unfavourable geographical conditions, small concentrations of users, or insufficient development, and for education, schooling and research, the Slovenian Government, in accordance with the Action plan and in cooperation with corresponding ministries - and in addition to the <b>European Regional Development Fund assets</b> - will allocate budget appropriations for co-financing.</p> <p><b>Operational plan for 2014-2020</b> is under developmet.</p>			<p>government</p> <p><b>REALISED:</b> In two tenders, 43 municipalites were awarded grants and received <b>82 million EUR</b> of financial support</p>
<b>Bulgaria</b>	<p>"Operational Programme Regional Development" was introduced to help the internet penetration in remote rural areas through investment in ict broadband.</p> <p>"operational programme administrative capacity" Support was introduced to help the elaboration of new and integrated e-services. The Development of e-services is a step-by-step process, beginning with the provision of access to Comprehensive information on the requirements and procedures of all administrative services Through a centralised web site. After that, through e-services official documents and forms will be Provided and could be used in paper form, as well. This will guarantee easy access to information And more transparency.</p>	<p>2007 – 2013</p> <p>2007 - 2013</p>		
<b>Hungary</b>	<p><b>Economic Competitiveness Operative Program</b> (GVOP 4.4.1 and 4.4.2) was introduced to help the IT and telecommuciation development in Hungary.</p> <p>The main framework to support the broadband development in the rural area is the so-called <b>Economic Development Operative Programme (EDOP)</b> . The EDOP directly supports three of the ten micro-economic objectives of the Revised Lisbon Strategy (Integrated Guidelines) of the European Union (namely Research &amp; Development, innovation, small and medium-sized</p>	<p>2004-2007</p> <p>2007 –2013</p>	<p>Two of the EDOP (GOP) tenders supported the Broadband development:</p> <ul style="list-style-type: none"> <li>EDOP (GOP) 3.1.1 tender that aimed at Building broadband infrastructure in the uncovered areas (co-financed by <b>EU Structural Funds and Hungarian budget</b>)</li> <li>EDOP (GOP) 3.1.2 tender that</li> </ul>	<p>No plans mentioned but exact amount of spend funds on broadband projects presented. The amount of money spent along with the description of the projects is in the description below the table.</p>

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	<p>enterprises), while four others (information society, production base, sustainable use of resources and business environment), as well as a guideline on employment (investment in human capital) in an indirect way.</p> <p>For the period 2014-2020 the funding programs are in development phase only, as they depend heavily on the next EU budget cycle.</p>		<p>aimed at building high-capacity fiber optic to winding up bottlenecks in the distribution networks (co-financed by <b>EU Structural Funds and Hungarian budget</b>)</p> <ul style="list-style-type: none"> <li>The last program (GOP 3.1.2) was initiated in 2012 and has not yet finished</li> </ul>	
<b>Greece</b>	<p>The rollout of the network requires the use of public funding. The sources of public funding are the <b>Rural development program of Greece 2007-2013 (EARFD)</b> and <b>the Operational Program »Digital Convergence« (ERDF)</b></p>		EU funds, national funds.	<p>PLANS: The maximum amount of public funding (all sources included) may come up to <b>250 million EUR</b>. The contract will be awarded through an open tender, hence the final public contribution is expected to be lower. The new infrastructure will be 100% financed by public funds.</p>
<b>Romania</b>	<p>The legal framework for the intervention is carried out under Priority Axis 3, “<i>ICT for Private and Public Sectors</i>”, of the <b>Sectoral Operational Programme (SOP) “Increase of Economic Competitiveness”</b>.</p> <p>Achievement of this objective envisages three Key Areas (KA) of intervention as follows: KA1 - Supporting the ICT use; KA2 - Developing and increasing the efficiency of electronic public services; KA3 - Sustaining the E-Economy.</p> <p>KA1, <i>Supporting ICT Use</i>, envisages supporting access to broadband connectivity in “white” areas where broadband is currently not available and where there are no plans for the near future. The support for broadband network deployment is in line with existing Community policies to promote regional cohesion and address market failures, and the primary objective is to ensure a higher level of broadband coverage and penetration, or</p>	2007-2013	EU structural funds	<p>PLANS: 84 million EUR</p>

## Summary Report

	in a more rapidly manner, than would occur without the aid.			
	No information available for 2014-2020			
<b>Austria</b>	<p>Austria started an initiative called »Breitband Austria Zwanzigdreizehn – BBA_2013« (<b>Broadband Austria 2013</b>) in 2007, with the aim to provide rural areas with broadband connections.</p> <p>Legal framework: <i>Special directive by the ministry of transport, innovation and technology according to the regulation for granting public fundings by the ministry of finances</i> . (BGBl. II Nr. 51/2004)</p>	2013	EU, national and regional fundings.	<p>The total funding for the initiative BBA_2013 is <b>30 million EUR</b>. The initiative is financed as followed:</p> <ul style="list-style-type: none"> <li>• 15 million EUR: European Union</li> <li>• 5 million EUR: Austrian ministry for transport, innovation and technology</li> <li>• 3 million EUR: Austrian ministry for living</li> <li>• 7 million EUR are provided by the nine Austrian provinces.</li> </ul>
<b>Serbia</b>	No plans and framework adopted yet			
<b>Macedonia</b>	<p>The plans for funding broadband development in rural areas in the period 2007-2013 are outlined in the:</p> <p><b>National Strategy for Developing of Next Generation Broadband – 2009</b>. The measures cover public-private partnerships (PPP) for reducing the digital gap between the urban and rural areas and in “absence of market incentives for investment in broadband infrastructure “ a publicly funded infrastructure.</p> <p><b>National Strategy for e-Inclusion (2011-2014)</b>. The measures cover, continuation with the internet kiosk project, public-private partnerships (PPP) and trainings for ICT use for the citizens of the rural areas.</p>	2007-2013		

**HUNGARY**

BROADBAND INFRASTRUCTURE DEVELOPMENT PROGRAMS IN HUNGARY

Program:	Year initiated	Number of projects:	Total amount disbursed (EUR~HUF)	Total project value (EUR~HUF)
<b>GVOP 4.4.1</b>	2004	28	8 215 284 EUR 2 020 384 678 HUF	17 955 863 EUR 4 415 885 493 HUF
<b>GVOP 4.4.2</b>	2005	59	42 435 027 EUR 10 724 604 270 HUF	58 038 876 EUR 14 668 165 038 HUF
<b>GOP 3.1.1</b>	2007	37	11 911 908 EUR 3 017 881 784 HUF	25 040 458 EUR 6 344 000 000 HUF

The last program (GOP 3.1.2) was initiated in 2012 and has not yet finished. The last available figures: based on the summary report<sup>[9]</sup> the final result of the tender (GOP 3.1.2 Backhaul network improvements) in 2013 year:

- number of approved projects: 21
- number of affected municipals: 110
- amount of public funding: 21 254 million HUF ~ 71 million EUR

After these projects there will be only 40 cities/villages (in 9 different municipals) where optical connection to the network will not be available.

## 2.10 EXPERIENCE IN BB DEVELOPMENT IN RURAL AREAS

The aim of this chapter is to describe the experience in the development of broadband network in rural areas in partner countries. Partners were asked to provide case studies.

Only two countries, Slovenia and Former Yugoslav Republic of Macedonia have already had experience in construction of broadband in rural areas. Romania's project is under development while in Slovakia the similar project is still to be implemented.

### SLOVAKIA

#### Project scope and objectives

The project aims to develop the infrastructure of electronic networks offering wholesale broadband services in rural areas of Slovakia which are currently not served and where there are no plans for coverage in the near future. The measure was designated as an objective of the Priority axis 3 of the Operational Programme Information Society (PO3 OPIS). The guiding document with details on the project is the **State aid SA.33151 (2011/N) - Basic broadband deployment in white areas of Slovak Republic.**

#### Key characteristics

Characteristic	Description
<b>Distinguishing features</b>	The backhaul network remains publicly owned.
<b>Ownership</b>	NASES (public body)
<b>Wholesale access</b>	Wholesale backhaul access on an open, non-discriminatory basis to electronic communication operators wishing to connect end users  After wholesale access the following products will be offered: a) access to cable ducts, b) renting dark fibre, c) renting collocation places, d) renting masts inside and outside municipality limits for building and operating wireless access networks.
<b>Wholesale pricing</b>	The tariffs of the wholesale service will be determined by NASES in consultation with the National Regulatory authority. The objective is to provide retail broadband services at usual market prices.
<b>Legal status</b>	State aid provided to address market failure in the provision of broadband services in so called white zones.
<b>Costs</b>	113,2 million EUR; 85 % ERDF, 10 % national Slovak budget, 5% contribution by end beneficiaries (municipalities).

#### Finance and ownership

##### Investment

The overall budget was 113,2 million EUR, funded by the ERDF and Slovak national resources.

##### Reasons for approach

Market failure, lagging behind the EU, recognition of the broadband development as a pre-condition for economic growth - the availability of broadband services is one of the key factors for the local

communities in attracting businesses, distance working, providing health care services and improving education and public services. The authorities expect that the measure will help (i) to eliminate the digital division concerning the availability of broadband services between urban and rural regions in Slovakia, (ii) to increase social cohesion and (iii) contribute to economic growth.

### Legal status

The notified measure is based on (i) Act No 610/2003 on Electronic Communications, (ii) Act No 275/2006 on Information Systems of the Public Administration, (iii) Act No 528/2008 on Support and Aid provided from the Funds of the European Community, (iv) Act No 523/2004 on Budget Rules of the Public Administration, and (v) Act No 231/1999 on State aid.

### Business approach

#### Procurement approach

The Slovak authorities envisage two phases of the tender procedures. During the first phase, the **construction of the networks** will be procured to the most economically advantageous offer(s). During the second phase, the **maintenance and technical support** of the network will be **tendered** out selecting the **most economically advantageous offer(s)**. All tender procedures will be conducted in full compliance with the EU and national public procurement rules.

#### Market competitiveness

The intended provision is State aid for the backhaul network which will be in the public ownership of NASES. The services providers will have an access to the backhaul based on a tariff determined by NASES in cooperation with NRA and will have the opportunity to offer their services to end-users on commercial basis at usual market prices.

#### Demand stimulation initiatives

Simulation of creation of contents services development of public administration applications, e-Government, e-Health and e-Education.

#### Management structure and business model

The subject of the measure is to build a regional optical network (backhaul infrastructure), through which it will be possible to combine the access networks of private operators into a higher communication layer (transport networks). The **construction works** (civil works, ducts, dark fibre, etc.) will be carried out by **private operators** selected by the means of an **open tender** in line with the relevant national and EU Procurement Directives. The newly created network will remain in the **ownership of NASES, a public legal entity**. NASES, as the receiver of aid, shall build and operate regional optical network in the form of passive dark fibre. The basic and only wholesale product shall be the **rental of unlit optical fibres** (dark fibre) to parties interested in constructing and operating broadband access networks in white areas. NASES does not pursue any activities in the wholesale or retail electronic communications markets, except the future operation of the backhaul network at stake.

The **construction of access networks (i.e. last mile to households)** will be provided by **commercial investors from their own resources**. The Slovak authorities have undertaken that (1) the network operators will limit its activity on the **pre-defined target areas and will not expand to other commercially attractive regions**; (2) NASES will not aim to make profit, but expenses and income will be balanced. Any profits made from the operation of the network will be reinvested within the scope of the measure; (3) **NASES will only maintain the passive infrastructure and to grant wholesale access** to it, but will not engage in competition on the retail levels with commercial operators. The management of the network and offering of wholesale services to the third party service providers will be carried out by NASES. The **maintenance and support** of the network will be carried out by a private operator selected by means of an **open tender**.

### Cost issues

#### Overall budget

The overall amount of the measure is approximately **113.2 million EUR**. The project will be financed from the resources of the European Regional Development Fund (85%) and from resources of Slovakia (15%). The aid takes the form of grants. Additional **6.7 million EUR** from the Rural Development programme and national funds are planned to be spent to foster access network deployment in the most disadvantaged region of Slovakia, but that aid will be granted in line with 'de minimis' rules.

### Network architecture, services and competition

#### Network architecture

Regional optical network (backhaul infrastructure) through which it will be possible to combine the access networks of private operators into a higher communication layer (transport networks). From the backhaul networks point of view, which are high capacity transport networks, according to the Slovak authorities, the chosen solutions in most cases will likely to be fibre optic networks as they are the most adequate technological means for backhaul networks. In areas with very difficult topographical situations (such as highly mountainous regions where settlements are difficult to reach), according to the Slovak authorities, most likely high speed wireless connections will be the most adequate solutions. From the access networks point of view, the chosen network topology ensures the technological neutrality of the measure: several alternative platforms will be able to utilise the new network as a backhaul connection to offer its own services to end users.

#### Services

Broadband access to internet will be offered according to the choice of the user given the technical belongings of the final solution. End-users will have the opportunity to choose the retail operator, the services and the last mile technology according to their needs, be it fixed, wireless or any other types of infrastructures.

#### Competition

For the **backhaul network construction open tender** will be applied; the access to the backhaul network will be subject to tariffs, **market competition** will be the case for **broadband service providers** to end-users, **open tender** foreseen for **maintenance and support** of the backhaul network.

### Project summary and lessons learned

The project is still to be implemented.

## SLOVENIA

### General information

In Slovenia the then Ministry of higher education, science and technology published 2 public tenders (in 2008 and 2010) for the construction and operation of open-access broadband networks in rural areas, funded by the ERDF and Slovenian funds. It was a two-step procedure:

1. First, each municipality (or a group of municipalities) conducted public procurement for the construction and operation of the network and chose the best bidder according to the award criteria from the procurement.
2. Then, the municipality, together with the selected contractor, applied for ERDF and national funds.

#### Summary of the first tender

Public funds: 45,2 mio EUR



## Summary Report

Private funds: 15,6 mio EUR  
Total: 60,8 mio EUR

- Average amount of public funds per individual BB connection was 2.840 EUR
- Mainly optical networks were constructed
- Number of households with new BB access: 15.921
- Number of municipalities involved: 20

### Summary of the second tender

Public funds: 36,8 mio EUR  
Private funds: 23,3 mio EUR  
Total: 60,1 mio EUR

- Average amount of public funds per individual BB connection was 2.726 EUR
- 4 cases of optical networks and one case of wireless network
- Number of households with new BB access: 13.497
- Number of municipalities involved: 23

**In two tenders, 43 municipalities (1,151 settlements) were awarded grants and received 82 million EUR of financial support.**

### ***CASE STUDY 1: BROADBAND ACCESS TO ALL UNSERVED HOUSEHOLDS IN WHITE AREAS IN THE MUNICIPALITY OF KOMEN***

#### **Project scope and objectives**

The main aim of the project is to provide broadband access to all unserved households in white areas in the municipality of Komen.

### Komen municipality (Slovenija)



The Komen project is an example of a GOCO model, where the municipality is the owner of the network, but gives concession to a private company FMC d.o.o., an infrastructure operator, who will run the network for 20 years.

### Key characteristics

Characteristic	Description
<b>Distinguishing features</b>	Extremely low user density (12 households per sq.km. Very good penetration (over 65%) reached within 2 years of operation. Three operators offering services now.
<b>Ownership</b>	100% municipality owned
<b>Wholesale</b>	Wholesale access provided by private partner FMC d.o.o.
<b>Legal status</b>	State aid provided as the target are white areas
<b>Costs</b>	2,7 million EUR

Municipality owns the network, a private company (FMC d.o.o., an infrastructure operator, wholesaler) runs the network.

### Finance and ownership

#### Investment

The investor was the Municipality of Komen, the project started in 2008 and the construction phase ended in 2010. 2,7 million EUR were spent to reach 100% coverage of white areas.

#### Reasons for approach

The reason for the selected approach was the fact that the area was defined as white area where there was no commercial interest for the building of the infrastructure due to the following reasons:

- extremely low user density
- extreme terrain conditions (97% of the digging was done in category 5 soil hardness, compact rock, with special building equipment);
- the area was subject to demographic erosion (young people leaving the area);
- the majority of users were accessing internet via dial-up, some ADSL present, but speeds lower than 1Mbps (the incumbent's access nodes connected upstream with radio-relay bridges with low capacity and subject to performance decrease related to weather conditions)

### Legal status

The public tender was published in accordance with Slovenian legislation and based on a decision of the EC (C(2009)8127 ) that the whole measure qualifies for state aid (State aid N172/2009).

### Business approach

#### Procurement approach

The municipality of Komen conducted public procurement for the construction of the network and for the concession for the operation of the network in accordance with Slovenian law. Then together with the selected constructor the municipality applied for public funds (ERDF 85 % , national 15 %).

The award criteria were cost per user and coverage.

#### Market competitiveness

The owner of the passive infrastructure and the active network layer is the municipality, whereas the services are offered by commercial service providers. The network is open access, bit-stream model.

### **Demand stimulation initiatives**

Meetings with local population were held, presenting the new infrastructure, and up-to-date information was given in the construction phase and at the beginning of network operational phase through local media (municipality newspaper that is freely distributed to every household).

### **Management structure and business model**

Municipality owns the network, a private company (FMC d.o.o., an infrastructure operator, wholesaler) runs the network, services are offered by commercial service providers (currently three of them).

### **Cost issues**

#### **Overall budget**

Capital investment was 2,73 mio EUR (100% public, 85% ERDF, 15% national funds), on-going operational expenditure financed from within the operation. The private company that runs the network invoices a flat rate sum per user per month to the service provider, and this income is used for covering operational expenditure.

#### **Cost and risk reduction measures**

Cost was reduced by using existing electric distribution infrastructure (poles) in the villages. The existing copper telephone network was partly used (for connecting users that were near enough to be reached with sufficient capacity over copper). Aerial self supporting optical fiber cables were used for end user connections. Also time was spared by reusing the existing infrastructure. xDSL technologies are now dismissed (but still operational) as fiber for FTTH has been built everywhere (a private investment in a second stage).

### **Network architecture, services and competition**

#### **Network architecture**

A fiber backbone connects the street cabinets with active access equipment. It is a hybrid access network (part xDSL via shortening the incumbent's copper local loop, part FTTH point to point). Bitstream open access is offered to service providers (passive and active network infrastructure is shared).

#### **Services**

Triple play services are offered via L2, fully transparent bitstream, different service providers are separated with VLAN trunks, the network is configured in a way to accommodate the existing logic network configuration of each operator (operators do not need to adapt to the network). RF services (cable operators) are possible, but no cable operator is present at the moment.

#### **Competition**

Three service providers are present since the launch of the network operation (Amis, Telekom Slovenije and T-2). For almost two years this was the only open access network in the country with three service providers present. Prices for the services to the end users are in line with the rest of the country.

### **Project summary and lessons learned**

A successful operation, covering an almost pure white area, deployed on time and on budget. 65% penetration of broadband service demonstrates that BB is needed also in deep rural areas.

Critical issues that were addressed:

- Continuous communication to the population in the area created interest and assistance from the inhabitants;
- Minimum (or no) financial costs for the end user ensure high penetration;

- In-house infrastructure (at the user premises) is an issue that has to be addressed, as it impacts the connection rate (without the fiber termination in the house and the adequate UTP cabling, the user cannot start getting the service).

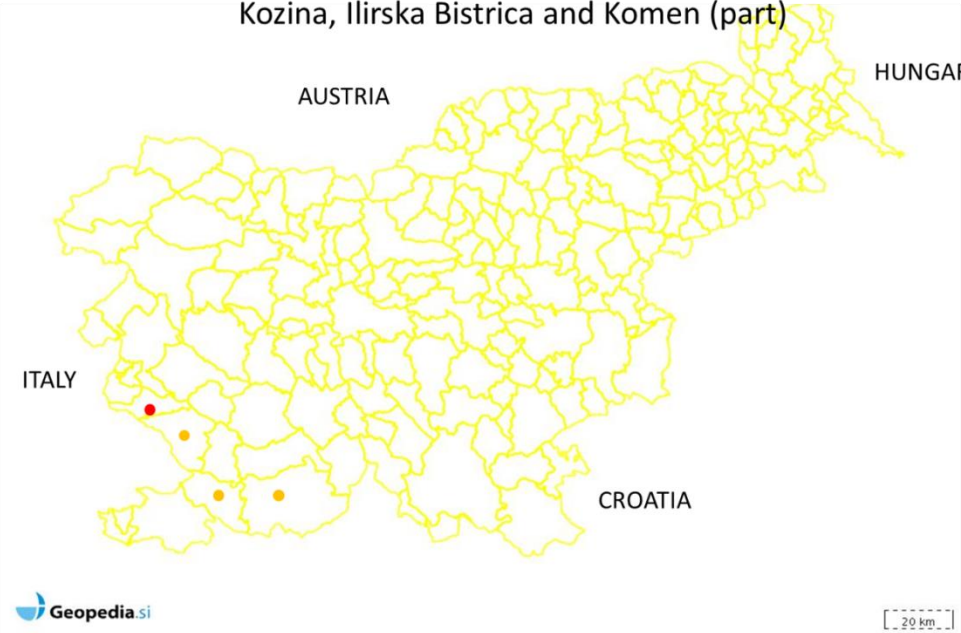
**CASE STUDY 2: BROADBAND ACCESS IN THE AREA OF THREE SOUTHERN PRIMORSKA MUNICIPALITIES (AND 2 SMALL IN THE MUNICIPALITY OF KOMEN)**

**Project scope and objectives**

The aim of the project is to provide broadband access to all unserved households (white areas) in the area of three Southern Primorska municipalities (and 2 small in the municipality of Komen).

The project is an example of public-private joint venture model.

Open access BB Southern Primorska - Municipalities of Sežana, Hrpelje-Kozina, Ilirska Bistrica and Komen (part)

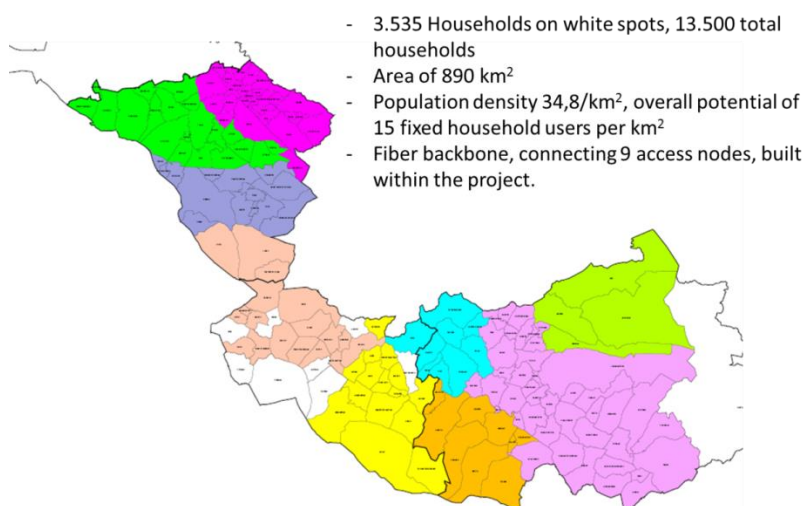


**Key characteristics**

Characteristic	Description
<b>Distinguishing features</b>	Extremely low user density (total of 15 households per sq.km. Very good response from local population. Penetration of over 65% expected within 2 years of network start. Six service providers present three months on. No special purpose vehicle (SPV), operation and maintenance of the network done by the private partner with a concession-like contract.
<b>Ownership</b>	60% Municipality owned, 40% private - partner owned. After 20 years period, ownership transferred 100% to the public

	partner.
<b>Wholesale</b>	Wholesale access provided by private partner FMC d.o.o.
<b>Legal status</b>	Public-private joint venture, contract based (no SPV)
<b>Costs</b>	10,5 million EUR public, 6,5 million EUR private

## Southern Primorska BB



### Finance and ownership

#### Investment

The investors were the four municipalities and the private partner (FMC d.o.o.). The municipalities contributed for 60% of the investment, the private partner for 40%. Project started in June 2011, finished the construction phase on December 2012, 10,5 MIO EUR of public funding and 6,5 MIO EUR of private investment were used to reach 100% coverage of white areas.

#### Reasons for approach

The reason for the selected approach was the fact that the area was defined as white area where there was no commercial interest for the building of the infrastructure due to the following reasons:

- extremely low user density
- extreme terrain conditions (97% of the digging was done in category 5 soil hardness, compact rock, with special building equipment);
- the area was subject to demographic erosion (young people leaving the area);
- the majority of users were accessing internet via dial-up, some ADSL present, but speeds lower than 2Mbps

#### Legal status

The public tender was published in accordance with Slovenian legislation and based on a decision of the EC (C(2009)8127 ) that the whole measure qualifies for state aid (State aid N172/2009).

### Business approach

#### Procurement approach

The municipalities conducted public procurement for the construction of the network and for the concession for the operation of the network in accordance with Slovenian law. Then together with the selected constructor they applied for public funds (ERDF 85 %, national 15 %).

The award criteria were cost per user, coverage and the percentage of private investment on the total investment cost.

#### Market competitiveness

The ownership of the passive infrastructure and the network layer is divided accordingly to the investment (60% public, 40% private), the services are offered by commercial service providers. The network is open access, bit-stream model.

#### Demand stimulation initiatives

Meetings with local population were held, presenting the new infrastructure, and up-to-date information was given in the construction phase and at the beginning of network operational phase through local media (municipality newspaper that is freely distributed to every household).

#### Management structure and business model

The network is co-owned for 20 years. The private partner and co-owner (FMC d.o.o., an infrastructure operator, wholesaler) runs the network, whereas services are offered by commercial service providers (currently six of them).

### Cost issues

#### Overall budget

Capital investment was 17 million EUR (60% public, of which 85% ERDF, 15% national funds; 40% private investor). The on-going operational expenditure is financed from within the operation. The private company that runs the network invoices a flat rate sum per user per month to the relative service provider, and this income is used for covering operational expenditure.

#### Cost and risk reduction measures

Cost was reduced by using existing electric distribution infrastructure (poles) in the villages. Aerial self supporting optical fiber cables were used for end user connections. Also time was spared by reusing the existing infrastructure. FTTH PON architecture for access network was used as it was optimally suited for covering small sparse villages in a wider, lowly populated area.

### Network architecture, services and competition

#### Network architecture

A fiber backbone connects 9 access point locations with active access equipment. A PON FTTH access network (GPON 2,5Gbps per 64 users) has been deployed on the access part. Bitstream open access is offered to service providers (passive and active network infrastructure is shared).

#### Services

Triple play services are offered via L2, fully transparent bitstream, different service providers are separated with VLAN trunks, the network is configured in a way to accommodate the existing logic network configuration of each operator (operators do not need to adapt to the network). RF services (cable operators) are possible and cable operators are present.

#### Competition

Three service providers have been present since the launch of network operation (Amis, Telekom Slovenije and T-2, three cable operators are entering the race).

### Project summary and lessons learned

The project was a successful operation, covering an almost pure white area, deployed on time and on budget. High population interest demonstrates that BB is needed also in deep rural areas.

Critical issues that were addressed:

- Continuous communication to the population in the area created interest and assistance from the inhabitants;
- Minimum (or no) financial costs for the end user ensure high penetration;
- In-house infrastructure (at the user premises) is an issue that has to be addressed, as it impacts the connection rate (without the fiber termination in the house and the adequate UTP cabling, the user cannot start getting the service).

## HUNGARY

### Project scope and objectives

PublicNet («KözHáló») <sup>[11]</sup>: project started on February 4th, 2004, as one of the largest government supported one-step programmes to increase the IT infrastructure to reach more than 2500 residency points. As a part of the Europe Plan the main objective was to promote the broadband communication to the public sector. It is not an open market solution – it is available only for the public sector.

In the PublicNet programme around 7300 broadband access points have been installed. The installed infrastructure is in operation with great success. From 2011 the NISZ National Infocommunication Services Ltd. is managing the support service.

In 2011-2013 new development programme was initiated as a part of ELECTRONIC ADMINISTRATION OPERATIONAL PROGRAMME (EKOP-2.2.5) with budget of 240 million HUF.

The program is co-funded by the European Regional Development Fund and the government. So the continuous support and development is ensured.

### Funding mechanism

The PublicNet was divided into two segments – Sulinet and Köznet. The funding of the first programme was:

- In Sulinet 5000 access points were co-funded by the Ministry of Informatics and Telecommunication and the Ministry of Education.
- Other 2300 access points in Köznet were financed by the Ministry of Informatics and Telecommunication.



### Key characteristics

Characteristic	Description
<b>Distinguishing features</b>	The PublicNet is supervised by institutions created or authorised by the Government. On the other hand private companies provide the info-communication services, so strict competition has been introduced to ensure good quality and cost effective solutions.
<b>Ownership</b>	PublicNet is not a state owned network, but it utilizes the services and networks of the market players. Only the active network equipments are state owned.
<b>Wholesale</b>	Two large telecom providers in Hungary (originally Elender, Euronet)
<b>Legal status</b>	State controls the service delivery. All service provider utilize their own infrastructure.
<b>Costs</b>	Approximately 20 000 million HUF

### Finance and ownership

This project was funded directly from the Hungarian budget.

### Reasons for approach

To strengthen the broadband coverage was a top priority for the transition period of Hungary, so public money was allocated for the program. At that time no EU funding was available.

### Legal status

Even in the eEurope 2005 Action Plan, launched in 2002, broadband development was handled as a key priority.

The primary reason for this was that the development of the information society is a key area for the EU's competitiveness objectives. This was true for the 2000 Lisbon goals, their revision and the EU's new information society strategy.

The European Commission published its growth and job creation priorities for the member states at the same time when the 2005 National Broadband Strategy ("NSZS 2005") was finalized.

So the "Közháló" ("PublicNet") program was fully compliant with the EU strategies when initiated in 2004.

### Business approach

#### Procurement approach

The Public Procurement procedure was followed, as detailed in Act CXXIX of 2003 on Public Procurement.<sup>[18]</sup>

The most important factors in the procurement approach were:

- Strict schedule



## Summary Report

- Fair competition
- Detailed and quite rigid formal requirements
- Evaluation criteria defined in advance
- All criteria are evaluated with the same algorithm

The award criterion was: overall the most favorable solution with the lowest compensation (price) as a result of the evaluation algorithm.

### Market competitiveness

The PublicNet – as regarding the telecommunication infrastructure – is not a state owned network, but it utilizes the services and networks of the market players.

It is not an open market solution – it is available only for the public sector.

Starting from January 1st, 2013 the two large user groups of PublicNet (who were previously organized into two separate VPNs) are served by two organizations:

- SchoolNet (schools, libraries) has approximately 5500 end points, and served by NIIF (National Information Infrastructure Development Institute).
- The other users of PublicNet (approximately 1500 institutions – Köznet) are municipalities, tele-houses, e-Hungary points, and they are served by NISZ (NISZ National Infocommunications Services Ltd.).

NISZ and NIIF are providing their services according to the public service contract with National Development Ministry. NISZ National Infocommunication Services Ltd. is the contracting and managing party of the PublicNet program. The Program Management Office is responsible for the representation of NISZ. The so called Service Management is supervising and managing the technical background.

The access services are delivered by the following third parties:

- Magyar Telekom Nyrt.
- Invitel Zrt.
- Antenna Hungária Zrt.
- HungaroDigiTel Kft. (HDT)
- GTS-Datanet Távközlési Kft.

The end-point-equipments owned by NISZ (rack + router + switch) is delivered and managed by:

- NISZ Zrt.

Internet services are provided by NIIF.

The main communication channel among the participants is the customer service of the PublicNet.

### Demand stimulation initiatives

For the public sector the services of PublicNet is free of charge. However, for the installed equipment the participant institute must make a proper insurance on their own cost.

### Management structure and business model

The PublicNet is supervised by the Government, specifically by the National Development Ministry. On the other hand, private companies provide the info-communication services, so strict competition has been introduced to ensure good quality and cost effective solutions.

### Cost issues

#### Overall budget

The original capital investment was approximately 20 000 million HUF.

On-going expenditure and smaller developments are co-funded by Hungarian budget and Electronic Public Administration Operational Programme (EKOP) programmes.

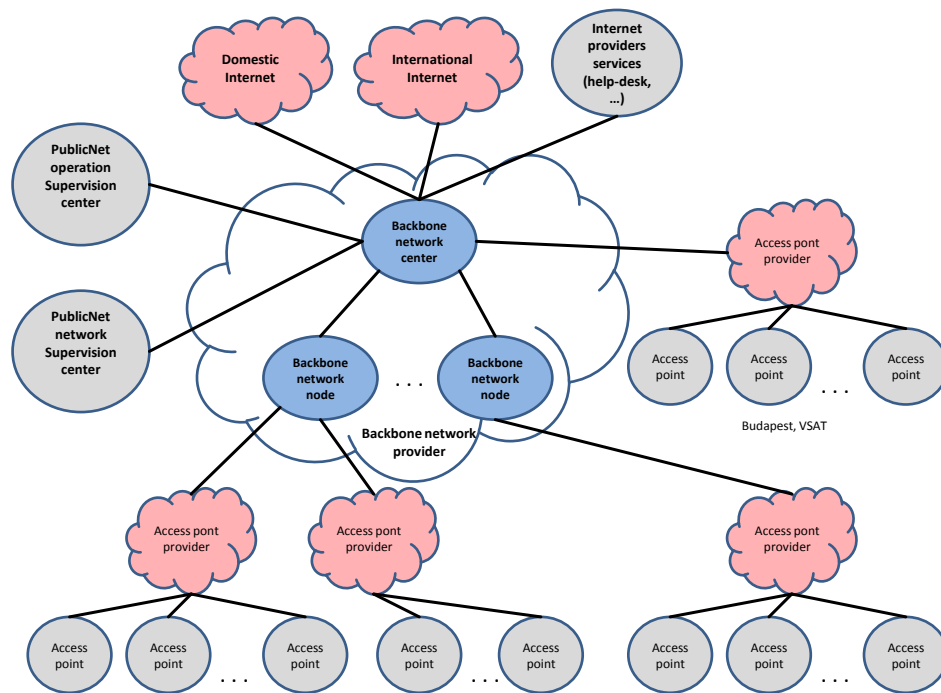
#### Cost and risk reduction measures

PublicNet is based on the resources built up and managed by the commercial telecommunication providers, but strict competition and unified requirements of the different public institutions resulted in a more cost-friendly and more reliable solution (as the network providers have a large volume and well planned orders to support the necessary infrastructural investments).

### Network architecture, services and competition

#### Network architecture

Overall architecture and service model:



The network architecture is composed of the following modules, as depicted in the figure above:

- Backbone center and network nodes
- Access points providers
- Internet services
- Management and support center

#### Services

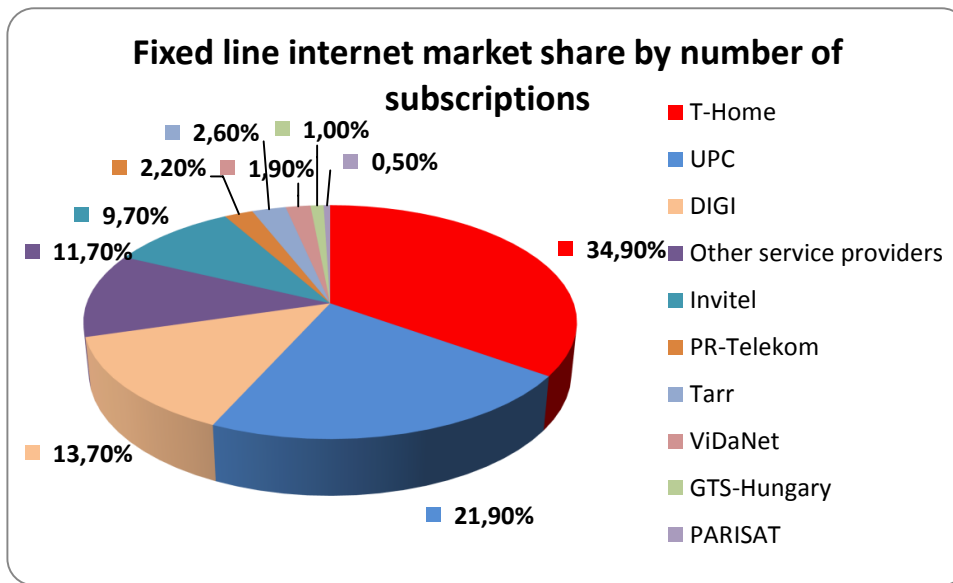
- Webhosting
- Mail relay
- Virus and spam filtering
- Mail service with integrated virus and mail filtering, dedicated administration, web based access

## Summary Report

- Mail lists and archives
- Domain and IP registration (IPv4/IPv6)
- Domain name system (DNS)
- Network time serves (NTP)
- Management of the configuration of end-point equipments

### Competition

Situation on the market – Based on the flash reports provided by National Media and Infocommunications Authority, 2013 January



### Project summary and lessons learned

This project is a clear success in telecom program organised and supervised by the state.

PublicNet demonstrates how commercial market offering can be organised and managed into a unified service which benefits the public sector.

Lessons learnt:

- Special management attention should be paid to overcome the 14 different company cultures
- Planning and preparation is a key success factor
- Bottleneck is always changing – competent and agile project management is necessary
- In a program of this size quick changes are almost impossible tasks

**ROMANIA**  
**PROJECT RO-NET DEVELOPMENT OF BROADBAND INFRASTRUCTURE IN ROMANIA**

**Project scope and objectives**

The project is at national level and the procurement procedure has not yet started. Each week there is a meeting at the MSI with experts for this project.

The present project (RoNet Project) will have the following objectives:

- Bridging the digital divide in the country by providing favourable conditions for all Romanian population to access advanced electronic communications infrastructure regardless of the place of residence.
- Promoting competition in the broadband electronic communications sector. As the project will develop the lacking broadband infrastructure which will become available to all operators intending to provide services to end-users in certain areas, the project outputs will contribute directly to the promotion of competition and the development of new business opportunities.
- Accelerating information society development processes in Romania.

Thus, project implementation in rural areas of Romania will provide favourable conditions for:

- the population to access e-services and e-content as well as teleworking and distance learning.
- businesses to use ICT in their different activities.
- public administrations and offices to modernise their activities and provide e-services.

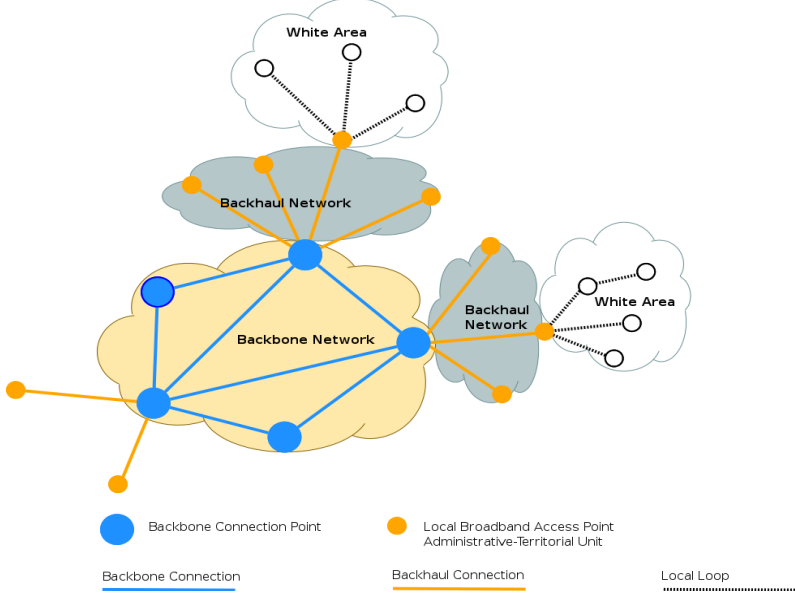
**Key characteristics**

Characteristic	Description
<b>Distinguishing features</b>	National level
<b>Ownership</b>	State
<b>Wholesale</b>	N/A
<b>Legal status</b>	Priority Axis 3, “ICT for Private and Public Sectors”, of the Sectoral Operational Programme (SOP) “Increase of Economic Competitiveness”. Approved by 1437/2007 EC Decision.
<b>Costs</b>	84 million EUR

The MCIS has started to design a project for financing the broadband infrastructure in the deprived areas (“white areas”) and to discuss with the private communication operators since 2008. Some data have changed meanwhile, but the one thing certain for all this time was and still is that no private operator has invested within the last two years, nor has the documented intention to invest (in the next three years) in the “white areas”. This situation proves that without a State intervention, there will be a long period of time until those deprived areas will benefit from broadband connectivity.

The studies and discussions conducted by the MCIS have proven that the most economical way to use the funds and to ensure the use of the existing infrastructure is to create an entity within the Ministry who will remain the owner of the newly created infrastructure.

Network architecture, services and competition



Project summary and lessons learned

The project Ro-NET is under development.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

In 2010 the government completed a project for installation of 680 internet-kiosks in rural areas with wireless internet access. The project foresaw that the economic operators in the period of four years will offer internet in rural areas with state subventions.

The economic operators' services consisted in installation of internet-kiosks, located nearby local schools in rural areas, through which a free internet signal is beamed in a 250 meter radius. The kiosks are constructed from stainless steel, resistant to wheather impact and temperatures in the range from -20 to +60 degrees. They contain an incorporated computer with metal keyboard with Macedonian support. The project internet-kiosks are installed in 13 regions, with 50 locations in each region.

The project budget was 2,5 million euros. After expiration of the four year contract with the government, the internet-kiosks remain in possession of the operators.

Besides improving the use of internet technology in rural areas, a great benefit from this project is infrastructure installation, which until now didn't provoke the operators' interest, because of absence of economic profitability.

Project scope and objectives

The project scope was to provide free broadband access points in rural Macedonia. Its main objective was to reduce the digital gap between the rural and urban areas.

The project was funded by the government and implemented in cooperation with the private sector.

### Finance and ownership

The internet-kiosks and the four year free internet service for the citizens were procured by the Government of RM for 2, 5 million euros. Rural areas are not attractive in terms of private investments, which is why the Government invested in the project.

### Legal status

The internet kiosks are in the ownership of the Government of Former Yugoslav Republic of Macedonia for the whole period of the contract. After expiration of the four year contract with the government, the internet-kiosks remain in possession of the operators.

### Business approach

Initially, 4, 72 million EUR were allocated in the budget but the electronic public auction decreased the price. Depending on the region, the savings were in the range of 10 to 36 per cent. Nine operators participated at the public auction, in a competition for 13 regions, with 50 locations in each region. The three chosen operators were obligated to install 30 percent of the kiosks within 120 days, 60 percent in 150 days, and the complete installation, within 180 days.

### Cost issues

Initially, 4, 72 million EUR were allocated in the budget but the electronic public auction decreased the price to 2, 5 million EUR.

### Network architecture, services and competition

Variety of network architectures were used but the dominant method was WiMAX.

### Project summary and lessons learned

The project results are still not available in terms of direct and indirect results. Even if 100 per cent successful, they are just a drop in the sea when it comes to bridging the rural/urban gap as outlined in the National Strategy for e-Inclusion (2011-2014) under Priority 4, and there is a need for more activities in this part of the digital divide.

### 3 PPP LEGAL FRAMEWORK

»While internet access in urban areas will be primarily financed and funded by the private sector, there are considerably greater challenges in extending coverage to less populated rural areas. Governments are constrained by the twin challenges of reducing deficits and meeting a number of competing demands placed on the public purse. It becomes increasingly unlikely that public authorities will be able to meet any gaps in provision on their own. Public-private partnerships ("PPPs") provide potentially effective solutions to this dilemma. As an alternative method of procurement, PPPs have been successfully applied to meet a range of infrastructure requirements. PPPs have been used to build a range of transport infrastructure projects but they have been equally successfully employed for building schools, hospitals, law courts, prisons, sports facilities as well as other forms of accommodation required by the public sector. PPPs should not be simply seen as a method of financing. They can provide the public sector with the ability to transfer risk and accelerate the roll out of the necessary infrastructure which service providers require to be in place before they are willing to provide broadband services for retail and business customers. PPPs have the advantage that the level of private sector involvement and funding commitment can be tailored to meet the specific requirements that exist for a particular region. There is not necessarily a single size that fits all. The level of control that needs to be retained by the public sector will vary. PPPs make it possible to implement projects with the appropriate scope and accelerated time scales, ensuring public funds will be used in the most effective and efficient manner while encouraging as much private sector involvement and especially risk sharing as possible (Source: Broadband, Delivering next generation access through PPP) «.

»A public-private partnership ("PPP") arrangement differs from conventional public procurement in several respects. In a PPP arrangement the public and private sectors collaborate to deliver public infrastructure projects – such as roads, railways, airports – which typically share the following features:

- a long-term contract between a public contracting authority (the "Authority") and a private sector company (the "PPP Company") based on the procurement of services, not assets;
- the transfer of certain project risks to the private sector, notably with regard to designing, building, operating and/or financing the project;
- a focus on the specification of project outputs rather than project inputs, taking account of the whole life cycle implications for the project;
- the application of private financing (often "project finance"<sup>1</sup>) to underpin the risks transferred to the private sector; and
- payments to the private sector which reflect the services delivered. The PPP Company may be paid either by users through user charges (e.g. motorway tolls), by the Authority (e.g. availability payments, shadow tolls) or by a combination of both (e.g. low user charges together with public operating subsidies).

The rationale for using a PPP arrangement instead of conventional public procurement rests on the proposition that optimal risk sharing with the private partner delivers better "value for money" for the public sector and ultimately the end user.

PPP arrangements are more complex than conventional public procurement. They require detailed project preparation and planning, proper management of the procurement phase to incentivise competition among bidders. They also require careful contract design to set service standards, allocate risks and reach an acceptable balance between commercial risks and returns. These features

require skills in the public sector which are not typically called for in conventional procurement (Source: The Guide to Guidance, How to prepare, Procure and Deliver PPP Projects)«.

### 3.1 NATIONAL DOCUMENTS

- ? **How is PPP legal framework identified?**
- ? **What provisions are included in the legislation?**

#### SLOVAKIA

Up to date, there is no specific law on PPP in Slovakia. Different provisions regarding PPP are included in the following three laws:

- **Law no. 25/2006 on public procurement** – provisions concerning the selection of private partner and also the concession (§ 15) on construction works or services which is one of possible forms of the PPP;
- **Law no. 523/2001 on budgetary rules of public administration bodies;**
- **Law no. 583/2004 and 611/2005 on budgetary rules of self-governmental units.**

There is a complex **analysis of the legislative environment of PPP** which will be in future used for accommodation of current Slovak legislation in order to avoid unnecessary obstacles for PPP projects and to ease their regulation at the same time. The amendments of the legislation should concern more topics such as public procurement, public/state property administration, budgetary rules, bankruptcy law, state aid, construction law, accountancy, taxes etc.

The first governmental document that dealt with the PPP in a complex way for the first time was the **Report on setting conditions for PPP project realization** (govt. resolution no. 245/2005) followed by Policy for realization of PPP projects (govt. resolution 914/2005). Since 1 January 2010, the PPP projects are to be carried out based on a **concession contract**. The law on public procurement specifies the concession for construction and services. For big projects, so called “**special purpose vehicle**” (**SPV**) is used being a consortium of several companies involved in the project (construction company, bank, public partner).

Central public bodies such as ministries have to follow the **methodology** delivered by the **Ministry of Finance**.

#### SLOVENIA

**The Public-Private Partnership Act** (ZJZP) has been in force since 7 March 2007. It lays down the ways of encouraging public-private partnership, the institutions in charge of developing PPP as well as the conditions, procedures and forms for implementing such partnership. It also provides for the law to be applied for dispute resolution including the competent court and arbitration. The *Public-Private Partnership Act* is meant for subsidiary application, i.e. only for the issues that are not regulated by special acts for various forms of PPP.

**The Public Procurement Act** (ZJN) entered into force on 23 December 2006 and has been applied since 7 January 2007. It lays down the obligations of contracting authorities, tenderers and subcontractors involved in public supply, services and works contracts.



**The Legal Protection in Public Procurement Procedures Act** (ZPVPJN) has been in force since 3 July 2011. It regulates legal protection of tenderers, contracting authorities and public interest in public procurement procedures and lays down the bodies competent for the protection of those rights.

**The Rules on the content of eligibility of execution of a project according to the model of public-private partnership** have been in force since 11 April 2007. This document lays down the method on the basis of which a public partner makes an assessment of the eligibility of carrying out a project according to the PPP model.

**The Rules on the content and mode of keeping records on public-private partnership projects and awarded contracts within public-private partnership** have been in force since 27 June 2007 and determine what data on projects and contracts the Ministry of Finance has to keep in the records of PPP contracts.

**The Decree on Green Public Procurement** entered into force on 14 December and has been applied since 12 March 2012. It regulates public procurement of goods, services and works that have smaller environmental impact and equal or better functionality in comparison with usual public supply, services and works contracts.

**The Government Council for Public-Private Partnership Ordinance** has been in force since 11 July 2007. It lays down the organisation and activities of the Government of the Republic of Slovenia Council for Public-Private Partnership.

There are also other acts regulatic specific fields which are not relevant for this report:

- The *Public Procurement in Water Management, Energy, Transport and Postal Services Area Act* (ZJNVETPS)
- The *Public Procurement for Defence and Security Act* (ZJNPOV)
- The *Public Utilities Act*

## BULGARIA

**The Law on PPP, Decree 230**, entered into force on 12 June 2006. Provision 3 defines PPP and lays down the conditions for implementing such partnership:

- (1) A public private partnership is long-term contract cooperation between one or more public partners and one or more private partners for implementing activities of public interest when accomplishing a public funds better value and in risks allocation between the partners which is carried out by using the conditions under this law.
- (2) A public private partnership under this law is established when the following conditions are met:
  1. A public interest procurement cannot be carried out under the procurement law because:
    - a. A public partner cannot ensure procurement financing and shall be wholly and partially taken over by private partner.
    - b. A better risk disseminated between public and private partner shall be accomplished.
  2. A public interest procurement cannot be implemented with a concession because there are no revenues from consumers using a public interest service. When there are such revenues private partner does not have rights to them.
- (3) These are not PPP under this law:
  1. Concessions which are assigned under the conditions and under the public concessions law and natural resources law.

2. Public procurements which are assigned under the conditions and under the public procurements law.

(4) When having public interest from the service and when there are revenues obtained by consumers or by other third person in relation to the public interest activity, private partner can collect them in benefit of the public partner.

### HUNGARY

**There is no Hungarian national legislation containing the sole object of the PPP.** In Hungary, there is no legal category of the PPP, the legislation only refers to it, and write about the phenomenon. The concept of PPP in economic terms has not become a legal category. The regulation of the Hungarian practice on usage of PPPs is primarily based on laws of the public procurement CXXIX (2003) and the concession XVI/(1991), but also on a number of other amendments of the legislation which were modified to make the PPP concept operate.

**The Law CXXIX/ 2003 on public procurement** also includes related directives of the European Union. The definitions of building and service concession are determined, and the relation between the bodies of law of concession and PPP is defined. The EU-compliant law entered into force on 1 May, 2004. Apart from the integration of EU directives it allows the management of the complex PPP structures (combined tendering of construction and 20-30 year of service element). As a new concept it defines and fixes the term of the construction and service concession and clarifies the relationship between concessions and PPPs.

This law - by definition - can be applied to all PPP projects. Depending on the investment value there are different applicable procedures. The law specifies a specific procedure if the Community threshold is reached, procurement between national and EU thresholds and below the national threshold.

**The next significant law is the law XVI/1991 on concession.** It controls the concession and the concession contract:

- the state or municipal property operation, or
- exclusive jurisdiction of the state or local government activities as one possible way to transfer benefits.

The Act sets out which areas are related to cede a concession contract and determine the maximum duration of the concession procedure.

Naturally, it was necessary to modify several norms in order for the PPP model to be utilised successfully in the Hungarian legal system. Provisions related to the approval of investments of the state's long-term engagement is also laid down in the **law XXXVIII/1992 on the budget**. It sets the rules for the approval of projects with the state long-term commitment, namely, that before entering the contract with net present value of over or equal 50 billion HUF with several years' obligation to pay, the Government should ask the National Assembly mandate (§ 22. (19) (in force since 1 January 2005). Further modification (January 1, 2006. and 2007) restricts the size of the long-term commitment that spending must not exceed the 2% of total expenditure, and currently the 3% of revenue total.

According to the **28.§ 2 paragraph (law IV/1959) of Civil Code** the state is obliged to fulfil its engagements undertaken in contracts, and is not allowed to refer to lack of funds in order to avoid fulfilling its obligations (applied for commitments after 19/07/2003) .

The amendment provides the State's contractual obligations restoration (even if not covered). It should be noted that this resistance cannot be applied to local governments, the local governments with similar statutory provision is emerging nowadays.

### GREECE

The main **Law governing PPPs in Greece is the Law 3389/2005** (O.J. 232/A'/22.9.2005), with the latest amendments introduced by Law 3483/2006 (O.J. 169/A'/7.8.2006), herein after referred to as «**Law 3389/2005**» Of course the relevant European legislation and regulations are in force.

Thus the legislative framework governing PPPs in Greece is:

- **Law 3389/2005** «*Public Private Partnerships*» (O.J. 232/A'/22.9.2005)
- Paragraph 1 of Article 16 of the **Law 3483/2006** «*Amending and supplementing the provisions for leasing, public revenue and other provisions*» (O.J. 169/A'/7.8.2006), which amends Paragraph 4 of Article 6 of the Law 3389/2005
- **Presidential Decree 59/2007** «*Harmonization of the Greek legislation with the Directive 2004/17/EC* » (O.J. 63/A'/16.3.2007)
- **Presidential Decree 60/2007** «*Harmonization of the Greek legislation with the Directive 2004/18/EC* » (O.J. 64/A'/16.3.2007)
- **Law 3886/2010** «*Judicial Protection in the award of Public Contracts - Harmonization of the Greek legislation with the Council Directive 89/665/EEC and the Council Directive 92/13/EEC as amended by the Directive 2007/66/EC* » (O.J. 173/A'/30.9.2010)
- **COM(2004) 327 final** «*Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions*» (30.04.2004)
- **COM(2005) 569 final** «*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*» (15.11.2005)

**A summary of the Law 3389/2005:**

#### General Concept

Law 3389/2005 regulates the procedure for the conclusion and operation of Public-Private Partnership Contracts in Greece for the performance of works and the provision of services with an overall budget **up to two hundred million euros (200.000.000 euros)**.

A private sector entity («Private Entity») may conclude a partnership contract with a «Public Entity» (the Greek State, local authorities, State Agencies or incorporated companies belonging exclusively to these entities). The Private Entity enters into a Partnership through a **Special Purpose Vehicle (SPV)**, i.e. an incorporated company established exclusively for the purposes of the Partnership. By means of the Partnership Contract, the Private Entity undertakes a substantial part of the risks associated with the performance of the work or the provision of services, which constitute the object of the Partnership, while the Public Entity or the end users undertake to pay the relevant fee.

#### Classifying an Infrastructure or Provision of Services Project under the present law

It is possible to subject any infrastructure project or provision of services project to the provisions of the present law, on condition that the relevant requirements are met.

As far as the procedural part is concerned, the interested Public Entities must file an application to that effect with the **Inter-ministerial Committee for Public-Private Partnerships**. Classification takes place pursuant to Decision of the Inter-ministerial Committee granting the relevant authorization.

The **Special Secretariat for Public-Private Partnerships** draws up a non-binding catalogue of works or services that may be concluded through a PPP (*List of Proposed Partnerships*), which is notified to the competent Public Entities. Within two months from the receipt of the relevant notification, the latter may file an application with the **Inter-ministerial Committee for PPPs** requesting the subjection of a specific partnership to the provisions of the present law (*Application for Classification*). The **Inter-ministerial Committee for PPPs**, within two months from the transmission of the *Application for Classification*, renders its Decision (*Decision on Classification*), which approves or rejects the application. Should the **Inter-ministerial Committee for PPPs** approve the proposed Partnership, the **Special Secretariat for PPPs** assumes the coordination of the Awarding Procedures.

### **Awarding Procedures - selection of a Private Entity**

The provisions of the Awarding Procedures transpose, in part, into the Greek legal order *Council Directive 2004/18 «On the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts»*. The law provides certain basic definitions (Contractor, open procedures, restricted procedures, competitive dialogue, negotiated procedures, etc.) and lays down certain basic principles governing the awarding procedure (equal treatment, transparency, proportionality, protection of public interest, protection of the rights of private third persons, of competition of the environment etc.).

The main awarding conditions are:

- either the most economically advantageous tender
- or the lowest bid.

The Awarding Authority sets the minimum requirements which candidates should fulfill.

Open Procedures or Restricted Agreements apply in principle to the award and conclusion of Partnerships.

Competitive Dialogue Procedures may also be followed, in respect of Particularly Complex Partnerships. In that event, the Awarding Authority enters into a dialogue with the candidates which have been selected, with the intention of seeking out the optimal solution to satisfy its need.

Under certain conditions, after the contract notice of the relevant competition, Negotiated Procedures may be applied. In that event, the Awarding Authority negotiates on the basis of the tenders already submitted, in order to have them aligned with the requirements of the contract notice.

Prior to the award, the Awarding Authority examines whether there are any grounds for the disqualification of the candidates (criminal convictions, bankruptcy or liquidation, professional misdemeanor, etc.) as well as their financial and professional adequacy, and evaluates their technical and professional skills. In exceptional circumstances, the provisions of Law 3049/2002 (O.J. 212/A'/10.9.2002) as amended by the Law 3986/2011 (O.J. 152/A'/1.7.2011) relating to privatizations of Public Undertakings may be applicable. In that event, the Inter-ministerial Committee for PPPs itself may operate as Awarding Authority and employ expert consultants.

### **Operation of a Partnership Contract**

Partnership Contracts must comply with the terms and conditions of the relevant Contract Notices.

Partnerships are governed:

- in principle, by the clauses of the relevant contracts, and
- complementary, by the provisions of the Greek Civil Code.

Public Procurement legislation does not apply to these Partnerships.

The Partnership Agreements include a clear and analytical description of the rights and duties of the respective parties. These contracts contain inter alia, provisions on:

- the object of the Partnership,
- the schedule for its implementation,
- the means of funding,
- risk allocation,
- the mode of operation,
- preservation and exploitation of the object.

Special Purpose Companies undertake both the responsibility and the risk of the required funding, and shall, accordingly, prove their funding availability. Public Entities may participate in the funding, as well as the exploitation of the object of the Partnership.

### **Special Provisions – Incentives**

The law also includes provisions on the facilitation of collection of the relevant fee, when this is to be paid by the end users. All the authorizations required to that effect are issued in the name of the Special Purpose Company, within a special, short deadline.

In the event of archeological discovery, special provisions are included, facilitating the prompt resumption of the works.

Any increase on the costs of the work due to the imposition of addition conditions for the benefit of the environment is allocated to the Public Entity.

The forcible expropriations necessary for the pursuit of the Partnership are considered extremely urgent and of greater importance and special provisions are made for their timely completion.

Public companies and public utility companies are under an obligation to give priority to any acts necessary or useful for the object of the Partnership.

Special Purpose Companies may assign their claims to credit or financial institutions, with the purpose of funding the object of the Partnership. The validity of real securities granted in favor of those Companies cannot be contested due to the imposition of any collective measure for the satisfaction of the Companies' creditors. Assignment of shares, increase of the shared capital or any company transformation of the Special Purpose Company may take place only after the Public Entity has given its consent in writing.

The admission of a Companies' shares to the Stock Market may take place only pursuant to an authorization granted by means of a joint decision of the Minister of Economy and Finance and the other competent, in each case, Ministers.

The Special Purpose Companies are exempted from income tax on interest until the commencement of the exploitation of the work. Any financial contribution of the Public Entity is considered as a grant and is exempted from V.A.T., income tax or any other tax. It is permitted to transfer any accumulated losses, in order to balance them with the profits of the next ten periods of usage. The Special Purpose Company may select the method of redemption.

Dispute settlement takes place by arbitration, in conformity with the terms set out in the Partnership Agreement, in deviation from the provisions applicable for arbitration with the Greek State. Greek substantive law is determined as the proper law of the contract.

### ROMANIA

The law regarding the **public-private partnership** (Law No. 178 from 1 October 2010) entered into force on 4 November 2010.

The law regulates the way in which a public-private partnership project that targets the design, financing, construction, rehabilitation, modernisation, operation, maintenance, development and transfer of public goods or public services is carried out. The purpose of this law is the regulation of the initiation and execution of public-private partnership projects for public works in different areas of activity, with private financing.

Principles included in the law:

- **Nondiscrimination**-ensuring the conditions of expression of effective competition for any private investor, regardless of nationality or citizenship, in order to attend the selection procedure for awarding a public private partnership contract and having the chance to become contractor;
- **Equal treatment** - the establishment and application at any time during the procedure of conclusion of the public-private partnership contract of rules, requirements, identically criteria to all private investors so that they can receive equal opportunities to participate in the selection procedure and become contractor;
- **Transparency** – availability, for the public, of all the information regarding the enforcement of the procedures for the conclusion of the public-private partnership contract;
- **Proportionality** – assuring the fair correlation between the purpose aimed at by the public partner, the object of the public-private partnership contract and the imposed requirements, so that there is a balance between the target which is supposed to be fulfilled within the public-private partnership contract and the real requirements, between the real requirements and the conditions imposed to the private investor, as well as between the selection criteria and the contractual stipulations;
- **Efficient use of funds** – the use of the procedures for the conclusion of public-private partnership contracts, as well as the use of criteria must reflect the tenders advantages of economical nature in order to obtain the targeted result, also taking into consideration the actual effects which are supposed to be obtained in the social area and in the environment protection area as well as in the promotion of the sustainable development;
- **Assumption of responsibility** – the clear definition of tasks and responsibilities of the parties involved in the process for the conclusion of the public-private partnership contracts, having as purpose to assure the professionalism, impartiality, independence of the decisions taken during the course of this process.

**The public-private partnership contract takes into consideration the following:**

- the cooperation between the public partner and the private partner;
- the public-private partnership project has private financing;
- in the case of a public-private project, the partners' role is to finance and to enforce the objectives of public interest, as well as to comply with the stipulations of the public-private partnership contract;
- sharing of risks within a public-private partnership project is made in a proportional and equitable way between the public partner and the private partner.

In order to award a contract for public-private partnership by the public partners, the Romanian state in its relations with other Member States apply conditions as favorable as those which they apply to economic operators/private investors from third countries under public procurement contracts concluded within the Uruguay Round multilateral negotiations. For this purpose, the Romanian state will consult on the measures to be taken for the implementation of the agreement, within the Advisory Committee for public procurement set up by Article 1 of Decision 71/306/CEE.

### Content

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- SECTION 1 Scope , Principles
- SECTION 2 Definitions of the terms and phrases used in this law
- SECTION 3 Types of activities in the public-private partnership projects
- SECTION 4 Public partners
- SECTION 5 Scope, Exceptions

#### CHAPTER II Applicable rules for the conclusion of the public-private partnership contract

- SECTION 1 General rules
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#### CHAPTER III Conditions for the initiation and ending of the public-private partnership project

- SECTION 1 Conditions for the initiation of the public-private partnership project
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#### CHAPTER IV The public-private partnership contract

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#### CHAPTER V Special rules for the set-up of the project company

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#### CHAPTER VIII Final and transitory provisions

#### ANNEX

- Minimum information that must be included in the selection notice for the public-private partnership contracts.
- Minimum information that must be included in the award notice for the public-private partnership contracts.

## AUSTRIA

### Overview of legal system

Austria is a civil law jurisdiction with a civil code. For public procurement the Federal Procurement Act 2006 (Bundesvergabegesetz 2006) applies. Austria has a relatively stable legislative system. Changes to legislation are driven by EU legislative changes or following consultation and development by the relevant ministries. There are often amendments related to public procurement. A large number of cases have been taken to the competent public authorities to challenge the procurement procedures used, and so case law must also be considered.

### Specific PPP / Concession Law

There is no specific law regarding PPP in Austria. The Federal Procurement Act 2006 (the "Procurement Act") implemented the provisions of the EU Directives 2004 / 18 / EC and 2004 / 17 / EC. This provides the legal framework for all public tenders by public authorities. It includes rules for specific procurement procedures (e.g. competitive dialogue) customised for PPP projects. The Procurement Act sets out regulations regarding works concessions as well as service concessions.



Unlike some Central European countries there are no specific legal obstacles to concession models (e.g. there are no restrictions on ownership of land for public infrastructure).

Austrian public procurement law provides a solid basis for PPP projects. There is no consideration/need for a specific PPP law.

### **SERBIA**

PPP legal framework in Serbia is identified in a specific law: **Law on Public-Private Partnership and Concessions** which entered into force in 2011. For all investment assets in PPP project the provisions of this law are applied, as well as the relevant provisions of the other laws governing relevant field.

Other laws governing relevant field are:

- Law on Public Procurement
- Law on Public Property
- Law on Public Companies
- Law on Foreign Investments
- Law on Budget
- Law on Communal Activities

The Law on Public-Private Partnership and Concessions regulates:

- conditions and methods of preparing, proposing and approving PPP projects;
- who are entities relevant or authorized for proposing and implementation of PPP;
- rights and obligations of public and private partners;
- form and content of PPP contract, with or without the element of concession and legal protection in the procedures of awarding public contracts;
- terms and conditions of the concession, the subject of the concession, the subjects relevant or authorized for the procedure of granting concessions, the termination of the concession;
- protection of the rights of participants in procedures of awarding public contracts;
- establishment, status and powers of PPP commission;
- other issues of importance to PPP, with or without the element of concession.

### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

PPP framework is defined in **Law on Concessions and Public Private Partnership** which entered into force on 15 March 2012.

The law covers the following areas:

#### **CHAPTER I - GENERAL PROVISIONS**

- Definitions of Terms
- Public Private Partnership
- Combined contracts
- Awarding State Aid
- Principles
- Concession Fee
- Exceptions of Application
- Ownership Right
- Special Purpose Company
- Public Private Partnership Council
- Competent Authority for Public Private Partnership
- Application of the Law on Public Procurement and Other Special Laws



- Preparatory Works for Awarding Concessions for Goods of General Interest and Contracts Establishing a Public Private Partnership
- Procedure Initiation
- Contents of the Decision on Procedure Initiation
- Contents of the Contract Notice for contracts establishing a Public Private Partnership
- Commission for Procedure Implementation
- Competences of the Commission

### **CHAPTER II - PROCEDURE FOR AWARDING A CONCESSION FOR GOODS OF GENERAL INTEREST**

- Tender Documentation
- Contents of the Tender Documentation
- Amending and Modifying the Tender Documentation
- Tender Documentation Fee
- Additional Questions Concerning the Tender Documentation
- Guarantee for Participation in the Procedure
- Public Call for Awarding a Concession for Goods of General Interest
- Manner of Submitting Tenders
- Deadline for Submitting Tenders
- Criteria for Selection of the Winning Tender
- Public Opening of the Tenders
- Evaluation of Tenders
- Evaluation Report
- Decision on the Winning Tender Selection
- Deadline for Adopting a Decision on the Winning Tender Selection
- Content of the Decision on the Winning Tender Selection
- Decision on Cancellation of the Procedure for Awarding a Concession for Goods of General Interest

### **CHAPTER III-CONTRACT FOR CONCESSION FOR GOODS OF GENERAL INTEREST AND CONTRACT ESTABLISHING A PUBLIC PRIVATE PARTNERSHIP**

- Contract Period
- Conclusion of Contract
- Amendments to the Contract
- Transfer
- Cases of Termination of a Concession and a Public Private Partnership
- Unilateral Termination of the Contract for Concession for Goods of General Interest or the Contract establishing a Public Private Partnership by the Concession Grantor or the Public Partner
- Unilateral Termination of the Contract for Concession for Goods of General Interest or the Contract establishing a Public Private Partnership by the Concessionaire or the Private Partner
- Consensual Termination of the Contract for Concession for Goods of General Interest or the Contract establishing a Public Private Partnership
- Rules for Awarding Additional Works and Services to Public Works Concessionaires and Public Service Concessionaires
- Subcontracting
- Planning of Funds
- Request for Approving Funds
- Applying the Law on Obligations

- Rules Applied to the Works Contracts Awarded to Third Parties by Private Partners Conducting a Public Private Partnership established as a Public Works Concession

### CHAPTER IV - SUPERVISION

### CHAPTER V - LEGAL PROTECTION

### CHAPTER VI - REPORT AND REGISTER OF AWARDED CONTRACTS

- Report on Uncompleted Procedure
- Register of Awarded Contracts
- Notification on Changes in the Contract

### CHAPTER VII - TRANSITIONAL AND FINAL PROVISIONS

- Application of Provisions
- Regulations on Enforcement of the Law
- Compliance Obligation
- Continuation of the Work of the Public Private Partnership Council
- Obligation for Submitting Data
- Termination of Application
- Entry into Force

## 3.2 INSTITUTIONAL FRAMEWORK

### ? Which bodies/institutions are involved in the implementation of PPP legislation?

#### SLOVAKIA

PPP is coordinated by the **Slovak Ministry of Finance, Department of PPP** responsible for development of desirable environment for PPP project and for implementation of technical assistance for PPP. More specifically, the role of the ministry during the preparation and realization of PPP projects is:

- **regulatory function** (together with the Statistics office provides opinions on draft PPP contracts regarding their impact on public debt and deficit according to the common methodology ESA 95)
- **methodological, supportive and control function** (technical assistance for PPP, consultations for public sector, publication of methodical guides and monitoring of the compliance)
- **function of knowledge and communication centre** (trainings and seminars on PPP, support to exchange of experience between the PPP stakeholders, support for new PPP projects)

**Association for PPP** – represents the private entities involved in PPP projects.

#### SLOVENIA

Pursuant to Article 20 of the *Public-Private Partnership Act* the **Ministry of Finance** shall monitor, advise and participate in the selection, evaluation and realisation of PPP projects in line with the regulations. Within the Ministry of Finance there are two directorates competent for carrying out the activities in the field of PPP:

**The Public Procurement Directorate** is responsible for drafting public procurement legislation, harmonising Slovenian national law with the EU acquis, preparation of materials for the working groups of European institutions, preparation of samples of tender documentation, carrying out joint

public procurement procedures, development of e-public procurement, interpretation of public procurement legislation and giving advice to contracting authorities, monitoring the implementation of public procurement rules, organisation of expert training, preparation of analyses regarding the public procurement system, cooperation with foreign institutions in the field of public procurement and ensuring public access to expert literature and information. The bodies working within the Public Procurement Directorate are: Department for Public Procurement System, Department for Public Procurement Procedures and Department for Electronic Procurement, Interpretation and Analyses;

**The Public Property Directorate**, within which there is a special Department for Public-Private Partnership and Public Procurement System which is responsible for harmonising Slovenian national law with the EU acquis, providing advice to the public sector on preparing and assessing projects, drafting legislation in the field of public-private partnership, keeping records, monitoring the realisation of projects and cooperation with foreign institutions.

**The Government of the Republic of Slovenia Council for Public-Private Partnership** is appointed by the government for the purposes of examining the policy and providing consultation in the field of public-private partnership. It is led by the Minister of Finance. The membership of the Council comprises independent experts (two from the economic and two from the legal field) as well as representatives of certain ministries (of finance, economy and transport) and of the Government Office for Local Self-Government and Government Office for Development and European Affairs.

### **BULGARIA**

**Ministry of Finance of the Republic of Bulgaria** is responsible for the implementation of PPP legislation.

### **HUNGARY**

In accordance with its statutory mandate, the Government has taken a decision (2028/2007.(II.28)) on the application of new forms of developments and service co-operation between the public and private sector (PPP), and set out the functions of the **Inter-Ministerial Committee**. On 28/02/2007 the Government entered into force the statute 24/2007. (II.28.) governing the commitment of long-term liabilities. Accordingly, before the contract the project has to be included in the **long-term development ranking**, which includes projects in priority order with the definition of the expected annual payments. The ranking is reviewed and approved by the minister responsible for national developments, thus ensuring that the government imposed statutory liability cannot exceed the framework, and within that major improvements will be implemented in the national economy. The government's decision provides that the Inter-Ministerial Committee has to work out the economic calculation methodology, in addition to give proposal for the unified state procedures, and for changes in the law. It is also necessary to prepare the progress report for the Government on the previous year's activities in PPP projects each year up to 31/March.

### **GREECE**

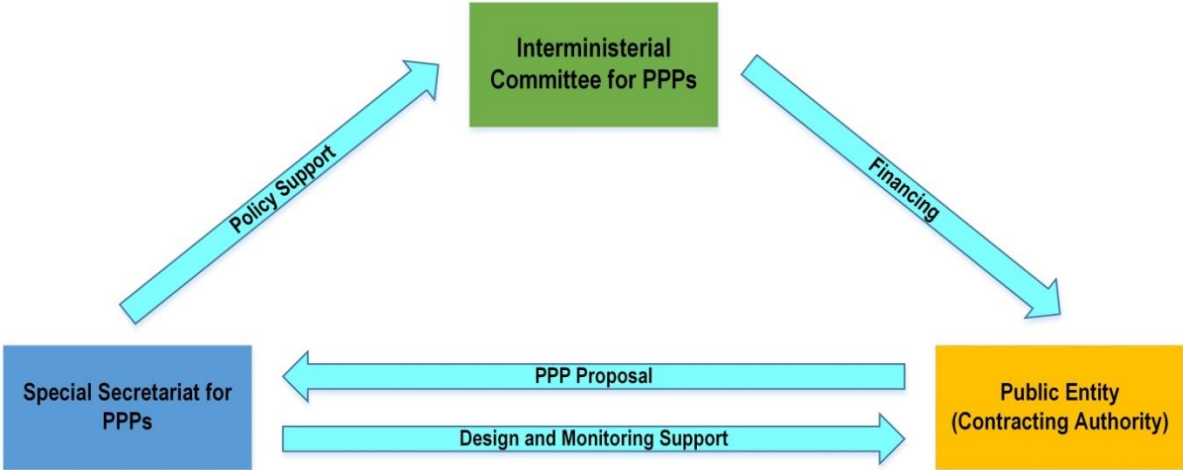
#### **Administrative Bodies**

Under Law 3389/2005, two new administrative bodies have been established, aiming at the support of Public Authorities, in order to improve the effective preparation and management of PPP projects.

The **Inter-Ministerial Committee for PPPs (IM PPP Committee)** is a collective governmental body that defines and specializes PPP policy, approves PPP projects that fall under Law 3385/2005 for the provision of infrastructure and the delivery of services by private funds, and coordinates and monitors the implementation of PPP projects.

The **Special Secretariat for Public-Private Partnerships (PPP Unit)** has been established within the Ministry of Economy and Finance. This Special Unit follows the structure and role of equivalent units in other Member States of the European Union for the promotion and implementation of PPPs. It identifies projects that can be delivered via a PPP scheme, promotes their implementation and provides support and assistance to the **Inter-Ministerial Committee for PPPs** and to the **Public Entities** in the context of all necessary procedures for the finalization of a PPP project. Its main tasks involve the following:

- the identification of the works or services which might be constructed or provided through Partnerships and be included under the provisions of Law 3389/2005,
- the evaluation of the proposals submitted by public entities and their subsequent forwarding to the Inter-Ministerial PPP Committee for approval,
- the promotion in general of the construction of works or the provision of services through the Partnership framework,
- the facilitation and support of Public Entities in pursuing contract award procedures, as defined in Law 3389/2005, for the selection of Private Entities,
- the monitoring of the implementation of Partnership Contracts.



**Parliament Ratification**

According to the new legal framework (Law 3389/2005), parliament ratification of PPP contracts is no longer needed.

Ratifying concession agreements by Law cannot be considered as a viable solution or deemed necessary, although in the past this was proven useful for the resolution of legal issues.

Before Law 3389/2005, the ratification of concession agreements by the Parliament was needed to validate the result of the tender award procedure, to establish the rights of the contractor and, often, to include deviations from special clauses, in order facilitate and accelerate the implementation of a project (for example precipitation of licenses, special tax status, etc.). Of course, the legislative ratification had certain drawbacks. It caused both legal issues (for example, the twofold legal character of concession agreement: is it a contract or legal framework? How is it modified?) and practical issues as well (for example important delays in the contract award procedures).

According to Law 3389/2005, the legislative ratification is no more necessary as:

- the minimum content of a Partnership Contract is clearly determined (article 17),

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- the new legal framework is explicit and flexible and limits the need for deviations and hence the need for ratification by the Parliament, (the contracts are subject to the terms of the Partnership Contract and also the Greek Civil Code) and
- chapters 5 and 6 resolve issues that in the past required special legislative regulations (granting of permits, archaeological finds, protection of the environment, expropriations, etc.).

### **Administrative Bodies Involvement**

As far as the procedure followed, the interested **Public Entities** must file an application.

The **Special Secretariat for PPPs** receives the applications and collects the information necessary to decide which projects or services can be implemented through Partnerships, and evaluates the financial and technical parameters, as well as the associated legal and other issues.

The **Special Secretariat for PPPs** then proceeds to draw up a non-binding list of projects and services (*List of Proposed Partnerships*) that may be implemented through Partnerships and may be included to the provisions of Law 3389/2005. For each project or service included in the *List of Proposed Partnerships*, the **Special Secretariat for PPPs** draws up a brief report setting out its rationale for:

- the financial, technical, socio-economic and legal reasons for which it considers that the construction of the specific projects or supply of the specific services ought to proceed by means of a Public-Private Partnership,
- the criteria that it has taken into account to select the specific projects or services that have been included in the List of Proposed Partnerships,
- the actions which may have been taken by the Public Entity involved to meet the needs of preparing the award of the relevant Contracts, such as, for example, the recruitment of financial, technical and legal advisors, the elaboration of preliminary design and / or studies and the preparation of draft contracts,
- the form of the proposed Contract Award Procedure, which is deemed most appropriate for the particular case, as well as the Public Entities acting as commissioning authorities,
- an indicative timetable of the Contract Award Procedure
- a report of the indicative budget of the project or services to be undertaken by the partnership under the Contract.

Then, the **Special Secretariat for PPPs** notifies the *List of Proposed Partnerships* to the competent **Public Entities**.

Within two months from the receipt of the relevant notification, the **Public Entities** may file an application with the **Inter-ministerial Committee for PPPs** requesting the subjection of a specific partnership to the provisions of the Law 3389/2005 (*Application for Classification*).

The **Inter-ministerial Committee for PPPs**, within two months from the transmission of the *Application for Classification*, renders its Decision (*Decision on Classification*), which approves or rejects the application.

Should the **Inter-ministerial Committee for PPPs** approve the proposed Partnership, the **Special Secretariat for PPPs** assumes the coordination of the Awarding Procedures.

## **ROMANIA**

The General Secretariat of the Government through his body organised at general directorate level named **Central Unit for the Coordination of the Public-Private Partnership** (UCCPPP) with the

fundamental role to provide guidance and monitoring of public and private investors interested in the activity of organizing and progress of a public-private partnership project, under the law.

This regards:

- verify each contract notice or other documentation complementary/submitted forwarded by the public partner for publication in electronic procurement system (SEAP) in the Official Journal of the European Union, if the project value exceeds 5 million EUR;
- within two working days of receiving the notice of the SEAP, UCCPPP has the obligation either to issue the publication to the SEAP operator for the advert, where upon examination there are no errors/omissions, or to reject the publication of the notice, if there are errors/omissions, while informing the public partner of this decision and how the errors/omissions can be rectified;
- elaborates the annual national strategy for promoting and implementing the public-private partnership projects and subjects it for the government approval;
- aims, verifies and reports regularly to the Government implementation of national strategy for promoting and implementing public-private partnership projects;
- establishes and promotes procedures for identifying and carrying out projects of public-private partnership and supporting of all public partners in preparing and implementing public-private partnership projects;
- constitutes and manages the integrated public database, unique and updated of all the public-private partnership projects announced, and those in progress or completed;
- updates and ensures maintenance and operation of the processing system, collection and management information and statistical data on the progress of public-private partnership contracts in central and local level;
- ensures the promotion of the concept of public-private partnership projects;
- develops, based on its analysis and the verification, synthesis documents relating to the conduct of public-private partnership projects;
- participates, through representatives at the invitation of the public partner, according to the law in force in the evaluation and negotiation committee set up in order to choose the private investor and the signature of public-private partnership contract with it;
- identifies and ensures the dissemination at national level of the best practices in public-private partnership domain;
- establishes contacts the stay in touch on issues of investment through public-private partnership projects with governmental and nongovernmental organizations, and foreign and local investors;
- facilitates the contact between local and foreign investors and public partners for the joint execution of projects under public-private partnership;
- may represent The Romanian Government at the meetings on public-private partnership organized at national or international level;
- issues recommendations on structuring public-private partnership projects, given the impact on the level of public sector lending and the borrowing limits at national or local level;
- monitors with public partners the progress of implementation of public-private partnership projects and coordinates activities required to implement them properly;
- administers professional assistance to the public partners and the interested investors, in all phases of a project of public-private partnership;
- ensures expert advice necessary for the establishment and functioning within the public authorities in the internal units for coordination of public-private partnership projects;
- ensures the verification of the selection process' stages of the private investor, after the publication of the selection notice to the selection of the private investor and conclusion of the contract.

### AUSTRIA

As mentioned there is no specific law regarding PPP projects in Austria. The Federal Procurement Act 2006 (the “Procurement Act”,) which implemented the provisions of the EU Directives 2004 / 18 / EC and 2004 / 17 / EC, provides the legal framework for all public tenders by public authorities.

**The Federal Public Procurement Office** (hereafter “the Office”) is tasked with the review of procurement decisions taken by public contracting authorities on federal level. Economic operators who consider their right to the lawful carrying out of a public procurement procedure has been infringed may thus seek redress through the Office.

#### Evolution and Organisation

The foundation for the Office’s function – the effective examination and review of federal public procurements – is established by the Austrian Federal Procurement Act of 2006 (BVerGG 2006). By statute, the Office is an institution with sovereign rights and is empowered to decide on claims seeking the annulment of decisions taken by public contracting authorities, interlocutory injunctions and judicial declarations in cases where a contract is not awarded to the “best tenderer.” The Office was furthermore established as a self-assessing federal judicial review authority whose decisions may be appealed before the Austrian Administrative Court and Constitutional Court.

Three-member “senates” decide in the first and last instance on applications lodged by tenderers or candidates, with the senate chairman deciding alone only on interlocutory injunctions. The senate chairman heads and conducts proceedings assisted by two assessors – one each representing the economic operator side (delegated by the Federal Economic Chamber or Federal Chamber of Architects and Chartered Engineering Consultants) and the contracting authority side (e.g., representatives of the Federal Ministries). All senate members are independent and not bound by instructions from outside bodies, thus meeting the requirement for independent tribunals in terms of Article 6 of the European Convention on Human Rights.

### SERBIA

Institution responsible for the implementation of PPP legislation is **Ministry of Finances and Economy. Commission for PPP** is responsible for providing expert consulting during implementation of PPP projects. Commission is established by the Government at the proposal of Prime Minister, Ministry in charge of economy and regional development, Ministry in charge of finance, Ministry responsible for infrastructure, Ministry responsible for mining, Ministry in charge of utilities, Ministry responsible for environmental protection, autonomous regions and local communities.

### FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Responsible bodies for the implementation of the PPP legislation are:

#### Ministry of Economy

- Responsible people:
  - The Minister of Economy
  - State Counsellor for Human Resource Management, Legal Affairs, Financial Issues, Information and Communication Technologies
- Department:
  - Sector for Legal Affairs - Department for Public-Private Partnership and Concessions

#### Secretariat for economic policy, structural reforms and investments

- Responsible people:
  - Vice-Prime Minister in charge of economic affairs
- Department:



- Cabinet of the Vice-Prime Minister in charge of economic affairs

### 3.3 TYPES OF PPP

- ? Which types of procurement procedures are possible for PPP projects based on national legislation and what are the legislative limitations, if any?
- Open Procedure
  - Restricted Procedure
  - Negotiated Procedure
  - Competitive Dialogue

Partners were asked to give information on the types of procurement procedures that are possible for PPP projects in their respective countries and to provide possible legislative limitations. In all countries except Romania and Hungary all four types of procedures are possible but there are national legislative limitations as to which procedure is to be used in certain circumstances. Restricted procedure is not mentioned in Romania. In Hungary, there are three national procedures possible (purchase based on 1 or 3 offers and purchase based on national procedures) and are selected based on the value limit.

#### SLOVAKIA

The types of procurement are specified in the Law on public procurement, § 24 par. 1 according to which all four following procedures are possible:

- ✓ Open Procedure
- ✓ Restricted Procedure
- ✓ Negotiated Procedure
- ✓ Competitive Dialogue

#### SLOVENIA

The open procedure can be carried out on the basis of the *Public Procurement Act* and the *Public Procurement in Water Management, Energy, Transport and Postal Services Area Act*. However, it can not be carried out on the basis of the *Public Procurement for Defence and Security Act*.

The restricted procedure can be carried out on the basis of the *Public Procurement Act*, *Public Procurement in Water Management, Energy, Transport and Postal Services Area Act* and the *Public Procurement for Defence and Security Act*.

The negotiated procedure can be carried out in two ways: without prior publication or after prior publication of contract notice, in both cases on the basis of the *Public Procurement Act*, *Public Procurement in Water Management, Energy, Transport and Postal Services Area Act* and the *Public Procurement for Defence and Security Act*.

The competitive dialogue procedure is carried out when the public contract is too complex to carry out the open procedure or restricted procedure, whereby the selection criterion is the most economically advantageous tender. The competitive dialogue procedure can not be used in case of PPP partnership in water management, energy, transport and postal services sectors. In those cases the negotiated procedure is used whereby the provisions on competitive dialogue laid down in Article 46 of the *Public-Private Partnership Act* are used.



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The competitive procedure is possible on the basis of the *Public Procurement for Defence and Security Act*.

Pursuant to Article 46 of the *Public-Private Partnership Act* the competitive procedure can not be used in cases when the lowest price is the only criterion.

In addition to the procedures described, the legislation of the Republic of Slovenia also provides for the tender collection procedure with prior publication of an information notice, the procedure for awarding low-value public contracts and the design contest.

### BULGARIA

In Bulgaria, all four procedures are possible.

### HUNGARY

The Public Procurement to be followed is selected according to the national value limit. There are 3 national procedures for purchasing products and services:

- purchase based on 1 quotation
- purchase based on 3 quotations
- purchase based on national procedures

The unified limits of the central announcement of EU public procurement tenders are the followings:

- The limit is Euro 200,000 in case of procurement of goods and services for central entities, local governments and regional organisations
- In case of central governmental entities the limit is Euro 130,000
- In case of public utilities, energy and telecommunication service suppliers the limit is Euro 400,000- 600,000
- In case of procurement related to investments and building, the limit is Euro 5 million

In case of **procurements below the limits**, announcement is available in national framework. The principles of public law prevail at this point as well (four human rights, free flow of capital, persons, goods and services, and prohibition of discrimination, etc.), moreover, public laws which are implemented in the national law and order of the member states regardless the limits of value also prevail.

The Community regulates the procurement market with six directives which contribute to the realisation of objectives. Four of them are:

- Investment in building
- Procurement of goods
- Purchasing services
- Related to procurement for public utilities

Two further legal directives regulate the compliance with the above mentioned provisions and the sanctioning of violating them. Harmonisation is not executed at the same pace in different countries.

#### **1. Public procurement related to building**

In case of investments in building in the form of public procurement, the above mentioned directives are regulated by the directive 71/305/EGK (directive of coordinating building), concerning public procurement at which the **expectable value of investment exceeds Euro 5 million** (without VAT). It was followed by the directive 93/37/EGK, which regulates the public procurement related to building

from the above mentioned limits in a unified structure. The first appendix of the directive details the customers whose purchase should be done with the application of the directive. The second appendix details building activities which belong to this field. The directive applies to all public procurements which were financed from public funds more than 50%. (It does not apply to transportation, water management, energy and telecommunication- the procurement of these is regulated by the directive 93/38/EGK.)

Until 1992, announcing the so called preference tenders was available at procurements which were under the effect of the directive. At this type of tender the criteria of gaining the contract could be the consideration determined by the announcing party instead of the most reasonable price.

**Such contracts include execution of investments and designing, executing them.** The person announcing the tender is in charge of determining the work of the contract's objective. According to the directive, the concept of building investment: 'the result of some building or architectural activity, which is able to fulfil economic and mechanic functions on its own.' The limit of procurement of governmental building investments is Euro 5,000,000. Public directives must be applied to investments exceeding this limit.

### **2. Public procurement related to purchasing goods**

The directive 93/36/EGK prevails in case of procurement of purchasing goods. It is applied to **procurements where the value of procurement is at least Euro 200,000** without VAT. The directive is applied not only to purchase but also to leasing and rental contracts exceeding the limit. The provisions of the directives concerning disclosure of the intention of purchase and its technical regulations are the same as the provisions of the related building directives.

### **3. Public procurement related to services**

Public procurement related to services is regulated by the directive 97/52/EK (directive 92/50/EGK was modified by this directive), **it shall be applied in case of purchase exceeding Euro 200,000**. According to the directive, these contracts include property contracts written by the procuring entity and the service provider for the sake of providing service.

The concept of service is determined by the directive as activities which cannot be related to goods procurement or building investments and are not contracted by public utilities.

The services (construction, repairing, insurance, book keeping, advertising, data processing, organising, transporting waste and money, etc.) are divided into two categories by the directive. This division is based on the extent of application of the directive to the given service: priority services and non- priority services. Stricter rules are applied at the purchase of the former services. Classification of certain services is modified by the Committee time by time.

Public procurements related to building and transportation of goods are regulated by a separate directive (89/665/EGK).

### **4. Public procurement related to public utilities**

The first laws concerning public procurement did not deal with public procurements related to public utilities. The Committee accepted the so called 'sectoral' directive (93/38/EGK) only in 1990, which regulates public procurement related to water management, energy and transport systems and telecommunication. The directive of procurement of public utilities deals with the operation of

systems which ensure services connected to producing, transporting and distributing drinking water, electricity and gas for the public, moreover, it deals with telecommunication, railway, tram and bus systems.

### **5. The content of public procurement directives related to particular areas**

The structure of certain directives is more or less the same, taking the characteristics of the object of procurement into account. They regulate:

- **the concept of the contracting authority.** It can be the state, state institution and all kinds of regional or local authority which serve public interest do not have industrial or commercial interest, their activity is financed by the government or local government, or they operate under the supervision of these.
- **way of competitive tenders, their compulsory announcement.** This can be three kinds: opened procedure, closed procedure, in which only the invited bidders can participate. The third type of procedure is a so called negotiating procedure: The latter procedure shall be applied only in case certain criteria are given (for example, there is no considerable offer in response to the announcement of tender, only one transporter is able to meet the technical requirements). The fact of procedure and the criteria of selection shall be disclosed. The offerers have the right to get to know the reason of not being accepted, the winner, etc.
- **how the technical conditions of announcement was determined, the use of European standards.** Announcement with national standards is limited. It is prohibited to name goods or patent which are related to a given transport group.
- **public disclosure of announcement.** The directives detail the types of information to be disclosed in certain cases on the official website of the EU (Official Journal Supplement), moreover in the public database of tenders (TED = Tenders Electronic Daily). Only word for word publications presented in the original language shall be decisive criteria. The announcement can be presented with the same text in the given member state and not earlier than the official website of the EU. At least 52 days shall be left for offers in case of public tenders, in other cases it is at least 37 days, in urgent cases it can be decreased to at least 15 days.
- **conditions of participation and criteria of approval.** Communities of bidders are permitted, creating legal form for that is not necessary. Cases of exclusion from tendering are detailed separately (bankruptcy proceedings, remainder of tax and social security, etc.), moreover, justifications of financial and economic efficiency, list of technical references.
- **criteria of decision, conditions of granting.** The directives allow the member state to decide whether it aims to set up the criteria based on the lowest price or economically the most beneficial offer. The related evaluating criteria shall be disclosed in the latter case.

### **Limits of value**

#### **GOVERNMENTAL PROCUREMENT ENTITIES**

##### **Procurement of goods and services**

General limit of value in case of organisations under the effect of GATT/WTO agreement Euro 200,000 Euro 130,000

##### **Orders of building**

Euro 5,000,000

### PROCUREMENT ENTITIES RELATED TO PUBLIC UTILITIES

#### Procurement of goods and services

Water and energy suppliers, Telecommunication suppliers Euro 200,000  
Euro 600,000

#### Orders of building

Euro 5,000,000

### 6. Directives of legal remedy

Controlling compliance with directives related to public procurements is regulated by separate directives (89/665/EGK, and in case of procurement of public utilities: 91/13/EGK). They prescribe the types of legal regulations which ensure the objective and efficient realisation of controllability, remedy of complaints, annulling illegal steps and possible compensations, etc.

Common regulation within the EU evoked problems in cases of legal remedy. **There is usually no independent national authority in the member states which deals with solely the questions of public procurement, hence most of the member states are incapable of enforcing their obligations and rights concerning fast and efficient legal remedy formulated in the directives.**

The rules of legal remedy are procedural and organisational rules. The procedures can take place on the level of nation and community as well. The national legal remedy is the main rule. The procedure starts with complaint; it is allowed to appeal to court against the competent authority.

**Common legal remedy** can be asked from the Committee, if the contract has not been judged and violation of law is evident. The Committee decides whether it intends to appeal to the European Court or not after the position taken up by the given member state and the given procurement entity. In case of the procurements of public utilities, legal remedy can be done with conciliation and attesting. The latter is preventive measurement, with the involvement of external experts.

The directive 93/13 introduced the so called validation procedure. In case of this, external experts-determined in the law of the member state- scrutinize and validate the procedure of public procurement of the member states' authorities. 34 enforcing procedures were launched between 1994 and 1996. According to the related green book, 85% of organisations obliged to public procurement do not apply the community rules at their public procurements.

### 7. Transparency at public procurements

The Committee has done a lot for the sake of spreading the knowledge related to public procurement in the member states. One of the most significant measures is the fact that it worked out the Common Procurement Vocabulary (CPV). It helps avoid misinterpretation, misunderstanding of expressions which are most commonly used in public procurements related to building, purchase of goods, services- with interpretation in several languages.

Tendering announcements are disclosed for public in the 'S' notes of the EU Official Gazette. The information is available electronically as well. Besides TED data bank, an information system related to public procurements has been worked out under the name of SIMAP (Information system for public procurement).

### **GREECE**

According to Law 3389/2005, all the above mentioned types of procurement are possible.

### Open Procedures

It means those procedures in which any interested Private Entity may submit a tender, provided that it is qualified and able as required by the Invitation to Tender.

### Restricted Procedures

It means those procedures in which any Private Entity may request to participate, provided that it is qualified as able. In the second stage, only these Private Entities meeting the qualification criteria are invited by the Contracting Authority to submit a Tender.

### Competitive Dialogue Procedures

The competitive dialogue is a new procedure introduced by the EU Directive 2004/18/EC. It means those procedures in which:

- Any Private Entity may request to participate.
- The Contracting Authority will publish an Invitation to Tender setting out its needs and requirements.
- The Contracting Authority will open with the candidates selected a dialogue, the aim of which is to identify and define the means best suited to satisfy the Authority's needs.
- After selecting the solution or solutions which best meet its needs, the Contracting Authority will declare the dialogue concluded and inform accordingly the candidates, inviting them to submit their final tender on the basis of the solution(s) selected during the dialogue.
- The Contracting Authority will evaluate the tenders and choose the most economically advantageous Tender.

The Competitive Dialogue Procedure may take place in successive phases, in order to reduce the number of solutions being examined during the dialogue phase by applying the contract award criteria indicated in the Invitation to Tender.

If the Contracting Authority deems that the cost of participation in the Competitive Dialogue Procedure is high, it may award prizes or pay part of the respective expenses incurred by the Tenders.

### Negotiated Procedures

It means those procedures whereby the Contracting Authorities consult the Private Entities of their choice and negotiate directly with them the terms of the Contracts that will eventually be executed with one or more of these Entities.

The Contracting Authority is entitled to determine that the Negotiated Procedure may be carried out in successive phases, thereby reducing the number of Tenders examined by applying the contract award criteria laid down in the Invitation to Tender. Reference to this option shall be made in the Invitation to Tender or in a separate document communicated to all the candidates.

**LIMITATIONS FOR THE PROCUREMENT PROCEDURES** are described from Article 9 to Article 16 of the Law 3389/2005. The main points are:

### General Principles

Beyond specific regulations related with the award of PPP contracts, it must be noted that Law 3389/2005 **is in line with the general principles applied under both National and Community law.**

- The principle of *Equal treatment* requires the avoidance of any discrimination on the basis of nationality or any other criterion that can't be objectively justified. The application of this principle entails not only defining non-discriminatory terms of access to an economic activity,

but also the adoption and application by the public authorities of all measures necessary to ensure the exercise of this activity.

- The principle of *Transparency* means that the contracting Authority ought to publicize its intention to conclude a Work Contract, Service Contract or Mixed Contract, in order to ensure conditions of fair competition without distortion.
- The principle of *Proportionality* means that any measure adopted by the Contracting Authority should be necessary and suitable for attaining the respective objective, and cause the fewest possible problems in the exercise of an economic activity. In the specific context of the Contract Award Procedures, there ought to be no requirements for technical, professional or financial capabilities that are disproportionate or excessive in respect of the object of the Work Contract, Service Contract or Mixed Contract in question.
- The principle of *Mutual Recognition* means that the Contracting Authority ought to accept the technical specifications, controls, qualifications and certifications required in another member state of the European Union, insofar as these are recognized as equivalent to those required in Greece.
- The principle of *Protection of the Public Interest* means that all decision-making concerning the award of a Work, Service or Mixed Contract ought to take into account the following factors:
  - the respective funding needs, and the need to minimize as far as possible the financial burden or contribution of the Contracting Authority,
  - the needs of the users for improved services, and
  - the need to employ specialized know-how
- The principle of *Protection of the Rights of Private Individuals* means that all decisions – positive, negative or decisions to reject proposals – must be properly reasoned and may give rise to judicial protection for Private Entities and private individuals in general. The concept of judicial protection also includes the notion of provisional judicial protection.
- The principle of *Free Competition* means that:
  - there should be the greatest possible involvement of candidates capable of constructing the works or providing the services desired by the Contracting Authority,
  - the competition should be conducted on equal terms and using objective criteria, and
  - the creation of monopolistic or quasi-monopolistic situations or distortions should be avoided.
- The principle of *Protection of the Environment and Sustainable Development* requires that the planning and implementation of the Work, Service or Mixed Contracts ought to take into account that the natural and man-made environments are assets that must be protected per se, in order to maintain the environmental balance, and to preserve natural resources for the sake of coming generations.

The adherence to all above mentioned principles aims at ensuring conditions of true competition for all involved private entities.

### **Competitive Dialogue Procedures**

Only in the case of Particularly Complex Contracts<sup>1</sup>, where the Contracting Authority consider that the use of the Open or Restricted Procedure will not permit the awarding of a particular contract.

### **Negotiated Procedures**

The Contracting Authority may use the Negotiated Procedures in the following cases:

- After an Open or Restricted Procedure, or Competitive Dialogue, provided that:

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<sup>1</sup> **Particularly Complex Contract:** It means any contract whose basic parameters (technical, financial, functional, legal or other) cannot be objectively defined *ab initio* by the Contracting Authority.

## Summary Report

- The Tenders submitted were unacceptable under the provisions of Law 3389/2005 or did not meet the terms and conditions of this law.
- The terms of the proposed contract are not substantially altered from the terms proposed during the Open or Restricted Procedure, or the Competitive Dialogue.
- In exceptional cases involving works or services whose nature or various non-definable factors do not allow prior overall pricing.
- In the case of Service Contracts and particularly intellectual services contracts, insofar as the nature of the services is such that the specifications of the contract cannot be determined with sufficient precision and for this reason the contract cannot be awarded on the basis of the selection of the best tender according to the rules governing the Open or Restricted Procedures.
- In the case of Work Contracts for works performed exclusively for purposes of research, testing or development, and not with the aim of ensuring profitability or recovering research and development costs.

### Contract Budget

The total contractually budgeted cost for implementing the Partnership object must **not exceed the two hundred million Euros (200.000.000,00 EUR)**, not including the Value Added Tax payable

### Contract object

The Contract Award Procedure that the Contracting Authorities may apply depends on the object of the Contract, i.e. whether a **Work**<sup>2</sup>, a **Service**<sup>3</sup> or a **Mixed**<sup>4</sup> Contract is to be awarded and executed:

		PROCEDURE			
		Open	Restricted	Competitive Dialogue	Negotiated
CONTRACT	Work	Yes	Yes	Yes	Yes
	Service	Yes	Yes	Yes	Yes
	Mixed	Yes	Yes	Yes	No

### Criterion for contract award

Contracts are awarded by the Public Entity acting as Contracting Authority either on **the criterion of the tender being the most economically advantageous**<sup>5</sup>, or on **the criterion of lowest price**, depending on the Contract Award Procedure followed:

<sup>2</sup> **Works Contracts:** It means contracts having as their object either the execution, or both the design and execution related to the realisation, by whatever means, of a work corresponding to the requirements specified by the Contracting Authority.

<sup>3</sup> **Service Contracts:** It means contracts, other than Work Contracts, having as their object the provision of services of any nature.

<sup>4</sup> **Mixed Contract:** It means any contract having as its object not exclusively the construction of works or the provision of services, but containing elements of both these activities.

<sup>5</sup> **The most economically advantageous tender:** In this case, the Contracting Authority will examine and take into account not only the economic parameters but also various other parameters of the contract object, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running cost, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion. These criteria must be clearly specified by the Contracting Authority as part of the Contract Award Procedure. The relative weighting the Contracting Authority gives to each of the criteria chosen to determine the most economically advantageous tender must also be announced to candidates. Those weightings can be expressed by providing for a range with an appropriate maximum or minimum limit (spread). Where weighting is not possible, the Contracting Authority shall indicate the priority of the criteria it has selected, compiling a table in which these criteria are presented in descending order of importance.



		PROCEDURE			
		Open	Restricted	Competitive Dialogue	Negotiated
CRITERION	The lowest price	Yes	Yes	No	No
	The most economically advantageous tender	Yes	Yes	Yes	Yes

**Limits on candidates**

In:

- Restricted Procedures,
- Negotiated Procedures (if conducted with the publication of an Invitation to Tender), and
- Competitive Dialogue Procedures,

the Contracting Authority **may limit the number of suitable candidates** they will invite to tender, to negotiate or to conduct a dialogue with, **provided a sufficient number of suitable candidates is available.**

In the Invitation to Tender, the Contracting Authority shall indicate:

- the objective and non-discriminatory criteria or rules it intends to apply,
- the minimum number of candidates it intends to invite and,
- (where appropriate), the maximum number of candidates it intends to invite.

The Law defines the minimum number of candidates per Award Procedure, as follows:

		Minimum number of candidates
PROCEDURE	Open	No limitation is allowed
	Restricted	5
	Competitive Dialogue	3
	Negotiated <i>(if conducted with the publication of an Invitation to Tender)</i>	3

**In any event the number of invited candidates shall be sufficient to ensure genuine competition.**

The Contracting Authorities shall invite a number of candidates at least equal to the minimum number of candidates set in advance.

**Where the number of candidates meeting the selection criteria and the minimum qualifications and abilities set out in the Invitation to Tender is below the minimum number,** the Contracting Authority may continue the Contract Award Procedure by inviting the candidate or candidates meeting the minimum qualifications and abilities. The Contracting Authority may not include in the Contract Award Procedure individuals who did not request to participate, or candidates who do not have the required capabilities.

**ROMANIA**

In accordance with the provisions of Law No. 178 from 1 October 2010 (Article 18 paragraphs 1, 5, 24), who regulate the public-private partnership and the Government Decision no. 1.239 of 8



December 2010 on approving Methodological Norms for the application of Law no.178/2010, the types of procurement procedure are:

- open procedure, defined as a selection procedure of the private partner which takes place in only one stage, in compliance with the provisions of the present law, and within which any private investor can submit a tender;
- competitive dialogue, defined as a selection procedure of the private partner by the public partner in which any private investor can take part. The procedure takes place in two stages (the assessment stage and the negotiation stage), within which the public partner leads a dialogue in compliance with the provisions of the present law;
- negotiated procedure, is used only by derogation from law provisions and as a matter of exception.

Public partners may award a public-private partnership contract for additional works or services which necessity has emerged as a result of unforeseen circumstances and which:

- Aggregate value not exceeding 50% of the original contract.
- Were not considered either in the initial estimate of the project nor in the public-private partnership contract. Award may be made only to investor who contracted the works and services before the advent of that contingency,
- Can not be separated economic or technically from the original contract without major inconvenience to the public partners.
- Although they could be separated from the performance of the original contract, they are strictly necessary for its completion.

### AUSTRIA

The Procurement Act sets out the following different procedures for the award of public contracts (each specified within the Procurement Act). Some are only available for specific kinds of contract:

**Open Procedure** – A one stage procedure in which any company may participate;

**Restricted Procedure with prior publication of contract notice** – any company may submit a request for participation. Only those who are invited may submit tender;

**Restricted Procedure without prior publication of contract notice** – the contracting authority invites only selected, suitable companies to submit a tender;

**Negotiated Procedure with prior publication of contract notice** – any company may submit a request to participate. Only those who are invited may submit a tender. The terms of the contract are negotiated;

**Negotiated Procedure without prior publication of contract notice** – the contracting authority invites only selected, suitable companies to submit a tender, only those who are invited may submit a tender. The terms of the contract are negotiated;

**Framework Agreement** – These agreements between a contracting authority and one or more companies provide the contractual framework of the terms (price, quantity, etc.) of purchases during a given period (without a commitment to buy products or services). Framework agreements may only be awarded after completion of an Open, Restricted or Negotiated Procedure with prior publication. Purchase orders based on the framework agreement may then be awarded directly;

**Dynamic Purchase Systems** – An electronic procedure used for the purchase of commonly requested items. Any company may submit a non-binding tender. Any company which satisfies the selection

criteria, as well as the specifications for the requested purchases may participate in the dynamic purchase system. To award a contract, all companies within the purchase system are invited to submit a tender for a specific purchase process. The best offer is then chosen based on the criteria determined earlier;

**Competitive Dialogue** – any company may submit a request to participate. The contracting authority conducts a dialogue with selected companies about all aspects of the purchase process to develop one or more suitable solutions that meet the requirements of the contracting authority. On that basis the selected companies are invited to submit tenders;

**Contests** – there are two forms of contests, the realisation contest and the design contest. Design contests, whether open, restricted or invited are conducted only to award a plan or a design selected by a jury. They are mainly used for town planning and architecture, engineering, advertisement and data processing. The realisation contest leads into a negotiation procedure to award a public service contract; and

**Electronic Auction** – This is not a procurement procedure but provides for the possibility of using electronic devices for the presentation of different data within a procurement procedure to automatically select the best tender via an auction process. All contracts with an estimated contract value exceeding EUR 100,000 are subject to the regulations of the Procurement Act.

### SERBIA

In Serbia all four procedures are possible.

### FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The provisions from the **Law on Public Procurement** concerning award procedures for public works contracts and public service contracts shall be adequately applied to the award procedures for contracts establishing a public private partnership, unless otherwise provided by the **Law on Concessions and Public Private Partnership**.

When awarding a contract establishing a public private partnership, the public partner shall apply the **open procedure**, the **restricted procedure**, the **negotiated procedure with prior publication of a notice** or the **competitive dialogue** in accordance with the conditions and in a manner as set out in the Law on Public Procurement.

The public partner may opt not to use an electronic auction in awarding a contract establishing a public private partnership.

The provisions of the **Law on Concessions and Public Private Partnership**, as well as the provisions of the special laws shall apply to the award procedures for concessions for goods of general interest with a compulsory adherence to the basic norms and principles that the procedure for awarding concessions for goods of general interest and contracts establishing a public private partnership shall be implemented in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment and mutual recognition.

## 3.4 PPP PROCEDURE

? Describe the whole PPP procedure according to the national legislation.

### SLOVAKIA

The PPP procedure:

1. **Identification of the opportunity for PPP project** – identification of public needs and specific goals of the project serving the public interest and needs
2. **Feasibility study** – under certain conditions<sup>6</sup> obligatory (for central public administration bodies and for other public bodies according to the law 523/2004), for all cases recommended by the Ministry of Finance; it is necessary to determine whether PPP is more effective than “traditional” contracting; the feasibility study must cover following areas:
  - Strategic context (identification of procurer’s needs, definition of goals and project outputs, analysis of stakeholders, etc.)
  - Analysis of possible options and definition of the preferred one
  - Analysis of feasibility of preferred option – legal and technical due diligence, analysis of tax and accounting belongings of the project, risk analysis, market analysis, compliance with EUROSTAT rules for enrolment of PPP into national accounts
  - Analysis of possibility of project realization – financial analysis and comparison with “traditional” solutions from the financial point of view
  - Payment mechanism definition
  - Procurement preparation and its timeline

Furthermore, the feasibility study must answer following questions:

- Does the PPP bring value for money? Is it more economical than alternative solutions?
- Is the project financially feasible for the public partner?
- What is the payment mechanism for the whole project lifecycle? What is the risk allocation between the contractual parties?
- What is the project impact on the deficit/surplus or public debt?
- Are there any obstacles for project realization through PPP model?

3. **Public procurement preparation** for projects whose feasibility studies were accepted and approved
4. **Private partner selection** following the Law on public procurement
5. **Contracting**
6. **PPP project realization**
7. **Monitoring of performance and contractual compliance**
8. **Project closure**

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<sup>6</sup> Applicable for all PPP projects meeting following conditions:

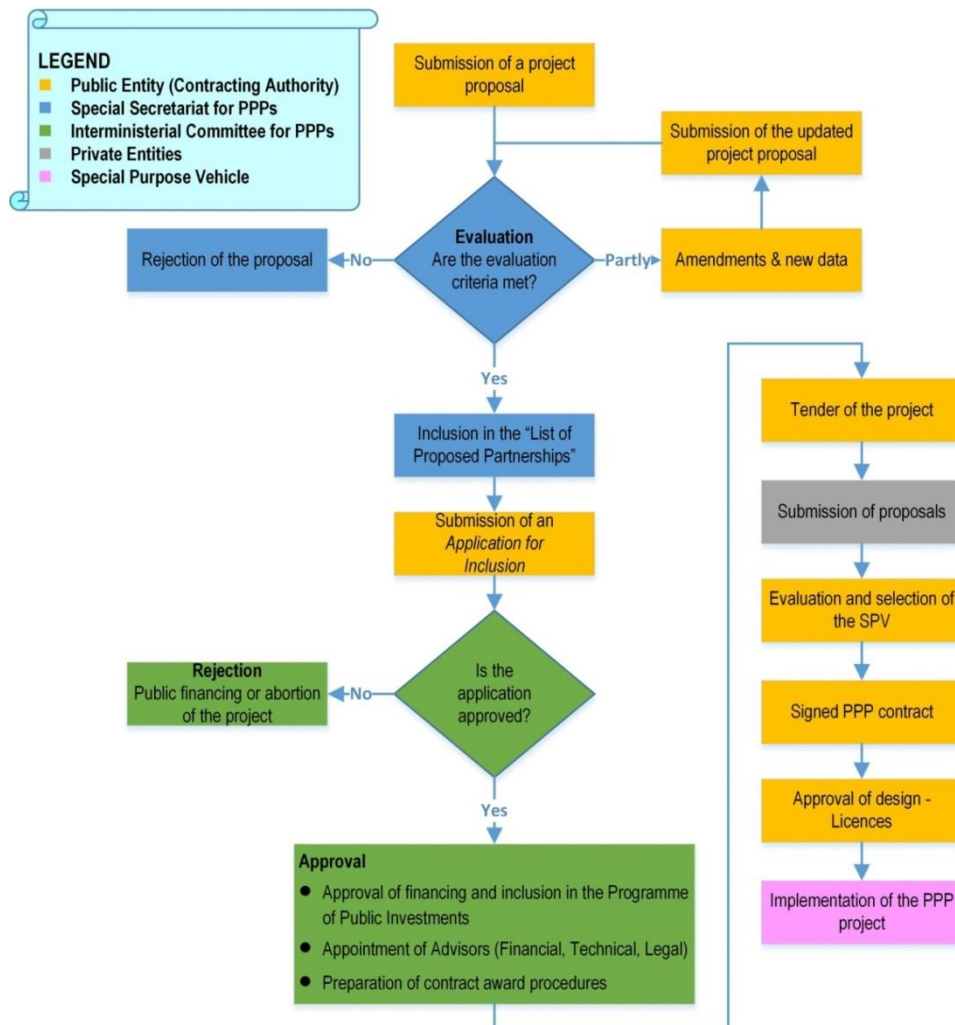
- Private partner is in charge of the delivery and operation of the subject of the contract and provides services related to the delivery and receives payments from the end users or from the public partner as an equivalent to the costs incurred for delivery and operation;
- Contract is concluded for minimum 3 years;
- Private partner bears some of the economic risks related to the realization of the project which otherwise and usually bears the public partner;
- The total investment is higher than 3,319 mil. Eur.

**BULGARIA**

A PPP procedure includes four stages:

Initiation	Assessment	Negotiation	Implementation
<ul style="list-style-type: none"> <li>• Forming a project team</li> <li>• Determination of strategic needs</li> <li>• Definition of strategic needs</li> <li>• Definition of the output file</li> </ul>	<ul style="list-style-type: none"> <li>• Determination of the preferred technical option</li> <li>• Determination of the preferred project option</li> <li>• Hiring an external consultant</li> <li>• Evaluation project options for value for money and affordability of budget</li> <li>• Summarizing the analysis carried out – initial assessment of the project</li> </ul>	<ul style="list-style-type: none"> <li>• Prequalification</li> <li>• Definition of the Short Listing</li> <li>• Submission of the detailed bids</li> <li>• Determination of preferred candidate</li> <li>• Financial Close</li> </ul>	<ul style="list-style-type: none"> <li>• Development strategy for the management of the contract</li> <li>• The project during construction phase</li> <li>• The project during operational phase</li> <li>• Risk management</li> <li>• Specification amendments</li> <li>• Refund</li> <li>• Suspension</li> </ul>

GREECE



3.4.1 Project assessment

- ? Are there any obligatory and legally given steps for project assesment?
- ? How are potential PPP projects identified?
- ? Are there any limitations for PPP procurers? Can any public body or body governed by public law be a procurer for a PPP project?
- ? Is there any central governmental body that identifies the projects or is the identification done by PPP procurers directly?

Project assessment phase steps vary from country to country depending on national legislation. Below is a summary of main topics discussed in this chapter.

COUNTRY	Are there any legally given steps?	Can any public body be a PPP procurer?	Central governmental body identifying the project?
Slovakia	YES	YES	NO
Slovenia	YES	YES (certain limitations apply)	NO
Bulgaria	YES	?	NO
Hungary	NO	?	YES
Greece	YES	YES	YES
Romania	YES	YES	NO
Austria	NO	?	NO
Serbia	NO	YES	YES
Former Yugoslav Republic of Macedonia	YES	YES	NO

### SLOVAKIA

**Feasibility studies** obligatory under conditions stated above, potential impact on the **public debt** must be assessed for central public bodies and self-governing units according to the Law on budgetary rules. The feasibility study must be **approved by the government in case the procurer is a central public body**.

There is no central body universally approving PPP projects, however, depending on the type of public procurer and on the overall value of contract, there are specific conditions to follow (governmental approval for central public bodies concluding contract of value higher than 3,319 million EUR, notification obligation for self-governing units when opening a tender for concession, etc.).

Any public body can be a procurer for PPP project.

As far as PPP procurers are concerned, in Slovakia it is most often a ministry, e.g. Ministry of transport, construction and regional development; Ministry of Culture, Ministry of Environment, etc.

### SLOVENIA

#### **Assessment and identification of PPP projects**

Pursuant to Article 8 of the *Public-Private Partnership Act* the public partner has to assess whether the project can be carried out as a public-private partnership (assessment of the grounds for project feasibility and comparison of options or other projects). **The Assessment** is carried out on the basis of the *Rules on the content of eligibility of execution of a project according to the model of public-private partnership* by comparing the documentation prepared by the public partner with the documentation submitted by the interested person. Projects are assessed on the basis of their lifetime, net present value, internal rate of profitability, results and goals of the traditional or PPP based investment (value for money), and the costs and benefits of invested funds (cost-benefit analysis). The assessment of the grounds for project feasibility does not need to be carried out when the project is co-financed from EU appropriated funds and no private funds are included in its financing (Article 4 of the Rules).

The economic, legal, technical, environmental and other conditions for the realisation of the project are assessed in the preliminary procedure. During the preliminary procedure the investment report is drafted and the basic elements of PPP are defined. This procedure is carried out by the public partner. The assessment of the economic viability of the project is performed by the public partner pursuant to the *Rules on the content of eligibility of execution of a project according to the model of public-private partnership*.

### **Limitations for PPP procurers**

In line with the definition in Article 5 of the *Public-Private Partnership Act*, the contracting authorities are public partners, i.e. the state and self-governing local communities (municipalities and city municipalities). Other public partners can also act as contracting authorities, if they are legal entities under public law established by the state or a self-governing local community or by another person which acts as the public contracting authority pursuant to legal provisions on public procurement. Other public partners can be the contracting authority if this is stipulated by the law or regulation.

**The decision on determining the public interest in concluding PPP and on the realisation of the project is taken by the contracting authority**, i.e. by the government when the government is the contracting authority or by the representative body of the self-governing local community when the local community is the contracting authority (Article 11 of the *Public-Private Partnership Act*). Other public partners can take the decision on determining the public interest only on the basis of the consent given by the founder or the authorisation provided by the law.

The government or the representative body of the self-governing local community is entitled to:

- determine the policy in the field of PPP,
- adopt the legislation that regulates the implementation of PPP,
- adopt the legislation that regulates the payment of services and determines the price of goods and services,
- issue individual acts related to the conclusion, implementation and termination of PPP,
- supervise PPP contractors.

## **BULGARIA**

The purpose of the assessment phase is to **determine the adequacy and scope of the project and preferred method of contracting**. During the evaluation phase:

- All realistically achievable technical options should be examined in correspondence to the strategic needs described in the output documentation.
- All project options shall be examined by taking into consideration all the law limitations and different options for negotiation.
- Tests, assessment and analysis needed to achieve the best value of the invested money and the preferred project option are defined.

The activities carried out during the evaluation stage are summarized in "**Initial justification for the project (POP)**", which serves for:

- documentation and assurance that the project is sufficiently defined and planned before significant resources are devoted to the negotiation phase.
- Planning and preparing ground for the rest of the process.
- Examination of the reasons for the choice of design options and how to negotiate.
- the approval of the responsible authorities, or applications for Grant / financial support.

### **Financial assessment would include:**

- **Estimated Risk proposal** of the candidate and how it differs from the desired allocation of risk. The transfer of risk must be accounted for in the overall assessment of the value of money and can affect the treatment of assets in the balance sheet of the administration.



- **Analysis of financial projections** set forth in the proposed tender, especially in financial model, which is the main topic of the financial analysis team.
- **Summary and comparison of the NPV of bids**, including comparison with ASR and model with "hidden charges". The comparison must take into account all the differences in risks retained by the administration.
- Review of bids by comparing forecasts due fixed payments to the government or resources of affordable proposed charges to end users.<sup>a</sup> <sup>a</sup> View included in the tender conditions and level of funding provided down funding and review the master file funders.
- **Analysis of the payment mechanism**, as proposed by the applicant and particularly its acceptability, impact on the distribution of risks value for money and affordability.
- **Stability and overall financial feasibility of the proposal**, the feasibility of financial projections in the sensitivity analysis (eg, possible changes in economic assumptions or changes in costs).

There is no any central governmental body that identifies the projects. The identification is done by PPP procurers directly.

### HUNGARY

#### PPP project assessment

The ministries decide on the basis of preliminary analysis, which projects can be implemented via PPP structure. The selected projects in greater details are worked out by the ministry that proposed the project. The project draft must include the cumulative value of total annual commitments of PPP and other projects with long-term commitments. The draft on the other hand should also contain information on the project:

- General data affecting the project (project objectives, the social effects of the implementation, international examples) and
- A detailed presentation of project characteristics (maturity, cost estimation, payment, financial payments, risk distribution).

During the construction of the project you may obtain the opinion of two organizations:

- Review of State Aid Monitoring Office examining if government payments to private investors qualify as State aid and
- Review of the Inter-Ministerial PPP Committee that may be important in order to avoid future disputes.

### GREECE

#### Steps for project assessment:

The interested **Public Entities** must file an application.

The **Special Secretariat for PPPs** receives the applications and collects the information necessary to decide which projects or services can be implemented through Partnerships, and evaluates the financial and technical parameters, as well as the associated legal and other issues.

The **Special Secretariat for PPPs** then proceeds to draw up a non-binding list of projects and services (*List of Proposed Partnerships*) that may be implemented through Partnerships and may be included to the provisions of Law 3389/2005. The *List of Proposed Partnerships* is amended and revised by the **Special Secretariat for PPPs** every six months.

The **Special Secretariat for PPPs** notifies the *List of Proposed Partnerships* to the competent **Public Entities**.



Within two months from the receipt of the relevant notification, the **Public Entities** may file an application with the **Inter-ministerial Committee for PPPs** requesting the subjection of a specific partnership to the provisions of the Law 3389/2005 (*Application for Classification*).

The **Inter-ministerial Committee for PPPs**, within two months from the transmission of the *Application for Classification*, renders its Decision (*Decision on Classification*), which approves or rejects the application.

Should the **Inter-ministerial Committee for PPPs** approve the proposed Partnership, the **Special Secretariat for PPPs** assumes the coordination of the Awarding Procedures.

### Project identification:

#### **Conditions for inclusion under the provisions of Law 3389/2005**

Partnerships may be subject to the provisions of Law 3389/2005, provided that all of the following conditions are met:

- their purpose is the construction of works or provision of services in the area of competence of the Public Entities on the basis of a provision of the law, or a contract, or their articles of incorporation,
- it is provided that the Private Entities, against payment to be made as a lump sum or in installments by the Public Entities or by final users of these works or services, shall assume a substantial part of the risks associated with the financing, construction, availability of or demand for the partnership object, and related risks, such as, for example, management and technical risk,
- it is provided that the financing, in whole or in part, of the construction of the works or provision of services, shall be accomplished with capital and resources secured by the Private Entities, and
- the total contractually budgeted cost for implementing the Partnership object does not exceed two hundred million Euros, not including the Value Added Tax payable.

By unanimous decision of the Inter-ministerial Committee for PPPs, it is possible, **in exceptional circumstances**, for Partnerships to be subjected to the provisions of this law, even though one or more of the above conditions are not met.

**Public-Private Partnerships are not allowed to engage** in projects or activities that are the direct and exclusive province of the State, under the terms of the Constitution of the Hellenic Republic, such as national defense, police work, the award of justice, and the execution of judicially imposed penalties.

Law 3389/2005 does not cover the case of partnerships, in which a public entity may participate in the SPV that undertakes a project.

### Proposal of the Public Entity

The **Public Entity (Contracting Authority)** wishing to implement a PPP project may submit a proposal to the **Special Secretariat for PPPs**, which then evaluates the feasibility of the specific project under a PPP scheme. This proposal should include the following:

- Presentation of the Public Entity
- Detailed description of the project / service that will be provided as a PPP
- Technical characteristics of the proposed partnership and timetables
- Presentation of the proposed PPP scheme, which may include the following:
  - Design
  - Built
  - Financing

- Maintenance
- Operation
- Exploitation
- Indicative budget of the proposed PPP project and analysis of the budget according to the proposed PPP form
- Socio – economic criteria, which justify the necessity of the proposed PPP.
- Repayment of the SPV
  - PPP projects repaid by the end-users.
    - Exploitation plan
    - Demand data
    - Competition
    - Forecasted revenues and expenses
    - Forecasted Profit and Loss account of the SPV
    - Basic and alternative scenario
    - Indicative terms of financing of the SPV
    - Potential contribution of the State, in order to ensure the bankability of the PPP project
  - PPP projects repaid by the State
    - Justification of the need to cover the cost of the project by the State
    - Historic data of the budget of the contracting Authority and forecasted budgetary needs, stemming from the implementation of the project
- Legal issues, related with the proposed PPP project
- Timetable of the actions that need to be taken by the contracting Authority

### **Evaluation by the PPP Unit**

- The evaluation criteria that the **Special Secretariat for PPPs** takes into consideration, when evaluating a proposal submitted by a **Public Entity** are the following:
- The competence of the Public Entity to implement the project
- The maturity of the proposed PPP project
- Financial criteria, namely the feasibility, bankability and value for money of the project vs. a public sector comparator
- Socio economic criteria, such as the necessity of the project, the consent of the public opinion, boost to entrepreneurship, etc.
- Technical criteria, such as improved quality of services to the end-users, etc.

The **Special Secretariat for PPPs** collects all necessary information so as to judge which projects can be implemented as PPPs, and evaluates financial and technical parameters, as well as related legal issues.

The **Special Secretariat for PPPs** then drafts a non – binding list of projects and services (*List of Proposed Partnerships*) that may be implemented as PPPs under the provisions of Law 3389/2005.

The **Special Secretariat for PPPs** notifies the **Public Entity** of its decision. The **Public Entity** must then submit an *Application for Inclusion* to the **Inter-ministerial Committee for PPPs** within two months after this notification. This deadline is given to the **Public Entities**, so as to let them judge whether they wish to proceed with the project, in case their proposal has been amended by the **Special Secretariat for PPPs**.

The **Special Secretariat for PPPs** supplements and revises the *List of Proposed Partnerships* every six months; although the *List* may be amended at other times by adding new Partnership proposals deemed mature or submitted for evaluation after the regular issue of the *List*.

### **Decision of the Inter-ministerial Committee**

For each project or service, which is included in the *List of Proposed Partnerships*, the **Special Secretariat for PPPs** drafts a brief report to be presented to the **Inter-ministerial Committee for PPPs**, presenting the following:

- the financial, technical, socio-economic and legal reasons for which it considers that the construction of the specific works or provision of the specific services ought to proceed by means of a PPP,
- the criteria taken into account to select the specific works or services that have been included in the List of Proposed Partnerships,
- the actions which may have been taken by the Public Entity involved to meet the needs of preparing the award of the relevant contracts, such as – for example – the recruitment of financial, technical and legal advisors, the elaboration of preliminary designs and/or studies and the preparation of draft contracts,
- the form of the proposed Contract Award Procedure, as defined in article 8 of Law 3389/2005, which is deemed most appropriate for the particular case, as well as the Public Entity acting as Contracting Authority,
- an indicative time schedule of the Contract Award Procedure
- a report of the indicative budget of the works or services to be undertaken by the partnership under the contract and, where appropriate, the ancillary agreements.

If the involved **Public Entity** decides to submit an *Application for Inclusion* within no more than two months after the date of notification, the Minister of Economy and Finance, acting as the President of the **Inter-ministerial Committee for PPPs**, sets this application as an item of the agenda of the next meeting of the **Inter-ministerial Committee for PPPs** and invites all regular members and the Minister that supervises the involved **Public Entity**.

In this meeting, the report drafted by the **Special Secretariat for PPPs** is presented to the **Inter-ministerial Committee for PPPs**, and all necessary and additional information and clarifications are provided, so as to help Ministers to reach a decision.

After that, the **Inter-ministerial Committee for PPPs** announces its decision, to either approve or reject the application.

If the **Inter-ministerial Committee for PPPs** decides to approve a partnership, the **Special Secretariat for PPPs** shall coordinate and monitor all contract award procedures, as defined in Law 3389/2005, so as to select the SPV that will participate to the partnership.

### **Limitations for PPP procurers**

Law 3389/2005 defines that **only Public Entities** may submit proposals to the **Special Secretariat for PPPs**.

Specifically the law defines the Public Entities that can implement partnership contracts with Private Entities, in areas falling within the scope of their competence. So, the term “Public Entities” means the following:

- a. the State
- b. local government organizations
- c. legal entities under public law
- d. sociétés anonymes whose share capital belongs wholly to Entities included under a. to c. above, or to another one or more sociétés anonymes under this clause.

The Private Entities can propose ideas for PPP projects either to Public Authorities or to the Special Secretariat for PPPs. However, it must be stated that if a project proposed by a Private Entity does get approved to be implemented as PPP, this Private Entity has to participate in the contract award procedure, so as to be eligible to implement the project.

### ROMANIA

#### Steps for project assessment

At the basis of the evaluation criteria are the principles: the contract is awarded to the private investor which had the most advantageous tender from the economical point of view and the result of the project is in public benefit.

#### **The public partner may apply following assessment criteria:**

- the total cost of the tender, together with the performance objectives defined according to the purpose of the contract. (This criterion is mandatory. The total cost of the tender involves the sum of the up-to-date costs generated by the design, financing, construction/realisation or conversion, rehabilitation/ modernisation, maintenance, operation, exploitation or management of works, equipment and tangible/intangible assets and by the supply of services stipulated for the contract period.);
- personal situation of the investor;
- the ability to exercise professional activities;
- economic and financial situation;
- the technical and/or professional capacity;
- quality assurance standards;
- environmental standards;
- the quality and the innovative nature of the offer;
- the term for the execution of works;
- the equipment or the intangible assets and their architectural, aesthetic and functional qualities.

#### PPP project identification

The public partner publishes through the medium of Electronic System for Public Procurement (ESPP) – Sistem Electronic pentru Achizitii Publice (SEAP) a **selection notice** for the public-private partnership which is a formal document in order to start the legal procedure for the enforcement of a public-private partnership project, together with a document named attached document, which is the document compiled by the public partner in order to inform all the interested investors of the project on the description of the necessary services, the project implementation schedule, the capacity requirements, the criteria and the procedure for the assessment and selection of the interested investors.

Each bid proposal must pass through the evaluation process in terms of eligibility, technical and economic assessment and negotiation. The public partner approves the winner project and concludes the partnership contract.

#### Limitations for PPP procurers

Public-private partnership projects are submitted only for the design, construction, rehabilitation, upgrading, operation, maintenance and development by:

- local public works - initiated by the communal, urban, municipal councils and territorial-administrative subdivisions councils of municipalities or intercommunity development associations.
- county interest public works - initiated by county councils.

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- public works of national interest - initiated by the Romanian Government, ministries and public partners.

A public partner, as defined by law, is only:

**(a)** any state body, public authority or public institution, acting at central level, regional or local or bodies governed by public law, irrespective of their activity, including those operating one of the relevant activities. A "body governed by public law" means any body:

(i) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and

(ii) having legal personality and

(iii) - financed, for the most part, by a public partner enumerated in paragraph (a); or

- subject to management supervision by a public partner enumerated in paragraph (a) ; or
- having an administrative, managerial or supervisory board, more than half of whose members are appointed by a public partner enumerated in letter (a);

**(b)** any association formed by one or several public partners enumerated in letter (a), irrespective of their activity, including those operating one of the relevant activities.

**(c)** any public enterprise operating one of the relevant activities, over which the public partners defined in paragraphs (a) and (b) can exercise, directly or indirectly, a dominant influence by virtue of ownership, financial participation or rules which govern it. Dominant influence is presumed if the public partners defined in paragraphs. (a) and (b), directly or indirectly, to an enterprise: - hold the majority of the issued capital of the enterprise or

- control the majority of votes attaching to shares issued by the enterprise or
- can appoint more than half of the members of the administrative, managerial or supervisory body of the company.

**(d)** any legal entities which, if they are not public partners as defined in paragraphs (a), (b) and (c) carry out, among their activities, one or more of the relevant activities, or any combination thereof, and benefit from special or exclusive rights granted by a competent authority. For the purposes of this law, 'special or exclusive rights' mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of relevant activities to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

In order to achieve a public-private partnership project, the executing authorities (mayors of cities, municipalities, territorial-administrative subdivisions of municipalities, the general mayor of Bucharest and the president of the county council), have the following functions:

- identify the public-private partnership project's objective;
- perform pre-feasibility study or foundation with specialists in their structure or, where appropriate, through a company with expertise;
- prepare decision documents covered by the deliberative authorities for approval of public-private partnership project;
- Public the notice of intent and the attached document, according to law;
- distribute without payment, the document attached to the notice of intent;
- organize, under the law and the mandate given by the deliberative authorities, the receipt of tenders or as appropriate letters of intent, the works of the evaluation commission, signing project agreements with the selected private investors, negotiating commission's work, analysis of the final tender of the selected private investor, conclusion of the public-private partnership contract.

Deliberative authorities (local council, county council, the General Council of Bucharest Municipality, local councils of territorial-administrative subdivisions of municipalities), have the following functions:

- approve the opportunity for launching public-private partnership project, based on the identification made by the executive authorities of the objective of public-private partnership project;
- approve the pre-feasibility or fundamentation study of the public-private partnership project;
- approve the form and the content of the notice of intent and of the attached document;
- approve the composition of the committee/commission of evaluation and negotiation.

For selection of private partners who enter into the negotiation phase, the public partner shall appoint a committee, which may be the same or may be changed and for the negotiation phase to establish the private investor with whom is concluded the public-private partnership contract;

- approves the evaluation criteria, scoring rubrics and how to treat the tenders/letters of intent received late or unsealed;
- approve the criteria for negotiating with private investors select, the signatories of the project agreement, to select the private partner with whom is concluded the public-private partnership contract;
- delegate, as appropriate, the mayor/chairman of county level or by a team coordinated by them one or more of the tasks metioned above;
- approve the report of assessment of the evaluation committee of private investors that will conclude the project;
- approve the basic elements, such as the type of public-private partnership project, the estimated investment value for the project, determined period of public-private partnership project, the key risks, possible penalties, etc., shape of the framework of a public-private partnership contract.

The ministry responsible in managing the scope of public-private partnership project has the following functions:

- identifies the objective of public-private partnership project;
- prepares the feasibility or foundation study with their own specialists or, as appropriate, through a company with expertise in accordance with legal provisions;
- publishes the notice of intent and attached document;
- distributes, free of charge, the document attached to the notice of intent;
- organizes, according to the the law and mandate given by the Government, receiving of tenders/letters of intent, the works of the evaluation commission, signing of project agreements with the selected private investors, works of the negotiation commission, analysis of the final tender of the selected private investor, the conclusion of public-private partnership contract;
- provides the framing of the public private partnership project in the fiscal budgetary strategy;
- ensures the classification for public-private partnership project in fiscal-budgetary strategy, approved under the Law of fiscal-budgetary responsibility.

The Government has the following functions:

- approves the opportunity for launching public-private partnership project, based on the identification made by the ministry responsible in managing the applicability domain of public-private partnership project;
- approves the pre-feasibility or fundamentation study for the public-private partnership project;
- approves the form and the content of the notice of intent and of the attached document;

- approves the composition of the committee/commission of evaluation and negotiation. For selection of private partners that enter into the negotiation phase, the public partner shall appoint a committee, which may be the same or may be changed/modified and for negotiation phase, to establish private investor with is concluded the public-private partnership contract;
- approves the evaluation criteria, scoring rubrics and how to treat the tenders/letters of intent received late or unsealed;
- approves the criteria for negotiating with private investors select, the signatories of the project agreement, to select the private partner with whom is concluded the public-private partnership contract;
- approves the report of the evaluation committee's evaluation of private investors with whom will be concluded the project;
- approves the basic elements, such as the type of public-private partnership project, the estimated investment for the project, determined period of the public-private partnership project, the key risks, possible penalties, etc., shape of the framework of contract public-private partnership;
- delegates, as appropriate, by the ministry responsible for the applicability domain of public-private partnership project or a team coordinated by the minister or secretary of state one or more of the tasks referred above.

### AUSTRIA

The Federal Public Procurement Office (hereafter “the Office”) is tasked with the review of procurement decisions taken by public contracting authorities on federal level. Economic operators who consider their right to the lawful carrying out of a public procurement procedure has been infringed may thus seek redress through the Office.

The foundation for the Office’s function – the effective examination and review of federal public procurements – is established by the Austrian Federal Procurement Act of 2006 (BVerG 2006). By statute, the Office is an institution with sovereign rights and is empowered to decide on claims seeking the annulment of decisions taken by public contracting authorities, interlocutory injunctions and judicial declarations in cases where a contract is not awarded to the “best tenderer.” The Office was furthermore established as a self-assessing federal judicial review authority whose decisions may be appealed before the Austrian Constitutional Court and Administrative Court. Three-member “senates” decide in the first and last instance on applications lodged by tenderers or candidates, with the senate chairman deciding alone only on interlocutory injunctions. The senate chairman heads and conducts proceedings assisted by two assessors – one each representing the economic operator side (delegated by the Federal Economic Chamber or Federal Chamber of Architects and Chartered Engineering Consultants) and the contracting authority side (e.g., representatives of the Federal Ministries). All senate members are independent and not bound by instructions from outside bodies, thus meeting the requirement for independent tribunals in terms of Article 6 of the European Convention on Human Rights.

Individual cases are assigned to the responsible senate in accordance with the rules of procedure and allocation of duties as determined by the Office’s independent plenary board (see also: [www.bva.gv.at](http://www.bva.gv.at)). From inception, app. thousand applications for review procedures have been brought before the Office, of which approx. 2/3 concerned cases above the applicable procurement threshold value and the other 1/3 below.

The notion of PPPs is not recognised by Austrian public procurement law and PPPs are typically classified as service or work concessions. Both service and work concessions are regulated by the BVerG, but a more flexible regime applies to classical work and service contracts.



Regarding the awarding of service concessions, (only) the EC fundamental principles (i.e. equal-treatment and transparency) and the principle of non-discrimination must be adhered to. The BVergG states that – depending on the subject and value of the contract – a service concession shall be, in principle, awarded through a competitive procedure. This means that even with regard to service concessions, a contracting authority will be obligated to publish a tender notice and invite several bidders to participate in the tender in order to ensure adequate competition. Procedures for the awarding of service concessions do not fall under the authority of the public procurement review authorities, but must be challenged before civil courts.

Regarding work concessions, only certain provisions of the BVergG apply (e.g. minimum deadlines, provisions regulating prequalification and the content of the tender documents, as well as the rules on the contract award and the remedies section). Again, the general principles of transparency and equal treatment must be observed. The BVergG leaves the choice of procedure for the awarding of a work concession largely to the contracting authority, but generally requires a publication. Thus, the Austrian requirements regarding the awarding of work concessions are stricter than what is required under EC legislation. Work concessionaires are obligated to put any work contracts for third parties out to tender. In this case, also private work concessionaires must follow certain rules when awarding contracts to, e.g., subcontractors.

### SERBIA

There are no obligatory or legally given steps for project assesment specified in the law.

#### Potential PPP project has to contain:

- the subject of the proposed PPP, an indication of the geographical area in which the activity is performed and objectives within the public task to be addressed by the project;
- a business plan, including the terms of PPP, cost estimation and analysis of the values obtained in respect of investment (value-for-money, in accordance with the methodology adopted by the Commission for PPP), specification of the PPP financial eligibility for public body, specifications in terms of financing of the project (funding from the budget, funding from international financial institutions, private funding and the cost of financing) and the availability of funds, the planned allocation of risks;
- an analysis of the economic efficiency of the proposed project;
- the types and amounts of security funds project partners are obliged to ensure;
- a brief overview of the conditions, requirements and ways of providing the infrastructure and services to users by the private partner, such as the quality of the project, the specification of the results or price level, etc;
- information on the award criteria, especially the selection and award criteria, the bidding procedure chosen, review of the contents of the public contract;
- the requirements in field of environmental protection, in terms of working conditions, health and safety and the safety of the employees hired by the private partner;
- the planned pace of development of the project, from the procurement procedure until the beginning of service or commissioning of facilities or other infrastructure;
- project team of public body which will monitor the entire project and serve as the selection committee that chooses the bidder or the most economically advantageous bid, including external advisors.

There are **no limitations for PPP Procurer**, any public body or body governed by public law can be a procurer for PPP project. The Law states that procurer or grantor of concession may be:

- The Government, on the behalf of the Republic of Serbia, when public body and the subject of the concession are under the jurisdiction of the Republic of Serbia;



- The government of the Autonomous Province, on the behalf of the Autonomous Province, when public body and the subject of the concession are under the jurisdiction of the Autonomous Province;
- Assembly of local government unit, (city, municipality) when the public body and the subject of the concession are in the jurisdiction of local government;
- the public company or entity authorized by special regulations for the granting of the concession.

The Law does not state if associations of these entities can be PPP procurer.

Public partner (PPP procurer) submits PPP project proposal for approval to the following authorities:

- Government, if public partner is the Republic of Serbia or any other public body of the Republic of Serbia;
- Government of the Autonomous Province, if public partner is Autonomous Province or any other public body of the Autonomous Province;
- Assembly of local government unit, if public partner is city/municipality or any other public body of the local government unit.

### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The **preparatory works** for awarding concessions for goods of general interest and contracts establishing a public private partnership shall be implemented by the concession grantor or the public partner.

The preparatory works include:

- establishing the Commission for implementation of award procedure for concession for goods of general interest or contract establishing a public private partnership;
- preparation of a pre-analysis report on the basic project elements giving an indication on the nature of the contract which should be concluded for the purpose of establishing a public private partnership, taking into account the definition of a Public Private Partnership of this Law;
- preparation of a feasibility study for justification of the award of a concession for goods of general interest or a contract establishing a public private partnership;
- assessment of the influence of the concession for goods of general interest or the public private partnership over the environment and
- other activities necessary for the implementation of the procedure.

The Government of the Former Yugoslav Republic of Macedonia shall prescribe the contents of the feasibility study for justification of the concession for goods of general interest or the public private partnership.

In order to initiate the procedure for the award of concession for goods of general interest and contracts establishing a public private partnership, the concession grantor or the public partner shall adopt a decision on procedure initiation for awarding a concession for goods of general interest and contracts establishing a public private partnership. The decision shall be adopted by the concession grantor or the public partner on the basis of the study (pre-analysis report) on the basic project elements giving an indication on the nature of the contract which should be concluded for the purpose of establishing a public private partnership, taking into account the definition of a Public Private Partnership of the ***Law on Concessions and Public Private Partnership***.

When the concession grantor or the public partner is the Former Yugoslav Republic of Macedonia, the decision shall be adopted by the Government of the Former Yugoslav Republic of Macedonia upon a proposal of the Minister competent for the area in which the public private partnership or

concession shall be awarded. When the concession grantor or the public partner is the municipality, the City of Skopje or the municipality in the City of Skopje, the decision 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, upon 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.

When a public partner is one of the following entities:

- the public enterprises, public institutions, companies established by the Former Yugoslav Republic of Macedonia, the municipality, the City of Skopje and the municipalities in the City of Skopje and companies over which the state or the bodies of the municipality, the City of Skopje and the municipalities in the City of Skopje have a direct or indirect influence through the ownership thereof, i.e. they own a major part of the company's capital, they have a majority of the shareholders'/partners' votes and they appoint more than a half of the members of the management or the supervisory board, i.e. the management bodies of the company and
- other legal entities that pursuant to the law perform public authorizations in the part of performance of public authorizations;

the decision shall be adopted by the management body, and the founder shall give its consent on the decision.

### 3.4.2 Procurement process

- ? **What are the obligatory legal frameworks given by the national legislation for the Procurement Notice, Prequalification, Shortlisting and Invitation to tender**
- ? **What are the rules for evaluation and selection of the preferred bidder**
- ? **Which control mechanisms are applied in your national legislation to secure the transparency, equal treatment, and fairness of selection procedure**

#### **SLOVAKIA**

Pursuant to the Law on public procurement § 23 and § 67, the procurer is obliged to publish the announcement on procurement/concession to the Publication office and/or Office for Public procurement.

It is foreseen that the most frequently used selection procedure will be the **competitive dialogue** as the other options are not equally suitable for PPP projects.

The overall process comprises following steps:

Notification → Qualification assessment → Call for participation in competitive dialogue → Competitive dialogue → Elaboration of informational document → Call for offers → Offers evaluation → Private partner selection

The decisive criterion for the private partner selection is the **economical** one; the winning bid must bring the **value for money** foreseen in the feasibility study.

Documentation to be elaborated by the procurer:

- Announcement on the initiation of the public procurement;
- Informational document – background for the participants of the competitive dialogue;

- Call for participation in the competitive dialogue.

For completion of the aforementioned documents, it is necessary that the procurer has elaborated:

- Draft of the method for evaluation of qualifications, proposed solutions and offers of the bidders;
- Simplified study on technical design of the project;
- Risks matrix;
- Draft contract including annexes.

### Notification to the Ministry of Finance

Notification obligation for self-governing units – based on the budgetary rules embedded in the Law no. 583/2004 there is the **obligation to notify the Ministry of Finance** before opening the process of concession procurement according to following principles:

- higher territorial units and legal entities established by these units for contracts of value higher than 3,319 mil. EUR
- municipality and legal entities established by municipalities for contracts of values differentiated according to the number of inhabitants:
  - up to 100 → 0,398 mil. Eur;
  - from 1 001 to 3 000 → 0,664 mil. Eur;
  - from 3 001 to 5 000 → 1,162 mil. Eur;
  - from 5 001 to 10 000 → 1,660 mil. Eur;
  - from 10 001 to 50 000 → 2,158 mil. Eur;
  - from 50 001 to 100 000 → 2,490 mil. Eur;
  - more than 100 001 → 3,319 mil. Eur.

The notification is however **recommended** for all projects falling into the PPP definition and implemented based on the contract on concession.

The provisions concerning the procurement publication, documentation and obligations of procurer towards the Office for public procurement are specified in **§ 21, § 22 and § 49**.

Basic conditions for evaluation of the bidders are outlined in the law on public procurement, however, can be accommodated specifically by the procurer provided the conditions are adequate to the subject of the procurement; such conditions must be justified in the announcement of the procurement.

As for the offers, two options are specified in the law for selection of the winning bid as follows:

- **economically most advantageous offer;**
- **lowest price.**

In case of the most advantageous offer, it is up to the procurer to specify sub-criteria relevant for the subject of the procurement, such as quality, price, technical design, functional characteristics, operational costs, etc. (§ 35, art. 3).

The selection is done by the procurer through a committee established according to the law on public procurement (§ 40).

Office for the public procurement is public body for controlling PPP procurement.

The unsuccessful bidder can appeal against the selection according to the **Law on public procurement, Chapter IV Revision procedures**.

**Nullity/invalidity of the contract** based on the prosecution (§ 148)

In case of administrative offense (§ 149) – **fin**es of 5% of the contract value or € 20.000 or fine of € 300 - € 30.000 depending on the specific case and gravity of the law violation.

The liability of entities with legal personality is partially embedded in the Slovak **criminal law** – in case of committing a crime, the legal personality can be punished by **confiscation of financial amount** between € 800 - € 1.660.000 or **confiscation of the property**.

The procurers can be **fin**ed/**penalized** according to the Chapter IV of the Law on public procurement.

### **SLOVENIA**

**The invitation to promoters** is laid down in Articles 32 and 33 of the *Public-Private Partnership Act*. Once a year the public partner issues a public invitation to eventual promoters to express their interest in the realisation of PPP in the fields that may meet the conditions for public co-financing of a private project. The public invitation lays down the contents of the expression of interest and the documents to be submitted by the promoter as well as the aspects of partnership that the promoter should present. The public invitation may not determine the form of PPP.

#### **Procedure for the award of public contract**

Pursuant to the provisions of Article 41 of the *Public Procurement Act* the contracting authority shall award public contracts on the basis of certain criteria and taking into account the possibility of offering various options.

In case of open procedure, tender collection procedure with prior publication of an information notice, and procedure for awarding low-value public contracts the contracting authority awards the public contract after it examines the completeness of tenders and classifies them on the basis of the applicable criteria.

In case of restricted procedure, negotiated procedure with prior publication and competitive dialogue procedure the contracting authority may limit the number of suitable candidates to be invited to tender, to negotiate or to participate in a dialogue. In the contract notice the contracting authority has to state objective and non-discriminatory conditions or rules it intends to apply, the minimum number of candidates and, where appropriate, the maximum number of candidates. In case of restricted procedure the contracting authority must invite at least five candidates. In case of negotiated procedure with prior publication and competitive dialogue procedure at least three candidates must be invited. If the number of candidates that meet the criteria is below the minimum number of candidates, the contracting authority may continue the procedure by inviting the candidates that meet the criteria; it may not invite other economic operators which did not apply for participation or do not have the required qualifications.

Article 31 of the *Public Procurement for Defence and Security Act* lays down a slightly different regulation in case the contracting authority is of the opinion that the number of appropriate candidates does not ensure sufficient competition. In those cases the contracting authority may suspend the procedure and republish the original contract notice in which it states a new deadline for submitting applications.

**The conditions to be met by the tenderers** are laid down in Articles 42 to 47 of the *Public Procurement Act*.

Article 42 of that Act lays down the basic requirements regarding the tenderer's suitability, i.e. the tenderer may not be convicted for a crime or listed in the records of criminal offences, may not have outstanding social security contributions or taxes of EUR 50 or more, may not be subject to

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liquidation or compulsory settlement and may not have committed grave professional misconduct or violation of professional rules.

Article 43 defines the tenderer's **suitability to pursue professional activities** which he/she proves with the certificate attesting the entry in the register of professions or trade register.

Article 44 defines the **economic and financial suitability** which is determined by the contracting authority in the contract notice and proven with bank statements, financial statements, credit ratings etc.

Article 45 lays down the **technical and professional capacity** which is also determined by the contracting authority and proven with appropriate supporting documents.

Article 46 lays down **quality assurance standards** and Article 47 provides for **environmental management standards**.

The same conditions are mutatis mutandis laid down in Articles 32 to 38 of the *Public Procurement for Defence and Security Act*.

**Contract award criteria** are laid down in Article 48 of the *Public Procurement Act*. The contracting authority may award a contract on the basis of:

- the **most economically advantageous** tender by using various criteria related to the subject of the public contract, such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service and technical assistance, delivery date and delivery period or completion date, or
- on the **basis of the lowest price**, whereby the tender may not be abnormally low (Article 49 of the *Public Procurement Act*).

When a public contract is awarded on the basis of the most economically advantageous tender, the contracting authority has to describe and weigh each award criterion in the contract notice, tender dossier or descriptive document. If the weighing of criteria is not possible, the contracting authority has to state them in the descending order of importance. In evaluating tenders, the contracting authority may only apply the criteria indicated in advance. The criteria must be formulated so that equal position of tenderers is ensured regardless of whether they have submitted the tender for all lots or the for one separate lot or for a part of lots. In case of two or more most economically advantageous tenders, the contracting authority selects the most advantageous one on the basis of predetermined social elements.

The same conditions are mutatis mutandis laid down in Article 39 of the *Public Procurement for Defence and Security Act* and Article 49 of the *Public Procurement in Water Management, Energy, Transport and Postal Services Area Act*.

**Control regarding the correct implementation of procurement procedures** is regulated in the *Legal Protection in Public Procurement Procedures Act* which provides for the review of public procurement procedures.

Control is **carried out by**:

- the contracting authority (in the pre-review procedure),
- National Review Commission (in the review procedure), and
- the court (in the judicial proceedings).

The following representatives of public interest may demand legal protection in the public contract award procedure:

- Ministry of Finance,
- the Court of Auditory of the Republic of Slovenia,
- Slovenian Competition Protection Agency, and
- Commission for the Prevention of Corruption.

A review claim may be submitted by every person who has or had an interest in being awarded a public contract and who could suffer damages due to alleged infringement, as well as by the representatives of public interest. Submitted review claim prevents the award of the contract, unless the realisation of the public contract is urgent (Article 17 of the *Legal Protection in Public Procurement Procedures Act*). When submitting a review claim the claimant may submit also his/her proposal to suspend the public contract award procedure (Article 19 of the *Legal Protection in Public Procurement Procedures Act*). Such proposal may also be submitted by the Ministry of Finance. If the National Review Commission establishes that the proposal is justified, it issues a decision to suspend all further activities pending the final decision is adopted by the contracting authority or the National Review Commission.

The contracting authority may consent to the review claim in the pre-review procedure and partly or fully revoke the public procurement procedure or remedy the infringement (Article 28 of the *Legal Protection in Public Procurement Procedures Act*).

The National Review Commission may consent to the review claim in the review procedure and partly or fully revoke the public procurement procedure or order the contracting authority to remedy the infringement (Article 39 of the *Legal Protection in Public Procurement Procedures Act*). If the National Review Commission suspects that serious infringements were committed during the public procurement procedure, it shall ex officio initiate the infringement procedure (Article 40 of the *Legal Protection in Public Procurement Procedures Act*).

The court may decide that the contract is null and void. The claims for nullification of a contract or public procurement are decided by the court in the legal protection procedure laid down in Articles 42 to 49 of the *Legal Protection in Public Procurement Procedures Act*. Nullification may be exercised by a person with a legal interest and by the representatives of public interest. In the legal proceedings the plaintiff may propose to temporarily suspend the performance of the contract or public procurement by issuing a temporary decree, provided such performance would cause damage. The plaintiff may also request that a temporary decree is issued in order to temporarily remedy the situation.

When the court establishes that the contract is null and void, it forwards its proposal to initiate an infringement procedure to the National Review Commission.

The possibility to appeal against the selection document depends on who issued the selection document (Article 61 of the *Public-Private Partnership Act*):

- no appeal may be lodged against the selection document issued by the competent minister; in other cases the appeal is possible under the following conditions:
- if the selection document was issued by municipal administration, the appeal is decided by the mayor,
- if the founder of the other public partner is the state, the appeal is decided by the competent minister,
- if the founder of the other public partner is a self-governing local community, the appeal is decided by the mayor.

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An administrative dispute may be initiated against a final decision on selection (except in case of PPP for which the rules on public procurement or concession works are applicable). Such dispute is resolved by the administrative court (Article 63 of the *Public-Private Partnership Act*). The status of the party in the legal proceedings is besides the claimant and the ministry also granted to the public partner (Article 65 of the *Public-Private Partnership Act*).

Criminal liability of private partners and public partners' officers is regulated in the Penal Code.

### BULGARIA

**Information on Procurement Notice procedure** for determining the private partner is included in Art. 25, para. 2 of the Public Procurement Act:

1. the subject describes the object, which operates in the public interest and states that it is implemented through PPP;
2. performance guarantee in the contract specifying all the guarantees set out in the draft PPP contract;
3. in the conditions and method of payment indicating the maximum amount of payments and other forms of financial support.

The notice shall also specify:

1. distribution of material risks;
2. conditions that determine the economic balance of the PPP and the circumstances of the factual or legal nature related to the object of the operation or service of public interest, the occurrence of which would lead to imbalance;
3. conditions or restrictions on the use of the facility or part of the collateral, if any, shall be provided.

(paragraph 4) Notice shall be entered in the Public Procurement Register and published in the "Official Gazette" of the European Union under the terms and provisions of the Law on Public Procurement.

### Control mechanisms

Ministry of Finance of the Republic of Bulgaria has and supports a public register about Public Private Partnership to which there is free internet access.

A public private partnership register contains:

1. Public Private Partnership national programme and operational plan for every programme period.
2. Municipal projects for Public Private Partnership and projects for PPP of municipal public law organization.
3. Solutions for opening procedures for defining private partner.
4. Announcements for carrying out procedure for defining a private partner.
5. Decisions establishing a private partner.
6. Financial – economic analysis.
7. Contracts signed for public private partnership without data representing trade or technical secret.
8. Report of the Minister of Finance for implementing the PPP National Programme and Operational plan and the public partners annual reports for implementing the contracts for PPP.
9. Information for implementing the PPP contracts to public law organizations.
10. Additional agreements for changes or supplements to the PPP contract signed.
11. Contracts for extension of the PPP contracts with assignee.
12. Decisions to terminate the contracts of PPP.
13. Any other information defined with the regulations for law enforcement.



Documents, contracts and additional agreements are entered electronically to the PPP register within 14 days of their adoption or enforcement by officials appointed by the Minister of Finance. Content, terms and conditions for keeping and maintaining the register of PPP are determined by the regulations implementing the law. The decisions of authorities under this Act, adopted in the process of determining the private partner may be appealed under the terms and provisions of Chapter Eleven "Appeal" of the Law on Public Procurement.

### HUNGARY

#### Procurement process

The compulsory elements of the PPP project proposals, and also the rules for the partners' commitments are included in the 217/1998. (XII.3.), Government Rule.

The net present value calculation methodology and the applicable discount factors are described in the 161 / 2005th (VIII 16) Government Rule.

24 / 2007th (II. 28). Government Rule contains the rules of undertaking the long-term liabilities, including the fact that the Government decides on initiation of PPP projects based on not individually, but a professionally based rankings.

According to regulations, the values of long-term government commitment to the PPP schemes are recorded by the Treasury, together with the other commitments.

After this **the project draft** is disseminated to the PPP Inter-Ministerial Committee. In the committee there are representatives of the Ministry of Transport and Economy, Ministry of Finance, the Prime Minister Office and the Central Statistics Office, and also the representatives of the Ministry submitted the project.

The committee can propose additions, amendments and, after discussions and any changes the project draft is submitted to the Economic Cabinet, and taking into account its decision, to the government. (Power of the PPP Inter-Ministerial Committee is only the comment.) If the government is supporting the project, (and only then) preparing a tender can take place under government mandate. There can be two cases:

- If the project plan is well developed with appropriate background calculations it can be submitted to the government. The ministry gets permission to carry out the tender without submitting the project to the PPP the Inter-Ministerial Committee.
- If the proposed project is not sufficiently developed, the background calculations are not correct when the project was submitted to the government, the tender may be submitted only through execution of the Interministerial PPP Committee. In this case, the previous calculations must be corrected and developed.

In conducting the tender there are two possibilities:

- If the pre-calculated value is less than the received tender offers, the Ministry may declare the tender unsuccessful. (Not required.)
- The previously calculated value is not less than the received tender offers.

In both cases the contract shall enter into force after the approval of the government. Total project value over 50 billion HUF must have the approval of the National Assembly.

Following the entry into force of the contract the Inter-Ministerial PPP Committee and the Hungarian State Treasury commitments must be informed immediately about the extent and framework, and time schedule of the project.



During the project, the organization responsible for the project has to inform the Inter-Ministerial PPP Committee on annual basis. On this basis, the Committee shall prepare a report on the status of the project annually.

### **Control mechanisms - PPP and the audit activity**

The new ways of spending public resources require the introduction of new techniques in the audit activities.

The State Audit Office (ÁSZ) is responsible for monitoring the PPP investments, and also controls the projects implementations. In general you can say these investments are usually detrimental to the state and the taxpayers too. In the current situation it is key issue the planned, appropriate and effective use of the public finances, because it's basically affect the prospects of the country. The SAO's audit revealed that clear strategies are needed in case of of public money use. Public money should be treated as if it were an investment. Although the resources are decreasing, measurable objectives and performance criteria must be assigned to each spent public money.. It means that more efficient and sustainable state is needed in Hungary.

### **PPP and the audit activity of Supreme Audit Institutions**

The new ways of spending public resources require the introduction of new techniques in the audit activities carried out by Supreme Audit Institutions (SAIs). This challenge is posing new tasks for the audits in terms of theory and practice alike. That is, two basic requirements can be specified for the audit activities carried out by Supreme Audit Institutions on PPP projects. According to the practice of SAIs in developed countries, apart from traditional financial audit activities, the qualification of the reliability of accounts and the enforcement of transparency, control activities focusing on performance and efficiency, as well as facilitating economic evaluation and decision-making are becoming priority. On the other hand, the compliance with rules is only the minimum requirement for the operation of the system of public finances without of which performance and efficiency cannot be interpreted.

On the basis of comparing the national experiences gained so far to the international experiences and the recommendations of Supreme Audit Institutions, one can emphasize that to achieve a more successful implementation of PPP investments in the future it is an imperative necessity for the central government agencies, which are involved in the decision-making, to have unambiguous regulation on the procedures and rules connected with PPP, both in the area of the central budget and in the area of the local governments.

## **GREECE**

- **Law 3389/2005** «*Public Private Partnerships*» (O.J. 232/A'/22.9.2005) with the latest amendments introduced by Paragraph 1 of Article 16 of the Law 3483/2006 (O.J. 169/A'/7.8.2006)
- **Presidential Decree 59/2007** «*Harmonization of the Greek legislation with the Directive 2004/17/EC*» (O.J. 63/A'/16.3.2007)
- **Presidential Decree 60/2007** «*Harmonization of the Greek legislation with the Directive 2004/18/EC*» (O.J. 64/A'/16.3.2007)
- **Law 3886/2010** «*Judicial Protection in the award of Public Contracts - Harmonization of the Greek legislation with the Council Directive 89/665/EEC and the Council Directive 92/13/EEC as amended by the Directive 2007/66/EC*» (O.J. 173/A'/30.9.2010)

According to the EU legislation as ratified by the Presidential Decrees 59/2007 (Directive 2004/17/EC) and 60/2007 (Directive 2004/18/EC).

According to Article 12 of the Law 3389/2005, the Public Entity (Contracting Authority) is entitled to determine the minimum qualifications and abilities of the candidates. These minimum qualifications and abilities must:

- be set out in the Invitation to Tender, and
- be in-line with the EU legislation as ratified by the Presidential Decrees 59/2007 (Directive 2004/17/EC) and 60/2007 (Directive 2004/18/EC).

Furthermore, Article 15 of the Law 3389/2005, sets the **Grounds for Disqualification** of a participant. As part of the contract award procedures, and before Contract Award, the Contracting Authority shall ascertain whether there are any grounds for the disqualification of candidates or Tenderers. Specifically:

- The Contracting Authority excludes candidates from the contract award procedures, if they themselves or the persons having powers of representation or control have been sentenced by irrevocable judgement of a criminal court for an offence punishable with imprisonment or confinement of at least three months. In order to implement this provision, the Contracting Authority may request that the candidates submit appropriate documentation. When the candidate is not established in Greece, but in another EU member State, the Contracting Authority may seek the cooperation of the respective authorities in that member State.
- The Contracting Authority is entitled to exclude any candidate or Tenderer from participation or further participation in the contract award procedures in cases where the candidate or Tenderer:
  - has been declared bankrupt, ordered into liquidation, placed under compulsory administration or ordered to reach composition with its creditors, or is in any comparable state arising from similar procedures as determined under the provisions either of Greek law or the laws of its country of origin,
  - is subject of proceedings for a declaration of bankruptcy, for an order for liquidation, compulsory winding up or administration, a composition with its creditors or any similar proceedings as determined under the provisions of Greek law or the laws of its country of origin,
  - has been convicted of any offence related to its professional conduct, by a judgment which has the force of res judicata in accordance with the provisions of Greek law or the laws of its country of origin,
  - has committed a serious breach of professional conduct proven by any means which the Contracting Authority can demonstrate,
  - has not fulfilled its obligations relating to the payment of social security contributions as required by Greek law or the laws of its country of origin,
  - has not fulfilled its obligations relating to the payment of taxes as required by Greek law or the laws of its country of origin or registration,
  - has demonstrably made serious misrepresentations in providing the information required to implement this paragraph, or has failed to provide the said information.

### **Restricted Procedures (Article 8)**

It means those procedures in which any Private Entity may request to participate, provided that it is qualified as able. In the second stage, only these Private Entities meeting the qualification criteria are invited by the Contracting Authority to submit a Tender.

### **Competitive Dialogue Procedures (Article 13)**

The Competitive Dialogue Procedure may take place in successive phases, in order to reduce the number of solutions being examined during the dialogue phase by applying the contract award criteria indicated in the Invitation to Tender. If the Contracting Authority deems that the cost of

## Summary Report

participation in the Competitive Dialogue Procedure is high, it may award prizes or pay part of the respective expenses incurred by the Tenders.

### **Negotiated Procedures** (Article 14)

The Contracting Authority is entitled to determine that the Negotiated Procedure may be carried out in successive phases, thereby reducing the number of Tenders examined by applying the contract award criteria laid down in the Invitation to Tender. Reference to this option shall be made in the Invitation to Tender or in a separate document communicated to all the candidates.

### Limits on candidates (Article 12)

In:

- Restricted Procedures,
- Negotiated Procedures (if conducted with the publication of an Invitation to Tender), and
- Competitive Dialogue Procedures,

The Contracting Authority **may limit the number of suitable candidates** they will invite to tender, to negotiate or to conduct a dialogue with, **provided a sufficient number of suitable candidates is available.**

In the Invitation to Tender, the Contracting Authority shall indicate:

- the objective and non-discriminatory criteria or rules it intends to apply,
- the minimum number of candidates it intends to invite and,
- (where appropriate), the maximum number of candidates it intends to invite.

The Law defines the minimum number of candidates per Award Procedure.

According to Article 10 of the Law 3389/2005, contracts are awarded by the Public Entity acting as Contracting Authority either on **the criterion of the tender being the most economically advantageous**, or on **the criterion of lowest price**, depending on the Contract Award Procedure followed.

When the contract is to be awarded to the **most economically advantageous tender**, the Public Entity (Contracting Authority) will examine and take into account not only the economic parameters but also various other parameters of the contract object, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running cost, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion. **These criteria must be clearly specified by the Public Entity (Contracting Authority) as part of the Contract Award Procedure.** The relative weighting the Contracting Authority gives to each of the criteria chosen to determine the most economically advantageous tender must also be announced to candidates. Those weightings can be expressed by providing for a range with an appropriate maximum or minimum limit (spread). Where weighting is not possible, the Public Entity (Contracting Authority) shall indicate the priority of the criteria it has selected, compiling a table in which these criteria are presented in descending order of importance.

Moreover, Article 15 of the Law 3389/2005, sets apart the Grounds for Disqualification (described in previous answer) the criteria for evaluating the financial standing and the technical and professional ability of the bidder:

- **Evaluation of the financial standing:** Following the ascertainment against the Grounds for Disqualification, the Contracting Authority shall proceed to verify the economic and financial standing of the candidates or Tenderers, including the details set out in article 18 of the Law 3389/2005, and also to verify details of the candidate's or Tenderer's ability to secure credit. In order to carry out the above verifications, the Contracting Authority may, inter alia, request that the candidates or Tenderers present documentation showing:

- the existence of bank funding or support, in accordance with the conditions to be set out in the Invitation to Tender,
  - their financial condition (as demonstrated in balance sheets or extracts thereof),
  - their overall turnover, or their turnover in the fields of activity related to the Contract, for a maximum of the last three financial years,
  - the formal commitment of third parties to support the candidate or Tenderer during execution of the Contract, or to participate in its financing (for example, in the form of a declaration by the third party), if the Tenderer has invoked such a commitment,
  - in cases where the candidate or Tenderer is a joint venture, the nature and extent of the commitment to financial participation of the various parties participating in the joint venture, or third parties (for example, in the form of a declaration or certification supplied by the members of the joint venture),
  - their ability to secure credit (for example, in the form of certification of credit ranking from an international credit agency).
- **Evaluation of technical and professional ability:** In addition to the assessments described above, the Contracting Authority shall also assess the technical and professional abilities of the candidates or Tenderers. The technical abilities of the candidates or Tenderers may be evidenced by one or more of the following means, depending on the nature, quantity or importance of the Contract object, and also its intended function. For the specific needs of the above assessment, the Contracting Authority may require that the Tenderers submit:
    - a list of projects carried out over the past five years, accompanied by certificates and documentation of satisfactory execution, the contract values, the date and site of the work, and its proper and timely completion,
    - a list of the principal projects completed or services carried out or provided during the past three years, with reference to the corresponding sum, date and name of the recipient,
    - a report on the technical staff or technical services available, whether these belong directly to the candidate or Tenderer or not,
    - a description of technical equipment and of the measures undertaken by the candidate or tenderer to ensure quality, and a description of the design and research facilities owned by its company,
    - a report on the professional qualifications of the candidate or Tenderer, or an account of the formal educational qualifications of its executive management, especially the staff responsible for providing the services or performing the work in question,
    - an indication of the environmental management measures to be taken by the candidate or Tenderer during performance of the contract, where relevant,
    - a formal statement reporting the average annual workforce (labour and administration) of the candidate or Tenderer, and the number of managers in the business over the last three years,
    - a formal statement indicating the tools, plant and technical equipment owned by or available to the candidate or Tenderer, for carrying out the contract project,
    - an indication of the proportion of the Contract Object the candidate or Tenderer intends to sub-contract out to third parties, and a description of the basic terms and conditions of the sub-contracting arrangement,
    - in cases where the candidate or Tenderer has cited the financial support of a third party for performing the contract, a certification from the third party in question confirming its commitment to bear all or part of the relevant cost,
    - in the case of a joint venture, a certification demonstrating the nature and extent of the commitment to financial participation of the parties participating in the joint venture, or any third parties.
      - The Contracting Authority shall require the candidates or Tenderers to demonstrate their matriculation in the appropriate professional or commercial

register, or to supply a comparable declaration under oath or certification. In the case of Service Contracts, if the candidates or Tenderers must possess a special professional license according to law, or if they must be members of a particular organization in order to provide the service in question in their country of origin or registration, the Contracting Authority may require proof of such professional license or of membership in such an organization.

- Should the Contracting Authority require that the candidates or Tenderers produce certificates issued by independent bodies attesting their compliance with certain quality assurance standards, reference must be made to quality assurance systems based on the relevant European standards series and certified by bodies conforming to European standards series concerning certification. The Contracting Authority shall recognize equivalent certificates issued by quality assurance bodies in other EU member states.
- Should the Contracting Authority require that the candidates or Tenderers produce certificates issued by independent bodies attesting their compliance with certain environmental management standards, reference must be made either to the European Eco-Management and Audit System (EMAS), or to environmental management standards based on comparable European or international standards.
- The Contracting Authority may call on the candidates or Tenderers to supplement or clarify the documents they have submitted for the contract award procedures.
- The manner and time of submitting these documents shall be set forth by the Contracting Authority in the Invitation to Tender.

All other matters are in-line with the EU legislation as ratified by the Presidential Decrees 59/2007 (Directive 2004/17/EC) and 60/2007 (Directive 2004/18/EC).

The **Special Secretariat for PPPs** is responsible for coordinating and monitoring all contract award procedures, as defined in Law 3389/2005 (Article 5), so as to select the SPV that will participate to the partnership. The **Public Entity (Contracting Authority)** is responsible for organizing and implementing the Award Procedure. All the texts involved in the Contract Award Procedure, including the tender documents, are checked and amended (if necessary) by the **Special Secretariat for PPPs** before their distribution or publication.

A representative of the **Special Secretariat for PPPs** always participates in the evaluation committees or other bodies set up to serve the Contract Award Procedure. In exceptional circumstances, relating to privatizations of Public Undertakings, the **Inter-ministerial Committee for PPPs** itself may operate as **Awarding Authority** and have the full control of the Award Process.

The **Special Secretariat for PPPs** is responsible for coordinating and monitoring all contract award procedures, as defined in Law 3389/2005 (Article 5), so as to select the SPV that will participate to the partnership.

Following the approval of the inclusion from the **Inter-ministerial Committee for PPPs**, the **Special Secretariat for PPPs** will undertake the coordination of the Contract Award Procedures, to select the **Private Entity** that will participate in the Partnership. The **Public Entities (Contracting Authorities)** included under the provisions of the Law 3389/2005 are obligated:

- to follow the suggestions of the **Special Secretariat for PPPs** in respect of the Contract Award Procedure to be followed in selecting the Private Entity to participate in the Partnership;
- to prepare all the texts involved in the Contract Award Procedure, including the tender documents, such as the invitation to tender, the special and technical terms of contract, the

invitation to submit tenders and the draft of the contract in accordance with the instructions, amendments and changes recommended by the **Special Secretariat for PPPs**, which shall be notified of all the texts and correspondence concerning the Contract Award Procedure before their distribution or publication;

- to ensure the participation of a representative of the **Special Secretariat for PPPs** in the evaluation committees or other bodies set up to serve the Contract Award Procedure for selection of a Private Entity that will participate in the Partnership.

In exceptional circumstances, relating to privatizations of Public Undertakings, the **Inter-ministerial Committee for PPPs** itself may operate as **Awarding Authority** and have the full control of the Award Process.

Full compliance with the EU legislation as ratified by the **Law 3886/2010** «*Judicial Protection in the award of Public Contracts - Harmonization of the Greek legislation with the Council Directive 89/665/EEC and the Council Directive 92/13/EEC as amended by the Directive 2007/66/EC* » (O.J. 173/A'/30.9.2010)

Ranges from disqualification of the bidder up to cancelation of the procurement.

### Legal Framework

- Law 2656/1998, which ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- Law 2802/2000, which ratified the Convention against corruption involving officials of the European Communities or officials of Member States of the European Union (OJC 195/25 June 1997);
- Law 2803/2000, which ratified the Convention on the protection of the European Communities' financial interests;
- Law 3560/2007, which ratified Criminal Law Convention on Corruption and Additional Protocol;
- Law 3666/2008, which ratified UN Convention on Combating Corruption;
- Greek Criminal Code, articles 234-237, 239;
- Law 4022/2011, referring to trial corruption acts of public officials;
- Law 1608/1950 (for the protection of the State's funds), which does not provide for different acts but serves as an aggravating factor (from a sentencing point of view) when the State's financial damage exceeds the limit of 150.000€.

All above-mentioned legislation aims to cover all aspects of corruption in political and economic activities and covers both bribery of foreign officials (a-e) and bribery of domestic public officials. Latest addition of Law 4022/2011 also provides for speedier processing of corruption cases through shorter procedural stages. Corruption cases are investigated by the Financial and Economic Crime Unit, a special task force of the Ministry of Finance with police and investigating powers (article 11 of Law 3650/2007). The Unit is supervised by a Public Prosecutor and is entitled to conduct full police investigations throughout the country. They are also entitled to request for mutual assistance at all stages of their investigation.

If there are indications of money laundering, the Independent Authority for Combating Money Laundering may conduct separate investigations and may initiate separate proceedings against individuals or companies, with or without the co-operation of the Financial and Economic Crime Unit.

The Authority for Combating money laundering is also supervised by a Prosecutor (of higher rank).



A newly established Authority, the Economic Crime Prosecutor, is aimed at investigating and prosecuting in cases (including cases of corruption) involving financial damage of the Greek State (Law 3943/2011). The Economic Crimes Prosecutor is entitled to investigate, prosecute and review any economic crime case either alone or with the co-operation and co-ordination of any other investigating authority (police, special task forces, investigating judges, prosecutors).

### **Liability of Private Companies**

The Greek legal system although not recognizing corporate criminal liability *per se*, nevertheless has a regime whereby administrative penalties may be imposed on corporations for the criminal acts of certain employees.

Criminal liability refers primarily to the individual. This rule has seen some exceptions over the past decade in order for the domestic legislation to comply with obligations undertaken through ratification of international conventions against corruption.

Although corporate liability is still not generally applicable, several provisions are in force stipulating certain forms of sanctions on the corporation or legal entity that benefits from the corruption act. Such provisions are those of Law 2656/1998 (OECD Convention), which provides for penalties that are imposed to legal entities benefiting from acts of bribery of foreign public officials in the form of administrative fines. Law 3650/2007 acknowledges that legal entities are liable for bribery if the acts of bribery were committed in their favour by individuals empowered to act on their behalf (managers, directors etc.) or to make decisions in relation to the company's activities, and provide for a series of administrative penalties (e.g. fines). Administrative fines are the main type of sanctions and are imposed in accordance with the corporation's activity, annual turnover etc. These provisions are applicable to all forms of participation in a corruption act (perpetrators, accessories and instigators).

### **Liability of Public Officers**

The basic definition of bribery is given in relevant articles of the Greek Criminal Code. These are also the definitions used for most of the International Conventions Greece is member to, when there is reference to the domestic legal framework.

Articles 235 (passive bribery) and 236 (active bribery) of the Greek Criminal code provide that the punishable act is an act of requesting or receiving, directly or indirectly through third persons in favour of oneself or others, benefits of any nature or accepting a promise of such benefits in order to act or omit to act in the future (or an act or omission to act in the past), with regard to public duties or contrary to these duties.

The individual requesting or receiving a gift, promise etc. must be a public official. The perpetrator of active bribery (art. 236 of the Greek Criminal Code) may be any individual or legal entity.

Article 237 of the Greek Criminal Code provides specifically for the act of bribing a judge. Wording of said legal provision is similar, whereby the punishable act may be requesting or receiving gifts or benefits in order to conduct or decide on a case in favour of or against someone.

Articles 235, 236 and 237 are the basis framework in relation to the act of bribery. Through relevant legislation as set out above they are applicable to acts of bribery relating to any public official (including members of international organisations or the European Union).

The provisions on passive bribery (article 235 of the Greek Criminal Code) are not applicable with regard to the OECD Convention.

It should be noted that in the year 2007 (through Law 3560/2007) offering to influence a public official (to make a decision or to enter an agreement) has also become punishable for the first time.

### Penalties for Individuals

The basic penalty for individuals in cases of a misdemeanor<sup>7</sup> act is imprisonment for at least one year. When the value of benefits, gifts, etc. exceeds the amount of €73,000 in total, bribery becomes a felony<sup>8</sup> and is punishable with incarceration of up to 10 years. In cases of bribery acts resulting to financial losses of the Greek State exceeding 150.000 €, Law 1608/1950 is applicable, whereby sentences of incarceration of up to 20 years (with a minimum sentence of 10 years) are provided for. If aggravated circumstances apply (e.g. particularly large amount of financial loss or acts committed over a long period of time), a maximum of a life sentence may be imposed. Said penalties are cited at their nominal value and do not include benefits from rules on the conversion of prison terms to fines, rules of suspension of penalties, early conditional release, application of mitigating circumstances.

## ROMANIA

### The case of Procurement Notice

The contracting authority has the obligation to ensure transparency award of public procurement contracts and Framework Agreements by publishing notices, announcements / invitations to tender and award notices.

For contracts whose estimated value is equal to or greater than the equivalent in RON of EUR 130,000 or the equivalent in RON of EUR 400,000 or the equivalent in RON of EUR 5,000,000 (according to certain conditions) contracting authority has the obligation to include in notices of intent, participation announcements / invitations and award notices at least the information included in Annex 3A of Government Emergency Ordinance no. 34/2006 and, if necessary, other information deemed useful by the contracting authority, using standard forms adopted by the European Commission. For contracts whose estimated value is below the thresholds above, transmission to the Official Journal of the European Union is not mandatory and the content of notices is established by Government decision.

Notices are sent for publication using only electronic means to this end by ESPP which is required to transmit electronic notices for publication internally and to the Official Journal of the European Union, if it is the case. Also, it is required to provide the National Authority for Regulating and Monitoring Public Procurement an unrestricted access to announcements / invitations sent by the contracting authorities before publication, in order to be verified. The ESPP is required to publish the notice within two working days after acceptance of publication.

In 3 days National Authority for Regulating and Monitoring Public Procurement shall: either issue the ESPP permission to publish or reject the publication if it finds errors / omissions while informing the contracting authority on how errors / omissions can be remedied.

### The case of Selection Notice

The public partner is required to submit for publication the selection notice, including those of type errata to these notices, to the operator of ESPP. The transmission for the publishing of the notices to the ESPP operator is performed only by electronic means.

Any other method concerning the publication of the selection notice and the attached document outside of thresholds exceeding 125,000 EURO without VAT (equivalent in RON), for goods and services and 4,845,000 EURO without VAT (equivalent in RON), for works (when it is necessary that publication be made also in the Official Journal of the European Union), including any amendments thereto, is not allowed.

**There are no legal preconditions for participants in a bidding procedure.** Any private investor has the right to participate, individually or in a group of private investors, in the selection procedure. To

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<sup>7</sup> misdemeanor acts are punishable with imprisonment up to 5 years.

<sup>8</sup> felony acts are punishable with incarceration ranging from a minimum of 5 years to a maximum of 10 years.



submit a tender or a letter of intent, public partners can not require groups of private investors to have a specific legal form, but the group selected will be required to acquire a certain legal form if the contract is awarded in extent that this transformation is necessary for the proper performance of the contract.

Private investors who, under the legislation of the member state in which they are established, are entitled to provide the service in question, can not be rejected only on the basis that, under Romanian law, are required to be legal entities. Legal entities may be required to indicate in the tenders or letters of intent, the names and professional qualifications of persons responsible for the performance of the contract in question.

Among the basic principles of legislation on public-private partnerships are:

- nondiscrimination - ensuring the conditions of expression of effective competition for any private investor, regardless of nationality or citizenship, in order to attend the selection procedure for awarding a public private partnership contract and having the chance to become contractor;
- equal treatment - the establishment and application at any time during the procedure of conclusion of the public-private partnership contract of rules, requirements, identically criteria to all private investors so that they can receive equal opportunities to participate in the selection procedure and become contractor;
- transparency – availability, for the public, of all the information regarding the enforcement of the procedures for the conclusion of the public-private partnership contract.

Generally it is organised a preselection procedure that is not imposed by law.

In particular, in the the competitive dialogue procedure, the public partners may limit the number of suitable private investors invited at the dialogue, on condition that a sufficient number of private investors will be available. The stage of selection in the competitive dialogue procedure of private investors represents a distinct process that aims only at limiting the number of private investors who will participate in the dialogue. The selection is done by giving every private investor a score which should reflect its ability to fulfill public-private partnership agreement due to be concluded.

### **Evaluation and selection**

The law creates a general framework of assessment that is nuanced through evaluation criteria by the public partner. The public partner appoints the evaluation commission with tenders/letters of intent and accompanying documents of private investors. The evaluation commission is composed of at least 5 members of the experts and specialists of the public partner and, where appropriate, members of deliberative authorities/governing bodies, members of the executive of the public partner, and any other person with expertise in the field of the object of the public-private partnership project, as co-opted expert, which is not in conflict of interest. The role of the evaluation commission is to analyze and select the private investors participating in the selection procedure and for signing the public-private partnership contract or the project agreement, as appropriate.

The selection is done by a commission appointed by the public partner, with UCCPPP who participated through representatives at the invitation of the public partner in the evaluation and negotiation committees, set up in order to choose the private investor and sign the public-private partnership. The procedures for the selection of the private investor, are: the open procedure and the competitive dialogue. The selection criteria aim at demonstrating the technical, financial and organizational potential of each private investor participating in the procedure, potential which should reflect its real possibility to fulfill the contract and to resolve any difficulties related to its fulfillment, in case it will be declared as winner.

The negotiation commission with the selected private investors with whom project agreements have been signed, consists of at least 5 members of the experts and specialists of the public partner and as

appropriate, local and county councilors, ministers, state secretaries, members of the board or executive of public partners or any other person with expertise in the field of the object of public-private partnership project, which is not in a conflict of interests. The negotiation commission's role, with the private investors selected and who have signed the project, is to negotiate with each candidate selected for this stage, to establish the private partner wherewith will determine the final offer and will sign the public-private partnership contract.

### **Control mechanisms**

A central body controlling PPP procurement is The National Authority for Regulating and Monitoring of Public Procurement. For the purpose of solving the complaints using the administrative-judicial approach, the aggrieved party has the right to address The National Council for Solving Complaints, who is the competent body in this matter.

Court with competences for solving the appeal against the Council's decision is the Court of Appeal, the contentious-administrative and fiscal section in the area of which the public partner has its premises.

If in carrying out of its specific monitoring duties, the Central Unit for the Coordination of the Public Private Partnership (UCCPPP) identifies some elements that could lead, in its opinion, to absolute nullity of the public-private partnership contract, it will notify the National Authority for Regulating and Monitoring of Public Procurement.

The National Authority for Regulating and Monitoring of Public Procurement has the right to ask in court the absolute nullity of the public-private partnership contracts, if the contracts are concluded with the infringement of the provisions of the law regarding the public-private partnership.

The criminal liability of public and private partners is regulated in the Criminal Code.

## **AUSTRIA**

The public procurement process can be divided into two distinct categories: first, the procurement procedure itself (tender invitation, tender submission, tender evaluation, contract award or cancellation of the procedure) and, second, review of the procurement procedure by a judicial agency – such as the Federal Public Procurement Office – upon application by a tenderer or candidate.

### **PUBLIC PROCUREMENT PROCEDURES**

Public contracting authorities, in particular the State and its undertakings, but also Austrian bodies governed by public law and other entities operating within the State's sphere of influence (e.g., universities, social insurance institutions), must abide by EU directives governing the procurement of public works, supply and service contracts.

#### **Types of Procurement Contracts and Procedures**

Several different public procurement procedures can be used depending on the type of contract to be awarded and the contract value (above or below specified threshold values).

#### ***Above- and Below-Threshold Procurement Procedures***

For contracts valued in the above-threshold range, tender notices must be advertised by EU-wide publication (see also: [www.lieferanzeiger.at](http://www.lieferanzeiger.at)). In general, longer time limits and more comprehensive documentation requirements apply for above-threshold procurement procedures, while shorter preclusion time limits are in force in the below-threshold range. Above-threshold procurement procedures apply when the estimated contract value (net of VAT) meets or exceeds the following threshold values:

Threshold values (net) for "classic" procurements (§12)	
Supply Contracts	193.000 €
contracting authorities as per Annex V, BVergG	125.000 €
Service Contracts	193.000 €
contracting authorities as per Annex V, BVergG	125.000 €
Contests	193.000 €
contracting authorities as per Annex V, BVergG	125.000 €
Works Contracts	4.845.000 €
Threshold values (net) for utilities-sector procurements (§180)	
Supply Contracts	387.000 €
Service Contracts	387.000 €
Contests	387.000 €
Works Contracts	4.845.000 €

The Austrian Federal Procurement Act (BVergG 2006) distinguishes between the following types of procurement procedures:

- open procedure;
- non-open procedure with prior advertisement;
- non-open procedure without prior advertisement;
- negotiated procedure with prior advertisement;
- negotiated procedure without prior advertisement;
- direct award without prior advertisement.

In addition to the above procedures, a public contracting authority may apply any of the following variations:

- dynamic procurement system;
- framework agreement;
- competitive dialogue;
- electronic auction.

A contracting authority may freely choose between an open procedure and a non-open procedure with prior advertisement. To select one of the other procurement procedures, the exhaustive requirements for each as set forth in the BVergG 2006 must be met. As a general rule, a contracting authority must retain a procurement procedure once it has been established. Switching to a different type of procedure in the course of the procurement process is thus prohibited.

The following procurement procedures are authorised only if the respective type of contract is valued at or below the indicated threshold value (in euros):

	Non-open procedure without prior advertisement (5 tenderers)	Negotiated procedure without prior advertisement (3 tenderers)	Direct Award*
Works Contracts	< 120.000	< 80.000	< 100.000
Supply Contracts	< 80.000	< 60.000	< 100.000
Service Contracts	< 80.000	< 60.000	< 100.000
Intellectual Services	< 80.000	< 60.000	< 100.000

### REDRESS PROCEDURES

The Federal Public Procurement Office has three types of procedures at its disposal for dealing with claims (applications) lodged by economic operators: the review procedure, the interim procedure and the declaratory procedure. Importantly, the Office may not take action on its own initiative. Instead, economic operators who consider their right to the lawful carrying out of a public procurement procedure has been infringed must first lodge an application. Applications lodged with the Office must include the following:

- the exact name/designation of the contracting authority;
- the exact designation of the procurement procedure and the separately challengeable decision of the contracting authority the material facts and the specific interest of the applicant;
- if the matter concerns an award decision, the name of the winning tenderer specification of the actual or potential damages the specific legal right(s) which the applicant considers to be infringed;
- the reasons for claiming the decision being challenged as unlawful an application for annulment of the specific decision being challenged evidence that the application is within the prescribed time limits.

### Flat Fees

The BVergG 2006 (Federal Public Procurement Act of 2006) contains the prescribed flat fees that an applicant must pay in full to the Office prior to lodging an application for a redress procedure. For a review procedure or declaratory procedure the flat fee shall be paid separately for each, while half of the indicated flat fee shall be paid when applying for an interim procedure (interlocutory injunction).

<b>Flat Fees (as of 2009)</b>	
Direct procurement	208 €
Direct award (above threshold)	623 €
Direct award (below threshold)	311 €
<b>Negotiated procedure, no prior advertising (above threshold)</b>	
Works contracts	415 €
Supply and service contracts	311 €
Intellectual services	363 €
<b>Non-open procedure, no prior advertising (below threshold)</b>	
Works contracts	623 €
Supply and service contracts	363 €
<b>Other procedures (below threshold)</b>	
Works contracts	2.594 €
Supply and service contracts	830 €
<b>Other procedures (above threshold)</b>	
Works contracts	5.188 €
Supply and service contracts	1.660 €

### Decisions Amenable to Separate Judicial Review

The list of specific decisions taken by a contracting authority which are amenable to separate challenge and judicial review is lengthy and will vary according to the type of procurement procedure. The most important such decisions are as follows:

- those related to the tender documents;
- the exclusion of a tender;
- the award of a contract;
- the cancellation of a procurement procedure;
- non-admittance of a candidate to participate in a tender contest and/or negotiated procedure;
- the invitation to tender;
- The decision to allocate prize money or payments (for contests);
- the selection of the procurement procedure (if it is a direct award).

A variety of other decisions related to framework agreements, dynamic procurement systems and the competitive dialogue may also be challenged before the Office.

### The Interim Procedure

The interim procedure serves as a temporary means of safeguarding legal rights by allowing for an applicant's claims to be preserved without creating a *faits accomplis* (e.g., the forced opening of tenders or awarding of a contract). As a result, the Office may adopt interim measures in order to suspend the procurement procedure for the time needed to investigate an applicant's claim. An interim procedure is initiated by the candidate lodging an application for an interlocutory injunction with the Office. In turn, the Office shall immediately notify the contracting authority of the receipt of such application. The contracting authority is accordingly not permitted to open tenders, nor, in case of other nullities, to award the contract, nor, in case of other invalidity, to cancel the procurement procedure. In addition, the applicant must lodge a separate application for a review procedure within the legally prescribed time limit. Failure to do so shall lead to the interim procedure being

discontinued without any formality. The Office must decide on an application for an interlocutory injunction within one week, and it must do so under equal consideration of competing interests – to mean evaluating what effect adopting the injunction would have in each concrete case on the applicant, the contracting authority, other tenderers or candidates and, if applicable, the public interest. The opposing parties in an interim procedure are limited to the applicant and contracting authority – the other tenderers do not participate in the proceedings – with the responsible senate chairman deciding on the application in question. The chairman’s decision is issued in writing and takes effect immediately.

### THE REVIEW PROCEDURE

The review procedure serves to enable certain decisions taken by a public contracting authority to be reviewed by a judicial agency before a procurement procedure ends (through a contract award or cancellation of the procedure). The key reason: The award of a contract establishes a legal relationship between the contracting authority and the winning tenderer, thus all tenderers/candidates must be given the opportunity to appeal decisions taken by the contracting authority – meaning those amenable to separate judicial review – before the contract is formally awarded. In addition, this can help meet the goal of minimising the overall procurement time and costs.

A review procedure has no suspensive effect. Thus, if an applicant desires to interrupt the procurement procedure – which, as a general rule, is an expedient choice to prevent the contracting authority from taking additional, irreversible steps – the applicant must also lodge an application for an interlocutory injunction.

### Time Limits

As a general rule, the decisive date with respect to time limits is the day on which the applicant becomes aware of, or should reasonably have become aware of, the contracting authority’s separately challengeable decision. Applications for the review of tender or contest documentation must be lodged

- within three days prior to expiry of the tender submission period when the tender submission period is less than 15 days.
- within seven days prior to expiry of the tender submission period in the following instances:  
for an “accelerated procurement procedure due to urgency” in accordance with the BVerG 2006 for a procedure in which the tender submission period has been cumulatively reduced i.a.w. with § 61 and, simultaneously, § 62 of the BVerG 2006
  - when challenging an award decision for a procurement procedure undertaken using either an electronic auction or dynamic procurement system
  - when challenging a decision to cancel a below-threshold procurement procedure i.a.w. the provisions contained in Sections 2 and 3 of the BVerG 2006 for a direct award procedure.
- or within 10 days in cases other than mentioned above.

The Office must decide on the application within six weeks. As a general rule, oral hearings are held to which the applicant and contracting authority are summoned, as well as the prospective winning tenderer for those cases where the award decision is being challenged. Hearing dates shall also be announced on the Federal Public Procurement Office’s homepage ([www.bva.gv.at](http://www.bva.gv.at)).

### The Declaratory Procedure

If an award decision has already been taken or a contract awarded, economic operators may have the opportunity to lodge an application for a declaratory procedure. However, this is true only in the following cases:

## Summary Report

- an interest in the conclusion of a contract which is subject to the scope of the BVerG must exist;
- the alleged unlawful decision has resulted in damages.

In such cases, the Office can determine if:

- a decision to select a direct award procedure or procurement procedure without prior advertisement was unlawful;
- an award was not made in accordance with the specifications of the tender invitation;
- a notice of cancellation was unlawful;
- the award of a contract directly to an economic operator without other economic operators having participated in the procurement procedure was manifestly unlawful.

### Time Limits

The application must be lodged within six weeks from the day on which the applicant becomes aware of, or should reasonably have become aware of, the contracting authority's decision. In any event, the right to a declaratory procedure expires after six months.

In cases where a contract is awarded without participation in the procurement procedure by other economic operators, the time limit for lodging an application is 30 days. The Office must decide on the application within six months. The decision shall be issued in writing and takes effect immediately; and the decision may be appealed before the Austrian Verwaltungsgerichtshof (Administrative Court) and/or Verfassungsgerichtshof (Constitutional Court).

## SERBIA

The process of awarding public contracts for PPP initiates with publishing a procurement notice in Serbian language and foreign language that is commonly used in international trade. »Public Call« is published in the "Official Gazette of the Republic of Serbia", as well as in public media which are distributed throughout the territory of the Republic of Serbia, on the website of the public body and the public procurement portal, stating the date on which a public notice in the "Official Gazette of the Republic of Serbia" was published. Public call, when appropriate, is published in international newspapers and electronically on the website Tenders Electronic Daily, the online edition of the Official Journal of the European Union, obligatory for projects worth over five million euros.

Participant in awarding public contracts – bidding procedure can be any domestic or foreign individual or legal entity. Groups or associations of economy entities may submit bids or act as participants in the process. These groups/associations do not have to have a particular legal form in order to participate in the proceedings.

The Law does not provide shortlisting procedure.

### Evaluation and selection

PPP procurer is implementing the process of evaluation and selection in accordance with the Law on Public Procurements. The selection is done by the Expert team of the Public body established for the purpose of procurement process.

### Control mechanisms

Public body controlling all public procurements, including PPP procurements is Republic Commission for protection of rights in the procurement procedures. This is independent body established by The Assembly of the Republic of Serbia. The Commission designs list of experts that have proven knowledge of public procurement procedures. The Commission reports to The Assembly.

Also, public body – procurer is required to pass an internal act which will regulate the public procurement within the procurer, and in particular about the planning of procurement (criteria, rules



and methods for determining the subject of public procurement and the estimated value, type testing and market research), responsibility for planning, objectives of public procurement, method of performing its duties under the procedure for ensuring competition, implementation and control of public procurement, the method of monitoring of the execution of public procurement contracts. Content of this document is specified by Public Procurement Office, which is also responsible to identify inconsistencies of this document with the Law.

The unsuccessful bidder can file a request for the protection of rights to the Republic Commission where would be clearly stated what is the reason for this request. The request for the protection of rights stops further activities in the public procurement procedure, during all period of pending a decision of the Republic Commission. An applicant may propose that the Republic Commission makes a decision to prohibit the contracting authority to sign and execute an agreement on procurement. Republic Commission shall within five days adopt the proposition of the applicant if it determines that the closing or execution of public procurement contracts without checking the regularity of the proceedings could result in substantial harm to the public funds.

### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The awarding of a contract establishing a public private partnership shall be carried out by a notice. The form, content and manner of publishing the contract notice for public private partnership established as a public works contract or a public service contract shall be pursuant to the Law on Public Procurement and its bylaws.

The form and content of the contract notice for public private partnership established as a public works concession or as a public service concession shall be prescribed by the Government of the Former Yugoslav Republic of Macedonia and it shall be published pursuant to the Law on Public Procurement.

The contract notice for public private partnership established as a public works concession and public service concession shall contain in particular the following data:

1. Name, address, fax number and e-mail of the public partner;
2.
  - a. Place of execution and
  - b. Subject of a public works concession or public service concession, nature and scope of the works and/or services as well as explanation of the justification for the award of public works concession or public service concession and designation of the objectives;
3.
  - a. Time limit for the submission of applications,
  - b. Address to which they must be sent and
  - c. Language in which they must be written;
4. Type of contract award procedure, in accordance with the provisions of the Law on Public Procurement and Other Special Laws;
5. Tender documentation fee;
6. Personal, technical and financial conditions to be met by the candidates;
7. Criterion which shall be applied in the award of the contract;
8. If necessary, a minimum proportion of the works which shall be awarded to third parties;
9. If necessary, the minimum amount of the concession fee and/or the manner in which the concession fee is calculated;
10. Publication date of the notice;



11. Name and address of the competent authority for resolving appeals, information on the deadlines for lodging appeals, or should it be necessary the name, address, telephone number, fax number and e-mail of the person from whom this information may be obtained.

It shall be considered that the contract award procedure for the award of contracts establishing a public private partnership established as a public works concession and public service concession has been initiated as of the day of the notice publication. The Public Procurement Bureau shall charge a fee for publishing the notices in the amount of EUR 100 in Denar equivalent calculated on the middle exchange rate of the National Bank of the Former Yugoslav Republic of Macedonia on the day of payment.

The award procedure for concession for goods of general interest and contracts establishing a public private partnership shall be implemented by the Commission for Procedure Implementation, formed by the Government of the Former Yugoslav Republic of Macedonia upon proposal of the minister in charge of the area in which the contract is awarded or by the mayor of the municipality, the mayor of the City of Skopje or the mayor of the municipality in the City of Skopje, or by the management body at the concerning entities. The Commission shall consist of a president and at least four members and their deputies, from the ranks of law, economy, technical sciences and other relevant field experts, depending on the subject of the contract. External experts may participate in the work of the Commission, without a right to vote.

The members of the Commission cannot be persons who:

- have marital relation, family relation up to the second generation, or adoption or custodial relation with the tenderer or the candidate, with his/her legal proxy, and in the cases when the tenderer or the candidate is a legal entity with members of its administrative, supervisory or other authorities;
- have been employed or have been members of the management bodies or the supervisory bodies of the tenderer or the candidate in the course of the last three years;
- are in any other legal relation with the tenderer or the candidate and
- have been convicted on the grounds of a financial offence, fraud or corruption.

In the sessions, the Commission shall work in full composition and it shall adopt the decisions with majority of votes.

The Commission shall perform the following:

- preparing the tender documentation, including contract draft;
- determining the contract award criteria;
- organizing receipt of the requests to participate and tenders;
- determining the candidates' qualification and selecting candidates entitled to further participation in the procedure;
- determining the qualification of the tenderers;
- providing clarifications and delivering further information and documents;
- examining and evaluating the tenders and ranking the tenderers with a proposal that the first-ranked tenderer be selected;
- preparing a report on the evaluation of tenders;
- submitting a proposal for cancellation of the procedure and
- conducting all other activities necessary for the procedure implementation.

### **Evaluation and selection**

The Commission shall be obliged to prepare the tender documentation within a deadline stipulated by the decision on initiating the award procedure for concession for goods of general interest. The

Commission may entrust the preparation of the tender documentation to a scientific or expert organization or to experts from the relevant area. The drafter of the tender documentation cannot participate as a tenderer in the procedure for which it has been instructed to carry out research, experiments, studies or development in connection with subject matter contract. The Commission may determine that the data or a part of the data contained in the tender documentation is considered confidential pursuant to the Law on Classified Information. In such case, the participants in the procedure shall be obliged to submit a statement, attached to the documentation with which they shall be obliged not to publish the data considered confidential.

The Government of the Former Yugoslav Republic of Macedonia upon proposal of the minister competent for the area for which the concession for goods of general interest shall be awarded, i.e. 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.

Depending on the nature of the concession for goods of general interest, the tender documentation shall contain the certain elements defined by the Law.

The Commission shall be obliged to respond to all the additional questions concerning the tender documentation posed by those economic operators that have collected the tender documentation if these questions have been submitted within 14 days prior to the expiry of the deadline for submitting the tenders. The Commission shall be obliged to deliver the responds to the posed questions to all the economic operators that have collected the tender documentation, without mentioning the name of the economic operator that posed the question, but no later than 7 days prior to the expiry of the deadline for submitting the tenders.

The award of a concession for goods of general interest shall be carried out by means of a public call. The tender shall be submitted in a manner and form stipulated in the tender documentation. The economic operators having collected the tender documentation shall have the right to submit tenders. The tenderer may submit only one tender.

### Control mechanisms

A central body responsible for controlling PPP procurement is the Commission for Procedure Implementation. The possibility for unsuccessful bidders to appeal against selection of the winning bidder and the consequences of a breach of the procurement rules are regulated in the Law on Public Procurement. The same law also regulates criminal liability of bidders and PPP procurers.

### 3.4.3 Contract design and risk allocation

- ? **Are there any provisions defining the PPP contract structure (if yes, describe them)**
- ? **What are the principles of risk allocation (if included in the law)**
- ? **What are the principles of financial agreements ( if included in the law)**

### SLOVAKIA

There are no special binding provisions concerning the PPP contract structure. The contract must be in line with provisions of the **Law on public procurement, § 45**.

Furthermore, the contract must cover following areas:

- Payment mechanism;
- Quality, penalty;

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- Price accommodation;
- Specification, offer, design;
- Ownership;
- Duration;
- Premature termination of the contract;
- Employees;
- General terms and provisions;
- Force majeure.

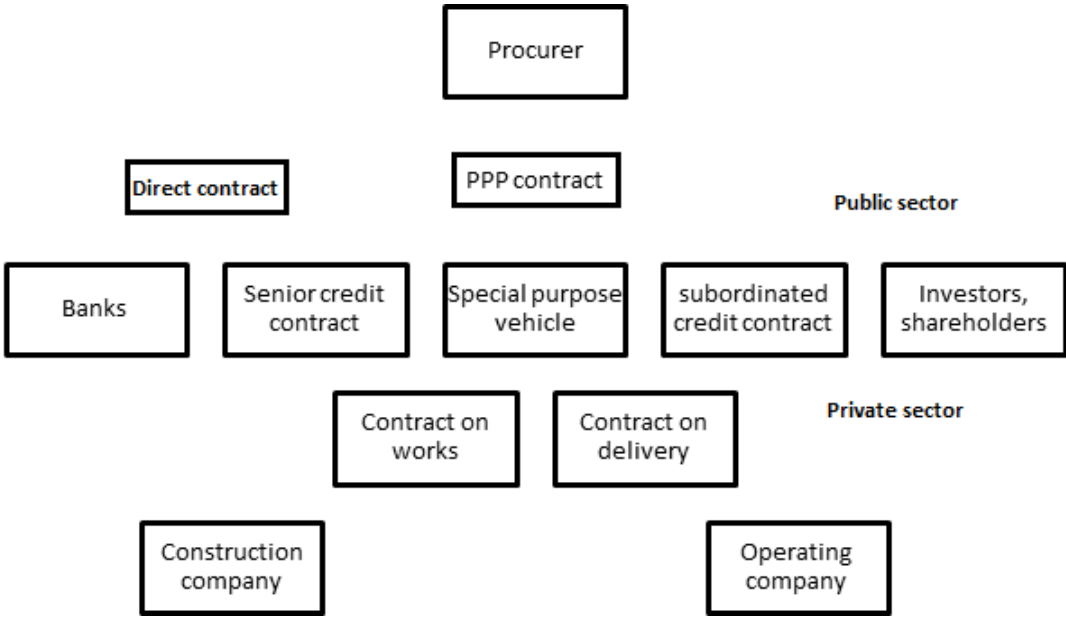
With regard to the fact that the private partner must after concluding contract with the procurer conclude also contracts with banks providing finance and with the subcontractors, the PPP contract must comprise **condition precedent**.

Procurer, who is a public administration body at the national level, must according to the law on budgetary rules for contracts with value higher than 3,319 million EUR obtain the **governmental approval** with such a contract before it is concluded.

There are several kinds of contracts to distinguish:

- PPP contract;
- Direct contract;
- Subcontracting.

The complex contracting relationships are shown in the picture below.



The contracts on concession concluded by central public bodies are subject to **approval of the government** while the contracts concluded by higher territorial units and municipalities are subject to **obligatory assessment by the Ministry of Finance** who will judge the impact of the contract on public debt. The contract can be concluded only if it is in line with the law no. 583/2004 on budgetary rules for self-governing units.

As there is not specific law on PPP, the risk allocation is not defined legally, there are only **recommendations** following the methodological document »Approach to risk management in PPP projects« published by the Ministry of Finance.

### **SLOVENIA**

**PPP contracts** are regulated by several acts.

General regulation is provided by the *Public-Private Partnership Act* which in Article 26 defines the forms of contractual partnerships as a concession or a public procurement relationship. The criteria for distinguishing between these two forms are laid down in Article 27. If the public partner bears the majority of or all the commercial risk involved in the project, the PPP is regarded as a public procurement relationship regardless of its name or provisions laid down in a special law. If it is not possible to determine who bears the majority of commercial risk, the PPP is in case of doubt deemed to be a public procurement relationship (Article 28). In such cases the rules on public procurement are applied. They are also applied if it is established during the selection of the concessionaire that the spread of commercial risks reflects a public procurement relationship rather than a concession (Article 30).

Article 127 of the *Public-Private Partnership Act* also lays down the content of the equity partnership contract, which is subject to the provisions of the *Public Utilities Act* regarding concession relationships and **must contain provisions on:**

- the form and purpose of the equity partnership;
- the type, amount and form of joint funds or funds provided through co-financing or of invested private funds;
- the relationships in connection with funds invested by the public partner and the manner of refunding or re-purchasing invested public funds;
- a timetable of the use of public funds;
- the method of supervising the appropriated spending of funds;
- a timetable and method of carrying out potential investments and fulfilling other obligations;
- the model of ownership right to buildings and facilities;
- the conditions for awarding works to subcontractors;
- changes in the equity partnership company for which it must obtain the consent of the public partner;
- contractual penalties and the reasons for cancellation, annulment or rescission of the contract;
- exclusion of the private partner or withdrawal of the public partner;
- the possibilities of entering into an equity partnership (step in);
- regulation of equity partnership for the contractor.

In the framework of the general regulation the *Public-Private Partnership Act* also lays down the circumstances causing **nullity of PPP contract:**

- if the contract is concluded with a subject other than the one selected with the selection document and such possibility was not foreseen in the procedure;
- if the contract is concluded in contravention of the rules on publication of contract notice;
- if the contract is concluded without having conducted the procedure for the selection of the public-private partner;
- if the contract is concluded without having issued the selection document;
- if another public partner has concluded the contract without the founder's consent; and
- if the selection document was revoked in a final judicial ruling and another contractor has been selected.

The **reasons for nullification** of the contract are also laid down in Article 44 of the *Legal Protection in Public Procurement Procedures Act*:

- if it is concluded as a consequence of criminal offence committed by the contracting authority or successful tenderer;
- if it is concluded without a prior public contract award procedure when such procedure should have been carried out;
- if the contracting authority carried out the negotiated procedure without prior publication of a contract notice when the conditions for this procedures were not fulfilled;
- if the contracting authority carried out the negotiated procedure with prior publication of a contract notice due to previously unsuccessful public contract award procedure and if during the procedure it did not publish a contract notice and therefore the conditions to carry out this procedure are not fulfilled;
- if the contracting authority failed to publish a contract notice when such notice should have been published;
- if the contracting authority does not take into account the grace period;
- if, after the submitted review claim, the contracting authority concludes a contract with the successful tenderer when this is not allowed;
- if the contract essentially derogates from the draft contract provided in the tender documentation and the contracting authority, the tenderer or his/her responsible representative or a person related to any of them gained profit therefrom;
- due to reasons for nullity laid down in the act regulating integrity and prevention of corruption and in other regulations.

Some details regarding public procurement relationship contracts are regulated in the *Public Procurement Act*, *Public Procurement in Water Management, Energy, Transport and Postal Services Area Act* and the *Public Procurement for Defence and Security Act*. Those acts define the public partner as the “contracting authority” and the private partner as the “tenderer”.

Article 71 of the *Public Procurement Act* stipulates that the public procurement contract must contain the actual value of the complete public contract or, if this can not be determined, the estimated value of the public contract, and the duration of the contract.

Public procurement contract may not derogate in its essential elements from the draft contract provided in the tender documentation, unless if certain provisions of the draft contract were subject to negotiations between the contracting authority and the tenderer during the public contract award procedure.

If the tenderer intends to perform the contract in cooperation with subcontractors, the contract must contain information on the subcontractors and the type of works or goods to be provided by the subcontractor as well as the subject, volume, value, place and time of the realisation. In the contract the tenderer must authorise the contracting authority to pay the invoices directly to subcontractors, and the subcontractor must submit his/her consent that the contracting authority may settle the tenderer's liability towards the subcontractor on behalf of the tenderer. The tenderer must submit to the contracting authority the contract concluded with the subcontractor.

Concession contract is regulated in the *Public Utilities Act* and *Public-Private Partnership Act*.

Article 39 of the *Public Utilities Act* stipulates that the concession contract must be concluded in written form, otherwise it has no legal effect. It also lays down the following **contents of the concession contract** (in addition to general elements):

- payment method and period and eventual securities;
- relationship regarding the funds invested by the concession awarding authority;
- the concessionaire's duty to report to the concession awarding authority all facts and events that may influence the realisation of public service in a way and under the conditions laid down in the concession document;
- financial and technical supervision to be carried out by the concession awarding authority;
- contractual sanctions for the non-realisation or incorrect realisation of the public service;
- mutual relationships in case of eventual damage caused by the realisation or non-realisation of the public service;
- relationships in case of changed or unforeseen circumstances;
- the method of amending the concession contract;
- termination of the concession contract and its eventual renewal;
- transfer of buildings and equipment (redemption of the concession) and eventual restitution after termination of the concession.

Article 90 of the *Public-Private Partnership Act* lays down that the concession contract must also contain provisions on:

- the form and purpose of concession;
- the type, amount and form of joint funds or funds provided through co-financing or of invested private funds;
- the relationships in connection with possible funds invested by the public partner, and on the manner of refunding or purchasing invested public funds;
- a timetable of the use of public funds;
- the method of supervising the appropriated spending of funds;
- a timetable and method of carrying out investments in buildings and facilities and fulfilling other obligations;
- the model of ownership right to buildings and facilities;
- the conditions for awarding works to subcontractors;
- changes in the concessionaire's company for which it must obtain the consent of the public partner;
- the possibilities of entering into a concession relationship in place of the existing concessionaire (step in);
- contractual penalties and reasons for cancellation, annulment or rescission of the contract and the rights and obligations of contracting parties in such cases.

### **BULGARIA**

**PPP contracts contain at least**(Article 44, paragraph 1):

1. the Contracting parties;
2. subject of the contract, which includes a description of the object and the activities of public interest and services of general interest - if applicable;
3. entry into force of the contract, preconditions, if any, and term of contract;
4. amount and sources of funding by the private partner;
5. specific amount of financial support, forms, terms and conditions of its provision by the public partner, and arrangements for its reduction or discontinuation and timing of payments where these are provided;
6. allocation of risks between the parties;
7. the size of the rate of return for the private partner with a financial and economic model and the procedure for its calculation, reporting and control;
8. procedures for obtaining public partner of the excess profits of the private partner rights conferred;

9. conditions that determine the economic balance and the circumstances of the factual or legal nature related to object of the operation or service of public interest, the occurrence or modification would affect the balance;
10. rights and obligations of the parties, the terms and conditions for their implementation;
11. terms and conditions of insurance facility, which operates in the public interest and sites allocated for additional business and / or provide additional services outside the public interest;
12. technical specifications;
13. terms and conditions for use of subcontractors;
14. conditions and procedures for reporting and monitoring of compliance of the private partner;
15. guarantees performance of the contract and the responsibilities of default, including defaults;
16. consequences of termination.

In the performance of the PPP is to monitor and control the performance of the obligations of the parties as well as private audit partner.

### **Risk allocation**

In PPP risks are shared between public and private partners. The distribution of risk is determined on a case-PPP, depending on the capabilities of partners to evaluate, monitor and manage risks. The private partner assumes the construction risk is always at least one of the risks for availability or call for service in the public interest.

### **Principles of financial agreement**

Public partners involved in PPPs by providing financial support to the private partner, which is in the form of:

1. payments to the private partner;
2. grant of properties or parts of properties that are different from the facility, which operates in the public interest to perform additional business and / or to provide additional services outside the public interest;
3. granting of rights to additional business and / or to provide additional services outside the public interest in the subject, which operates in the public interest.

## **HUNGARY**

In the Hungarian law, the PPP contract as a single type of contract does not exist. The body of the PPP contract is based on the general elements of any contract defined by the Civil Code. So the PPP contracts' provisions are built up by public duties in different contract groups, or can be different by individual ones.

One of the most important key features of the PPP contracts is the risk allocation between the public and private sector in connection with the possible risks.

As general principle we can say that the risk-sharing is optimal, if in case of each risk factor that partner bears the possible consequences who is able to manage it the most effectively.

The general practice for sharing the risks is outlining and compilation of the the so-called risk matrix. The actual sharing takes shape in the contract between the state and the private partner - using the best possible wordings and defining the possible sanctions.

## **GREECE**

According to article 17 of Law 3389/2005, the Partnership Contracts and Ancillary Agreements shall contain clear and detailed descriptions of the rights and obligations of the Parties under the Partnership concerning its object. Specifically, the above contracts shall make special provision for the following:



- The Partnership object, including the specifications of the work or service to be provided, the sum to be paid to the Private Entity under the contract, and the provisions defining how any amounts paid by the final users for use of the work or provision of the service shall be shared by the parties to the contract;
- The method of monitoring the performance and operation of the work or provision of the service either by independent companies recruited for this purpose by the Public and Private Entities acting in common, or by the competent State agencies;
- The methods of ensuring quality during implementation and operation of the work or provision of the service;
- The time-schedule for the performance of the object of the Partnership, the conditions under which it may be amended, the penalties and bonuses to be applied in the event of failure to comply with the time-schedule or early completion, the duration of the Partnership Contract, and the conditions under which its term may be extended or abridged;
- The formal concession to the Private Entity of the use or exploitation of the fixed assets necessary for implementation and operation of the work or provision of the service, and any payments which may be envisaged;
- The way of financing the implementation of the Partnership object;
- Any approval which may be required by the Public Entity for the financing contracts executed by the Private Entity, and the procedure for amending that approval;
- The allocation of risk between the parties and the consequences of events representing force majeure;
- The insurance policies for the Contract object, or for the Private Entity;
- Protection of the environment and of antiquities;
- Protection of rights of intellectual and industrial property;
- The mode of operation, maintenance and exploitation of the Partnership object;
- The amounts to be paid for use of the work or service by the users; the manner in which these payments will be collected, and the grounds and methods for revision of such payments;
- The method of allocating between the Public and Private Entity the benefits that will accrue either from a re-structuring of the loans of the Private Entity, or after a specific percentage return on its own capital has been attained;
- The extent of the guarantees to be provided by the Private Entity for the proper implementation, operation and maintenance of the work, or for proper provision of the service;
- The substitution of the Private Entity or the creditors by decision of the Contracting Authority, the circumstances under which such substitution may be permitted, and all related issues;
- The payment of compensation and in general the reparation of any loss or damage caused in the event that either of the contracting parties is in violation of its contractual obligations;
- The grounds for termination of each contract and the consequences thereof;
- The applicable law;
- The procedure for resolving disputes;
- The order of priority of any appendices or annexes to each contract;
- A detailed definition of the minimum operation and maintenance requirements contained in the tender documents;
- Determining the procedures for delivery of the project to the public sector upon the end of the exploitation period, the eventual obligations for training and transfer of know-how from the Private Entity to the Public Entity, the specifications applicable to the object on handover and the guarantees, as well as their duration, following the handover of the work or the service by the Public Entity;



- The requirements for the hygiene and safety of the employers and the users of the work or the service;
- The procedures for the resolution of disputes that may arise, by an experts panel nominated by a joint decision of the involved parties.

### Risk allocation

According to Article 2 “Scope” of Law 3389/2005, among the 4 obligatory conditions that must be met in order a Partnership may be subject to the provisions of Law 3389/2005, is that **the Private Entities, shall assume a substantial part of the risks associated with the financing, construction, availability of or demand for the partnership object, and related risks**, such as, for example, management and technical risk.

Moreover, according to article 17 of Law 3389/2005, the Partnership Contracts and Ancillary Agreements, among others, must make special provision for the following:

- The method of monitoring the performance and operation of the work or provision of the service either by independent companies recruited for this purpose by the Public and Private Entities acting in common, or by the competent State agencies;
- **The allocation of risk between the parties and the consequences of events representing force majeure;**
- The insurance policies for the Contract object, or for the Private Entity;
- Protection of the environment and of antiquities;
- The extent of the guarantees to be provided by the Private Entity for the proper implementation, operation and maintenance of the work, or for proper provision of the service;
- The substitution of the Private Entity or the creditors by decision of the Contracting Authority, the circumstances under which such substitution may be permitted, and all related issues;
- The requirements for the hygiene and safety of the employers and the users of the work or the service.

Furthermore, Law 3389/2005 makes special provisions (from Article 20 to Article 24) in order to avoid delays caused by issues arising as PPPs are implemented. These provisions are similar to those implemented in the ratified concession agreements (Attiki Odos, El. Venizelos Airport, Rio – Antirio Bridge, Attiko Metro).

### **Granting of permits** (Article 20)

All permits required for the design, construction, financing, operation, exploitation and maintenance of the works or provision of services under the Contract shall be issued in the name of and for the account of the SPV.

**These permits shall be deemed to have been issued**, if the authorities responsible for issuing them have not proceeded to issue a written, reasoned refusal to issue the permits **within a period of sixty days** after the SPV has submitted the application for the permit.

An application for a permit shall be deemed to have been legally submitted only if

- it is accompanied by the supporting documentation required by law for the issuing of the permit in question;
- it has been pre-approved for the fulfillment of the needed documents in case such pre-approval is provided for by law.

### **Archaeological finds** (Article 21)

In the event that archaeological remains are uncovered during construction, the Public Entity shall, upon being notified by the SPV, communicate the event to the appropriate Archaeological Authority,

which **within sixty days** must indicate ways for continuing the project works and proceed to the necessary actions in order to secure the protection of the antiquities.

If the above deadline is not met by the Archaeological Service, the SPV may request, and the Public Entity is obligated to grant, an **extension of the contract deadlines** equal to the delay caused by the non-compliance of the competent Archaeological Service or the execution of the possibly needed actions for the preservation of the Archaeological finds.

In this case, the SPV has the right to **seek redress** for any loss it may sustain as a result of such delay.

### **Protection of the environment** (Article 22)

The environmental impact studies required in each project shall be prepared and submitted for approval, and need to be approved before the award of the Partnership Contract.

If the Public Entity involved, for reasons that could not originally have been predicted even if special care was applied, imposes additional regulations, it must **indemnify the SPV** for any additional cost or expense it may have sustained.

The Partnership Contract may include measures for increased protection of the natural and cultural environment, as long as these measures have been included in the respective Invitation to Tender.

### **Expropriations** (Article 23)

The expropriations required for the construction of works or the provision of services under Law 3389/2005, or the constitution of rights in rem or liens to those properties, where permitted, serve purposes of obvious public interest and shall be regarded as urgent and of major significance, provided that the official approval of the compulsory purchase includes adequate evidence that the particular expropriation serves objectives of public interest.

The expropriation of such properties or the constitution of rights in rem or liens to those properties, shall be effected to the benefit of the Public Entity involved in each case.

The expropriation shall be declared by joint decision of the Minister of Economy and Finance, and the Minister in the field of competence relevant to the project.

If the scheduled deadline for completion of the expropriation or for constitution of rights in rem or liens to those properties passes and the relevant procedures are still pending, then the SPV shall be entitled to request, and the Public Entity shall be obligated to grant, an **extension of the Contract time-schedule and deadlines** equivalent to the effective delay.

In these cases, the Special Purpose Company shall be entitled to **seek redress** for any loss it may have sustained as a result of the said delay.

If the compulsory expropriation or the constitution of right in rem or liens to the above properties is made at the expenses of the SPV, these expenses shall be construed as payment for the use of these properties or the rights thereon.

### **Public agencies and projects undertaken by and / or behalf of Public Utility companies** (Article 24)

Public Agencies, Public Enterprises and Public Utility companies are entitled to **proceed immediately in order of priority** to carry out work and implement measures within their area of responsibility, which are necessary or useful for the smooth and unhindered execution of works or provision of services under Law 3389/2005.

If the public agencies, enterprises and utility companies do not fulfill their obligations as set out above, the Special Purpose Company may request and the Public Entity shall be obligated to grant an **extension of the deadlines** laid down in the Contract equal to the delay caused by this failure to fulfill obligations.

In these cases, the Special Purpose Company shall be entitled to **seek redress** for any loss it may have sustained as a result of the said delay.

### **Principles of financial agreement**

In the traditional forms of public procurement, the Public Sector possesses and maintains its infrastructure, while it finances their construction via taxes or loans. The Private Sector is responsible

for the project only during the construction period and upon the completion of works. The Public Sector also undertakes possible budget overruns that can result from problems and delays during the construction phase, while after a period of time there is no guarantee for the good operation and the quality of the project.

The nature and risk of financing are totally different in the case of PPP projects. The Private Sector is responsible for the initial financing of the project, its maintenance and the delivery of relevant services during the lifetime of the contract.

Remember that among the 4 obligatory conditions (Article 2 "Scope" of Law 3389/2005) that must be met in order a Partnership may be subject to the provisions of Law 3389/2005, are that :

- the Private Entities, against payment to be made as a lump sum or in installments by the Public Entities or by final users of these works or services, shall assume a substantial part of the risks associated with the financing, construction, availability of or demand for the partnership object, and related risks, such as, for example, management and technical risk, and
- the financing, in whole or in part, of the construction of the works or provision of services, shall be accomplished with capital and resources secured by the Private Entities.

Via PPP, the Public Sector procures services or works without the obligation to finance them immediately, since their initial financing is undertaken by the Private Sector. The invested private funds return to the Private Sector through periodic payments, whereas the Public Sector knows beforehand the precise payments that have to be made during the contractual period.

These payments cannot increase, if the Private Sector that has undertaken the project faces issues with risks undertaken by itself, **since it is the Private Sector that assumes the construction risk, the financing risk, and the availability / demand risk**. Payments on behalf of the Public Sector or the end-users can only be made once the project is operational, and are directly linked with the performance of the offered services, which the Private Sector must maintain up to certain quality standards, until the very last day of the contract. Low services result to lower payments.

So, upon the termination of the tender, the Private Partner selected creates a **Special Purpose Vehicle (SPV)** that will undertake, according to the scheme of the partnership:

- the finalization of the design of the project;
- its construction, and
- either the operation and exploitation of the project or its maintenance according to the contractual agreement.

The SPV signs an agreement with the Contracting Authority, whereby all aspects related to the project are regulated and its financing is secured. Typically, the financing comes from, to a small extent, the private partner's equity and to larger one from bank loans.

The SPV undertakes the responsibility of constructing the project's infrastructure (construction, renovation of existing infrastructure, installation of equipment, etc.) and the provision of pre-agreed services during the life of the contract, using either own resources or subcontractors that meet the criteria determined by the Contracting Authority. During the project's life, the SPV is paid either through regular installments by the Contracting Authority (availability payments) or through fees paid by the end users. In turn, it gradually repays the loans it has obtained and, provided that it records profits, it distributes dividends to its equity investors, based on the yield on its equity.

According to Article 18 of Law 3389/2005, the SPVs which undertake to execute works or provide services in Partnership arrangements, **bear all responsibility and risk concerning the required financing** for the proper performance of their obligations under the relevant Partnership Contracts or Ancillary Agreements.

SPVs must furnish to the Public Entities all necessary documentation demonstrating the availability of funding that is sufficient for the performance of the overall obligations to be undertaken by them under the relevant Invitation to Tender. Funding items involve in particular:

- a. The own capital of the Special Purpose Company;
- b. The capital secured by the Special Purpose Company in any form of credit or loan, and especially in the form of loans, bonds and securitization of future and existing receivables;
- c. The necessary guarantees or assurances required for obtaining the capital or credits of a. and b. above;
- d. The resources from exploitation of the Partnership object during the construction period.

Furthermore, Law 3389/2005 allows the participation of Public Entities, providing that the participation of the Public Entity and the form(s) of such participation are clearly defined in the respective Invitation to Tender:

- Participation to the financing for the implementation of projects or the provision of services. This support may be in money or in kind. In the latter case, a payment mode might be, for example, the concession of the use of real property (partially or in whole), the concession of real titles in property, and the assignment of rights to operate and exploit projects. In this case, the rights assigned to the SPV cannot be extended into the period after the end of the Partnership Contract;
- Participation to the operation and/or exploitation of the Partnership object.

Moreover, in order to regulate special matters and facilitate the financing of project implementation and/or the provision of services in general, the Law provides that the Public Entities may also execute agreements with the creditors of the SPV.

According to their financing scheme, PPP projects fall into the two following categories:

### **1. Projects where the Public Sector reimburses the Private Sector**

This is the case of projects that are not operated by the Private Sector. Basically, these are projects with a social character, which are operated by the State and are offered to citizens for free. In these projects the initial investment of the Private Partner is reimbursed by the Contracting Authority through regular availability payments, linked with the pre-determined output specification criteria. The risk that the private partner undertakes is the availability risk, i.e. the management and maintenance of the project, so as to render it available, according to predefined quality criteria, defined in the contract for the whole contractual period.

The payments made by the State are called availability payments, because if they are to be made in full, the Private Partner should cater for the efficient management and maintenance of the infrastructure or the services that it provides. If the services offered fall below a set limit, the availability payments are reduced or even cancelled until the Private Partner abides by its contractual obligations and achieves the set quality limit.

At the end of the contractual period, the project is transferred to the Public Entity. These PPP schemes are usually implemented for projects that have a social character, such as schools, hospitals, buildings for the accommodation of the public sector, or the provision of ICT services, as well as for transport projects with lower demand (rural roads, public transportation, etc.). It is common that under such PPP schemes, additional commercial or other uses may stem from the exploitation of the project (e.g. exploitation of the commercial spaces in a building where a public entity will be accommodated). In this case, the Public Partner complements with availability payments the revenues of the SPV from the exploitation. Basically, it is the same payment mechanism as the one elaborated above, yet the payments that the public counterpart has to make are lower, due to the extra revenues the SPV has.

### 2. Projects where the end-user pays a fee directly to the Private Partner

This is the type of projects, whereby the Private Partner, besides their design, construction and maintenance, undertakes their operation / exploitation as well. In such projects, the initial investment of the Private Partner is reimbursed through the fees that the end-users pay directly to the SPV for the use of the infrastructure or services provided.

The amount of these fees, the conditions and their collection mechanism is clearly defined in the contractual agreement between the Contracting Authority and the selected Private Partner.

The Private Partners, beyond the financing and the construction risk, also under take the demand risk, which is related with the usage of the project, so as to be able to have forecasted revenues.

At the end of the contractual period, the infrastructure is transferred to the Contracting Authority.

In case that the fees paid by the end-users are not sufficient enough to cover the whole cost of the project, the Public Sector may support this venture, either through lump sum contributions during the construction phase or through availability payments during the operational period.

These projects, because of the higher risk undertaken by the Private Sector, need special preparation and regulation of a series of issues that are related with their bankability.

Based on the experience of concession agreements that were ratified by the Greek Parliament in the past for such projects, Law 3389/2005 introduces a series of special regulations that facilitate the bankability of such projects.

Common examples that fall under this category include transport projects (ports, airports, railways, car parking, etc.), environmental projects (water supply, waste management and sewage), energy and tourist infrastructure projects.

### ROMANIA

Public-private partnership can be achieved through the following types of contracts:

- contracts of works;
- contracts of goods;
- contracts of services.

According to the provisions of art. 4 let. g) of Law no. 178/2010, the public-private partnership contract or the project contract is the legal document which stipulates the rights and the obligations of the public partner and the investor for the entire period of operation of the public-private partnership. The content and the form of the public-private partnership contract is negotiated on the basis of a draft agreement proposed by the public partner to the selected private investor, as well as on the basis of the framework project agreement in case of competitive dialogue procedure. The terms of the public-private partnership contract are stipulated on the conditions of the project already negotiated and agreed.

The public-private partnership contract in final form is submitted for approval to the public partner, according to its legal powers and duties. The standard content of the public-private partnership contract is structured in two sections:

- general conditions, which include general terms, specific and common. In this section various items agreed between the public partner and the investor shall be legally formed;
- technical conditions, that set the conditions for achieving the public-private project, identifies its main aspects, namely financing, construction, operation, profit, etc.

General information of the public-private partnership contract include at least the following elements:

- the parties with their legal identification data;
- the aim of the contract;

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- the duration of the contract;
- the commencement of the contract;
- property rights;
- confidentiality;
- rights to exploit the property.

The general conditions of the public-private partnership contract include at least the following specific terms:

- the public-private project implementation custody;
- the amount of funding;
- ways of financing;
- ways to ensure the free trade;
- acceptable changes in the project;
- land purchase, if any;
- the assurance of exclusive rights, if any;
- compensation formulas, if applicable;
- the tax and fee regime;
- special guarantees;
- ways of highlighting and using public property with which the private partner participates in the project company;
- defining of the financial warranties and currency risk;
- prohibition of the substitution of the parties;
- monitoring the design, construction and operation of public-private project, and other activities covered by the public-private partnership contract;
- the right of the users;
- cases of suspension or early termination of the contract;
- liaison and communication procedures;
- procedures for documents review;
- establishing the participation quotas of the public partner and the investor in the project company;
- establishing the fixed-term of the public-private partnership contract;
- the establishing conditions of the project company;
- the basic elements of the project company status as a basic document for the registration of the company resulted;
- the establishment of reduction in value base;
- other funding mechanisms and financial auditing during the operation of the public-private project;
- monitoring procedures of attainment of the objectives of the public-private project;
- the way of returning the investment by each party to the contract;
- the way of transfer to the public partner of the property resulted from the public-private partnership project at the end of the contract;
- the establishment of specific commitments of the parties;
- the conditions of realization of the feasibility study;
- withdraw clauses from the project;
- penalties for the situation that does not meet/comply with the objectives/terms/conditions set by contract.

General conditions include also the following common terms:

- the applicable law;
- the property insurance;

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- the contract termination;
- force majeure;
- ways of resolving the disputes.

The technical requirements contained in the public-private partnership agreement include the following financial issues:

- invested capital or, where appropriate, initial subscribed and paid capital; b) debt-equity ratio, if applicable;
- coverage rate, if applicable;
- working capital;
- dividends, if any;
- stand-by credit facilities, if any;
- other agreements between shareholders;
- the applicable rate of interest;
- currency loans and funding sources.

The technical requirements include the following clauses of the construction or modernization, as appropriate:

- standards and specifications;
- designed lifetime;
- the maximum construction or modernization period;
- methods of entry into service;
- construction quality standards;
- the acquisition of materials;
- building characteristics;
- applicable construction technology;
- ancillary works program, if applicable;
- temporary requirements, guarantees and constructive precautions.

The technical requirements contained in the public-private partnership contract include the following clauses of exploitation and operation:

- performance specifications;
- minimum demand;
- infrastructure capacity;
- direct measurement of use methods;
- security;
- accounting, records and the access to them;
- equipment specifications;
- control and inspection procedures;
- operation methods.

The technical requirements contained in the public-private partnership contract covers the following economic and financial clauses:

- the fees/tariffs level and their perception;
- the period charging the fees/charges, if any;
- the frequency and updating criteria of the fees/charges, if any;
- income distribution, if any;
- foreign currency income, if any;
- guarantees for minimum demand;
- tariff structure, if any;



- escrow banking arrangements, if necessary.

The form and the content of public-private partnership contract will be negotiated and finalized taking into account the above mentioned terms, which can be partially or fully developed in the content of the contract or to which more terms specific to the public-private partnership project can be added.

### **Risk allocation**

Sharing of risks within a public-private partnership project is made in a proportional and equitable way between the public partner and the private partner. In the case of public-private partnership contracts, the risk can be of two types: transferred risk and retained risk. Transferable risk represents quantification of value of all project risks to be taken over by the investor. Retained risk represents the quantification of value of all project risks to be taken by the public partner.

Risk evaluation involves the following steps:

- identification of all risks;
- quantification of the consequences of risks;
- estimation of the risk probability;
- financial quantification of risks;
- identification of the structure of of risks allocation;
- calculation of transferable risk;
- calculation of retained risk.

In the context of the estimated value, the risk reflects potential additional costs over the basis cost of the estimated contract value of public-private partnership.

Generally the risk can be included in the estimated contract value of public-private partnership, in one of the following methods:

- inclusion of the risks of project costs in the general cash flow;
- adjustment of the cost of capital discount rate in order to reflect the specific risk level for each project.

The main risk categories are represented by:

- the risk of fulfilling of the specific requirements imposed to the project;
- design and construction risk;
- risk that the demand for use to be lower than estimations;
- risk associated with environmental protection;
- the financing risk;
- risk of developing of a majeure force;
- operational risk and ensuring the performance level;
- legislative change risk;
- risk of obsolescence and the need for modernization;
- specific risk of the project.

Upon completion of identification of all risks the public partner must evaluate and quantify the possible consequences of each risk, including the effect of any sequence or timing of risk elements. The consequence of appearance of a risk measures the difference between the basic level of the estimated value and the new cost generated by the appearance of that risk, harmonized with the likelihood of this risk. The consequences of risk appearance can be direct or indirect. Direct consequences include the amount, time and costs that exceed the level of the estimated value. Indirect consequences arise from the interaction of different risks. All identified and quantified risks must be included in the estimated contract value of public-private partnership.



After identifying and evaluation of all material risks, each risk should be analyzed as a transferable or retained risk, to the extent that it can be transferred to the private partner or retained by the public partner in an arrangement, a public-private partnership one. Retained risk represents the amount of those risks proposed to be undertaken by the public partner in the public-private partnership. These risks must be added to the value of projects, thus obtaining real cost supported by the public partner in a public-private partnership. Such risks include: changes in legislation, risks induced by gaps in the project specifications, the section assumed by the public partner from the risk of diminishing the demand, etc.

Factors that may reduce the retained risks are:

- ability to influence directly the probability of the occurrence of a risk;
- collaboration with reputable contractors and use of advanced technologies, effective leverages for monitoring and risk management, effective coverage of risks through insurance.

Retained risks can be estimated based on previous losses or compared to insurance premium amount for an equivalent risk. All retained risks must be assessed, quantified and included to give real value to the cost incurred by the public partner.

### **Financial agreements**

According to legal regulations, the public-private partnership project has private financing. Principles of financial agreements are not included in law, but the contribution of the private partner in the public-private partnership is mainly financial.

## **AUSTRIA**

### **Mandatory Elements**

Austrian law does not foresee any mandatory elements to be used in a concession contract. The limits to what the parties to a contract may stipulate are set by the good morals clause (section 879 of the Austrian General Civil Code), which render a provision null and void if it is against good morals (gute Sitten). This issue may become relevant and will need to be checked in particular in connection with contractual risk allocation, liability caps and termination clauses.

### **Usual Provisions**

With projects being tendered by a number of different authorities on the communal, provincial as well as federal level, Austria still lacks a common approach to concession contracts and PPPs. Therefore, it is difficult to determine which provisions are market standard in an Austrian concession or PPP project. Given, however, that most projects require external financing, certain provisions can be expected to be contained in a concession contract in order to allow it to be bankable. These include clauses relating to relief events, compensation events, force majeure events, unavailability of insurability clauses and a detailed termination regime, including termination compensation payments. For instance, the risk allocation in the concession contract for the A5 highway project was, to a large extent, based on, or similar to, the SoPC standard used in England.

### **Austrian Specificities**

#### **Concession Contracts as contracts for the performance of a continuing obligation**

It is worth pointing out that, under Austrian civil law, a contract for the performance of a continuing obligation may at any time be terminated for good cause, even if the list of termination events under the concession contract is exhaustive.

### Authority to contract

If the contracting authorities are not corporations based on private law (such as companies with limited liability or joint stock companies), but rather public sector entities established by a public law statute, it may be difficult to ascertain the authority to contract with the relevant body, especially in cases in which the authorization to sign a contract is based on certain rules for internal decision making processes which may not be easily available for inspection by a third party. For public sector bodies, acts of private law carried out by them are usually null and void if they are beyond its scope of authority (e.g., in case rules for internal decision making processes are breached). Therefore, sponsors and funders will need to ensure that proper advice is taken on the due authorization and execution of project agreements on the part of contracting authorities that are public sector e.

### SERBIA

PPP contract (in the Law: Public contract) contains all terms, conditions and other clauses that public partner deems necessary for fulfillment of task of private partner, as well as for the relationships of private partner with other stakeholders who play a significant role in the implementation of PPP.

In determining the **terms and conditions of public contracts**, public governing partner edits the following questions:

- the nature and extent of the works to be carried out and/or services to be provided by the private partner and conditions for their fulfillment, provided those are specified in the call;
- allocation of risk between public and private partners;
- provisions on the minimum required quality and standard of services and works in the interest of public/users of services/public facilities, as well as the consequences of failure to meet the quality requirements;
- the scope and extent of the exclusive rights of private partners, if any;
- potential assistance public partner can provide for the private partner for the purpose of gaining permits and approvals necessary for the implementation of PPP;
- ownership of the assets related to the project and, if applicable, obligations of the parties in the terms of the acquisition of project funds and required easements;
- amount and method of calculating the concession fee, if any;
- private partner compensation, whether consisting of tariffs or fees for services or facilities provided, the method and formula for determining, periodic alignment and adjustment of tariffs or fees, any potential payment public partner should make to the private partner;
- mechanisms for increasing or decreasing fees (regardless of legal form) for private partner, depending on the good or bad quality of its services/facilities;
- procedure public partner uses to review and approve projects, construction plans and specifications, and procedures for testing and final inspection, approval and acceptance of infrastructure facilities and services performed, if necessary;
- procedures for editing of project, construction plans and specifications if they unilaterally defined by the public partner, and procedures for the approval of any extension of deadlines and/or increase of fees (including financing costs);
- the extent of the private partner's obligation to provide modification of facilities or services during the contract period as it is needed, in order to meet the amended actual demand for service, its continuity and its provision under essentially same conditions for all users, as well as the consequences for the fee (and the costs of financing) for the private partner;
- possible range of changes of the public contract after its conclusion, persons who have the right to request that and a mechanism for the coordination of these changes;
- potential rights of the public partner to approve to private partner conclusion of the most important subcontracts or contracts with other dependent associates and related entities;
- assurance which should be provided by private partner or public partner (including guarantees by public partner to funders);

- insurance coverage to be provided by private partner;
- available remedies in case any party fails to perform its contractual obligations;
- the extent to which any party may be excused from liability for failure or delay in fulfilling contractual obligations, due to circumstances beyond its control in real terms (force majeure, changes in laws, etc);
- duration of public contract and the rights and obligations of the parties upon its expiry (including the state in which the property must be submitted to the public partner), the procedure for agreed deadline extension including its impact on the financing of the project;
- compensation;
- harmful effects of the legislative changes;
- causes and consequences of premature termination of contract (including the minimum amount that must be paid to public or private partner), penalties and related;
- possible restrictions on responsibilities of parties;
- all secondary or related agreements that are to be concluded, including those aimed at facilitating financing costs related to the project, and the effects of these contracts on a public contract. This particularly includes special provisions which allow for the public partner to contract with funders of private partners and to ensure the right to transfer the contract to entity that financiers state, in certain circumstances;
- applicable law and dispute resolution mechanism;
- circumstances under which public partner or designated third party can (temporarily or otherwise) take over managing the facility or other function of private partner, in order to ensure effective and continuous performance of services and/or facilities that are the subject of the contract, in the case of a serious failure in the performance of the private partner's obligations;
- taxation and fiscal issues - if any.

The principles of **risk allocation** are not included in the Law.

### **Financial agreements**

Public contract is financed by the private partner through a combination of direct equity investments or through borrowing, including »no limitation« structured or project finance or similar, provided by international financial institutions, banks and third parties. With the prior approval of the public partners, the private partner will be entitled to assign, encumber by mortgage, pledge, in the period and the extent of compliance with the Law, or the Law governing public property, any of its rights or obligations under the contract or any other public assets related to the project, for the benefit of financiers, in order to ensure payment of any future claims arising from or related to the construction and financing or refinancing of PPP.

At the request of the financiers and private partners, public partners can accept to give away certain reasonable securities and take on more responsibilities that are necessary for private partner, in connection with any obligation of a public contract.

### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

#### **Provisions defining the PPP contract structure**

The new Law on PPP has no provisions of the PPP contract structure. All contracts stipulated by the LAW ON CONCESSIONS AND PUBLIC PRIVATE PARTNERSHIP shall be drawn up in compliance with the tender documentation, the contract notice or the public call, as well as the decision on the winning tender selection.

#### **Principles of risk allocation**

According to the LAW ON CONCESSIONS AND PUBLIC PRIVATE PARTNERSHIP, for the purpose of fulfilling the obligations stipulated in the contract the private partner may take over the obligation to:

- finance, design, construct or/and reconstruct/renovate public infrastructure facility, operate and maintain a newly constructed or/and reconstructed/renovated public infrastructure facility, or
- use, operate and maintain an existing public infrastructure facility, or
- any combination of the above mentioned obligations as long as the combination of those obligations is for the purpose of fulfillment of objectives set in item a) of this paragraph;

In taking over the obligations the private partner usually assumes substantial part of the risks associated with financing, construction, demand and/or availability, and other such operations, management, maintenance and technical risks, depending on the contractual basis when establishing public private partnership and subject to case-by-case determination;

Notwithstanding the previous paragraph, each partner in a public private partnership shall, for the duration of the public private partnership, assume responsibility for risk events that are under his sphere of influence, or the responsibility is shared, for the purpose of achieving optimal risk management for the duration of the partnership, among other things by using managerial, technical, financial and innovative capabilities of the private partner and by promoting the exchange of skills and know-how between the public and the private partner;

### Principles of financial agreements

The principles of financial agreements are stated in the tender documentation not in the Law.

## 3.5 PPP IMPLEMENTATION

### 3.5.1 Duration of PPP projects

#### ? Are there any limitations on duration of the PPP?

#### SLOVAKIA

The duration of PPP is minimum 3 years and of concession maximum 30 years. Generally the documents speak of duration of PPP projects for period of 20 – 40 years.

#### SLOVENIA

Duration of PPP is regulated in Article 71 of the *Public-Private Partnership Act* which stipulates that public-private partnership is a long-term relationship established for a fixed period of time.

There are also **criteria for determining the duration of PPP**. Article 71 of the *Public-Private Partnership Act* lays down that the duration of PPP relationship must be determined in such a way that it affords the PPP contractor:

- stability and security of investment,
- the possibility of effective and safe financial investment and return of investments,
- the return of funds invested in the PPP relationship in view of the nature of the subject of the relationship,
- the achievement of a proper market yield on invested funds,

while at the same time the contractor keeps, assumes and manages (depending on the nature of the public-private partnership) a part of the commercial risk.

The same Article provides for the extension of the PPP relationship:

- if the contractor was not able to realise the relationship owing to the measures taken by the public partner or other measures taken by public authorities,
- if this is necessary owing to additional investments by the contractor resulting from the requests made by the public partner or the measures taken in the public interest.

The duration can be extended by not more than half of the original duration.

### **BULGARIA**

There are no limitations on duration of the PPP.

### **HUNGARY**

N/A

### **GREECE**

There no limitations on the duration of a PPP project. The Partnership Contracts have clear and detailed timetable of the project.

### **ROMANIA**

Duration of the public-private partnership is a negotiated period, in which the public-private partnership contract is performed and which assures the time for the private investor to recover its financing.

### **AUSTRIA**

There no limitations on the duration of a PPP project in Austria. In the partnership contracts are clear and detailed timetable of the project included.

### **SERBIA**

Duration of the PPP can not be shorter than 5 years and longer than 50 years, with the possibility of concluding a new contract after the expiry of the period, with the choice of new private partners, in the manner and procedure prescribed by the Law.

The duration of the PPP contract defined in the Law is determined in a manner that does not restrict competition more than is necessary to provide depreciation of private partners and a reasonable return on investment, taking into account the risk associated with the commercial use of the subject off contract.

### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

All contracts stipulated by this Law shall be concluded for a period of up to 35 years, calculated as of the day of concluding the contract, i.e. as of the day of entering into force of the contract, if this date differs from the former one, unless otherwise provided by a special law.

When determining the deadline, the financial and economic indicators and the technical and/or technological specifics of the subject of the contract shall be taken into consideration, on the basis of a feasibility study of the justification for awarding the concession for goods of general interest or the contract establishing a public private partnership.

### 3.5.2 Implementing any other changes in PPP projects

- ? What are the principles and limitations for management changes in PPP projects permitted in PPP contract?
- ? What are the principles and limitations for management changes in PPP projects not included in PPP contract?

#### SLOVAKIA

The contract must include the provisions concerning the possibility of small changes which do not affect the original project in a significant way. Changes in the project must be embedded in the **addendum** to the contract on concession.

The procurer cannot effectuate an addendum to the contract concluded according to the § 45 of the law no. 25/2006:

- if the original subject of contract is changed significantly or
- if the original conditions of the procurement change significantly in a way that they would have enabled participation of other bidders or which would have led to acceptance of another offer as the winning one or
- if the economic balance of the contract was shifted in advance of the winning bidder in a way previously unforeseen in the original contract.

Furthermore, in case of contracts requiring the approval by the government, any significant changes through contract addendum must be again subject to the governmental approval. For significant changes, the compliance with state-aid rules and public procurement law must be assured in any case.

#### SLOVENIA

Amendments to the tender are laid down in Article 78 of the *Public Procurement Act*.

Amendments are necessary when the contracting authority lays down in the tender documentation that the tenderers must submit tenders that contain only an estimate price and the parts relating to technical specifications. Amendments to the tender are also admissible when the offer is formally incomplete.

However, the amendments may not affect:

- the price per unit, item value, total value of the tender and the tender in the framework of the criteria,
- the part of the tender relating to technical specifications,
- the elements of the tender which may cause a different classification of tenders.

A change in public procurement contract in view of the draft contract provided in the tender documentation is allowed only in its insubstantial elements, except in cases when certain provisions of the draft contract were subject to negotiations between the contracting authority and the tenderer during the public contract award procedure (Article 71 of the *Public Procurement Act*).

The same provisions regarding amendments to the contract in view of the draft contract are mutatis mutandis laid down in the *Public Procurement for Defence and Security Act* and the *Public Procurement in Water Management, Energy, Transport and Postal Services Area Act*.

Changes to the contract after its conclusion (in the implementation phase) can be made in line with the general rules of the law of obligations.

### BULGARIA

At the conclusion of a PPP is defined economic balance of the PPP, which is a balance between the benefits to the parties and the allocation of risks between them. The contractual economic balance of the PPP is maintained throughout the contract period.

Economic balance can be disturbed and when:

1. as a result of changes in legislation or an act by a regulatory authority has changed the conditions for financing, construction, management and maintenance of the facility, which operates in the public interest and / or conditions of the service of the public interest;
2. perish all or part of the site, which operates in the public interest or occur objectively impossible to use it as intended, except when loss or objective impossibility due to the wrongful act or omission of the private partner;

In violation of the economic balance each party PPP contract may require amendment of the contract to restore economic balance. Application is made to the other side with a reasoned proposal on the basis of a new comprehensive analysis of the circumstances leading to the violation of the economic balance.

### HUNGARY

The public procurement contract is a mixed-nature, atypical contract, the application of the general provisions of the contract amendment (which are pinned down in the Hungarian Civil Code) is very narrow. While the provisions of the Hungarian Public Procurement Act are primary, the private law provisions mean underlying norms.

After a short view of the general rules of the contract amendment, the article deals with the possibilities of the amendment in the public procurement, included the case, when the real aim of the contracting parties not to modify the contract, but to avoid to conduct a new public procurement procedure. Thus, parties aim to amend the genuine conditions of the contract, but with their illegal behaviour they infringe the public procurement and competition rules at the same time.

The possibility to amend a public procurement contract is particularly interesting, if we try to draw a parallel between the terminology used by the Hungarian Public Procurement Act and the Hungarian Civil Code juridical contract amendment provisions.

To amend the public procurement contract preconditions shall be fulfilled and the extent of the amendment is also limited. The parties can only amend parts of the contract drawn up on the basis of the invitation, the terms and conditions of the tender documentation and the contents of the tender if a circumstance violating a material legitimate interest of either party arises after the conclusion of the contract, due to a reason unforeseeable at the time of the conclusion of the contract.

- Contract modification by the parties – if the contract is the result of the procurement process - opposed to private law contracts - is limited, contractual autonomy of the parties is low, common will alone is not enough, in addition certain conditions required in PPA are needed as well.
- Contract modification is possible only in exceptional cases as it is defined in the PPA. 303§ according to the conditions of the invitation to tender documentation. It means that the content of modification is specified.
- In the absence of conditions specified in PPA 303§, contract modifications is not possible even if the amendment is irrelevant in terms of procurement, directed small content.



- In case of infringements of the rules of the PPA contract modification Arbitration Committee is authorized to act, but the relationship could not be modified, the determination of PPA-modified consequences of the conflict belongs to judicial competence.

### GREECE

According to article 17 of Law 3389/2005, the Partnership Contracts and Ancillary Agreements contain the terms and regulations defined by the Public Entity in the relevant Invitation to Tender during the contract award procedure, and represent the sole contract framework binding the Public and Private Entities involved.

The Partnership Contracts and Ancillary Agreements must contain clear and detailed descriptions of the rights and obligations of the Parties under the Partnership concerning its object. Article 17 defines that among others, the above contracts should make special provision for:

- The methods of ensuring quality during implementation and operation of the work or provision of the service.
- The time-schedule for the performance of the object of the Partnership, the conditions under which it may be amended, the penalties and bonuses to be applied in the event of failure to comply with the time-schedule or early completion, the duration of the Partnership Contract, and the conditions under which its term may be extended or abridged.
- Any approval which may be required by the Public Entity for the financing contracts executed by the Private Entity, and the procedure for amending that approval.
- The amounts to be paid for use of the work or service by the users; the manner in which these payments will be collected, and the grounds and methods for revision of such payments.
- The substitution of the Private Entity or the creditors by decision of the Contracting Authority, the circumstances under which such substitution may be permitted, and all related issues.
- The procedure for resolving disputes.
- The order of priority of any appendices or annexes to each contract.
- The procedures for the resolution of disputes that may arise, by an experts panel nominated by a joint decision of the involved parties.

### ROMANIA

The project company resulting from the signing of the public private partnership contract, will be managed by an administration board, in which the public partner and the private partner will be represented proportionally with the participation in the public-private partnership contract.

The general conditions of the public-private partnership contract include acceptable changes in the project.

Any change regarding the contractual terms of the public-private partnership contract is made by an addendum, with the consent of the signatories. It can not be changed:

- the activity object;
- the aim of development of the project for the community benefit;
- the contract price, in the sense of increasing its price. Increasing is however possible only for the strictly necessary extent to cover the increase of the costs. The way of adjusting the public-private partnership contract price should not lead, in any case, to the alteration of the outcome of the selection procedure, by canceling or reducing the competitive advantage based on which the respective private investor has been declared winner.



### AUSTRIA

As mentioned, there is no specific legislation applicable to the awarding of concessions or PPP projects, but rather they are regulated by general public procurement rules, i.e. the Federal Public Procurement Act (*Bundesvergabegesetz* - BVergG).

The notion of PPPs is not recognised by Austrian public procurement law and PPPs are typically classified as service or work concessions. Both service and work concessions are regulated by the BVergG, but a more flexible regime applies to classical work and service contracts.

Regarding the awarding of service concessions, (only) the EC fundamental principles (i.e. equal-treatment and transparency) and the principle of non-discrimination must be adhered to. The BVergG states that – depending on the subject and value of the contract – a service concession shall be, in principle, awarded through a competitive procedure. This means that even with regard to service concessions, a contracting authority will be obligated to publish a tender notice and invite several bidders to participate in the tender in order to ensure adequate competition.

Regarding work concessions, only certain provisions of the BVergG apply (e.g. minimum deadlines, provisions regulating prequalification and the content of the tender documents, as well as the rules on the contract award and the remedies section). Again, the general principles of transparency and equal treatment must be observed. The BVergG leaves the choice of procedure for the awarding of a work concession largely to the contracting authority, but generally requires a publication. Thus, the Austrian requirements regarding the awarding of work concessions are stricter than what is required under EC legislation.

### SERBIA

The Law states that public contract for PPP project can be changed on the request of public partner, private partner, bank or other financial institution. The Law does not state which management changes are permitted, there are mentioned only those forbidden. Changes may not include the following provisions:

1. the subject of the contract,
2. the period for which the contract was signed;
3. in the public concession contract, concession fee offered.

The Law only includes Clause of stability which says: In the case of changes in regulations, after the conclusion of a public contract, which worsen the position of public or private partners, the contract can be modified without restriction, and in the extent necessary to encourage private and public partners and bring them in the same position as at the time of the conclusion of a public contract.

### FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The principles and limitations for management changes in PPP projects should be / could be stated in the tender documentation. These are not stated in the Law. If the principles and limitations for management changes in PPP projects are not included in the PPP contract than the Law on Obligations covers potential disputes

#### 3.5.3 Monitoring of PPP projects

- ? Which government body is responsible for monitoring the project and what are its powers?

### SLOVAKIA

Not specified, the monitoring lies with the procurer based on the regular monitoring reports from the private partner who is able to realistically assess the progress of the project and the incurred costs of implementation at certain point of time.

### SLOVENIA

1. Control over the implementation of the PPP contract is carried out by the public partner (Article 135 of the *Public-Private Partnership Act*). To this end the public partner may request the contractor to draw up a report on the operations. Within the framework of such control the public partner may (Article 136 of the *Public-Private Partnership Act*):

- inspect buildings and facilities,
- inspect the documentation,
- determine the quality of performance of PPP contract.

The public partner has the power to issue an administrative decision requiring the contractor to fulfil the obligations or act in some other way. The public partner shall carry out the control in line with the regulations on inspection.

2. The competent body for monitoring PPP projects is Department for Public-Private Partnership and Public Procurement System which operates as a special organisational unit within the Public Property Directorate. However, this Department is not authorised to interfere with the concluded contracts.

### BULGARIA

Government body responsible for monitoring is the Court of Auditors and Ministry of Finance of the Republic of Bulgaria. The public partner only has a permission to override the agreement when some requirements related to the contract are violated.

### HUNGARY

The State Audit Office of Hungary is the financial and economic audit organization of the National Assembly and the supreme organ of state auditing. The aim of this institution is to audit the management of public funds and public property as an organization being independent from the government. Based on the Constitution and the relevant legislation the mission of the institution is to audit and evaluate the operation of the financial system of public finances and to promote its development. The purpose of audits is to serve and reinforce the security of public financing. Audits are carried out upon consideration of legality, expediency and effectiveness.

State Audit Office of Hungary audits can be divided into three main groups: regularity, performance and comprehensive audit. Regularity audits focus on organization and their operation (activities, programs and the related financial processes). The purpose is to assess their legality and compliance with the relevant rules. The purpose of performance audit is to establish whether the organizations have accomplished projects and activities in economic, efficient and effective manner. Comprehensive audits evaluate the organizational frameworks as well as the conformity of all these by applying the system-based approach.

### GREECE

According to article 17 of Law 3389/2005, the Partnership Contracts have clear and detailed descriptions of the rights and obligations of both Parties (Public - Private Entities) for the Partnership object. The **method of monitoring the performance and operation of the project is agreed in the contract** and can be done either by independent companies recruited for this purpose by the Public and Private Entities acting in common, or by the competent State authorities.

The payments of the Public Sector to Private Entities are linked with the pre-determined output specifications for the provision of infrastructure and services of high quality. In each PPP contract, there is a number of parameters that determine the quality and performance of the project, so as to quantify whether the contractual obligations of the Private Sector are fulfilled. Low quality services result in reduced payments by the Public Authorities. This way, the quality of a project throughout the contractual period is ensured.

The monitoring of the Private Entities by the financial institutions (banks) is an additional guarantee for the Public Authorities and the end users. Banks want to ensure that the Private Entity delivers the PPP project according to the quality specifications set out in the contractual agreement. In this way the payment mechanism, which is linked to the agreed quality specifications, is activated and with these payments, the Private Entity repays its loans.

### **ROMANIA**

Government body responsible for monitoring is The Central Unit for the Coordination of the Public-Private Partnership.

### **AUSTRIA**

There is no organization in Austria which is monitoring especially PPP projects. They are just regulated by general public procurement rules, i.e. the Federal Public Procurement Act (Bundesvergabegesetz - BVergG).

The notion of PPPs is not recognised by Austrian public procurement law and PPPs are typically classified as service or work concessions. Both service and work concessions are regulated by the BVergG, but a more flexible regime applies to classical work and service contracts.

### **SERBIA**

Monitoring of the PPP project is regulated with the particular Act designed by the Government. However this Act has not yet been acquired by the Government. Additionally, Ministry, or the authority of the autonomous province, or local government unit responsible for financial affairs may independently, without request from the public partner, begin process of control through inspection and/or tax service and administration, over a private partner who fails to fulfill its obligations under public contract, all of this within the scope of competence of the Ministry, authority of the autonomous province or local government unit in charge of financial affairs.

Ministry, or the authority of the autonomous province or local government unit responsible for financial affairs conducts all other activities related to collaboration with public partners who conduct public contracts, in the purpose of preventive action, as well as to harmonize all activities in the field of PPP.

In the case of failure to complete measures and recommendations of the ministry, the authority of the autonomous province or local government unit in charge of financial affairs, as in the case of failure to achieve cooperation, the ministry, the authority of the autonomous province or local government unit may require the initiation of administrative and inspection monitoring, in accordance with the provisions of the law regulating the work of public administration.

### **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The concession grantor and the public partner shall perform constant and regular supervision over the implementation of the concession for goods of general interest or the contract establishing a public private partnership and the realization of the awarded contract in question, as well as meeting

the obligations by the concessionaire or the private partner, pursuant to the law and the contract in question. The Law is not specifying how the monitoring will be performed and the monitoring is covered by the contract.

### 3.5.4 Dispute resolution

- ? Is there a dispute resolution mechanism?
- ? What are the dispute resolution procedures? (court proceeding, domestic or/and international arbitration, mediation, ...)
- ? What authority is responsible for dispute resolution?

#### SLOVAKIA

**Escalation** – discussion and efforts for finding solution through representatives of both parties who were not at the starting point of the conflict; if unsuccessful → **Mediation** – involvement of a third – independent – party who will provide expert opinion or recommendation; if unsuccessful → **Arbitration** – not so much recommended as there is no possibility for appeal.

*Not specified*, depends on the way chosen for dispute resolution, can be an independent **mediator or arbitrator**.

#### SLOVENIA

Pursuant to Article 140 of the *Public-Private Partnership Act* the parties to a public-private partnership may agree that disputes directly related to their PPP relationship and which do not fall within the exclusive jurisdiction of a court in the Republic of Slovenia, may be resolved through an agreed arbitration service.

The same Article stipulates that relations between PPP contractors and users fall within the exclusive jurisdiction of the competent court in the Republic of Slovenia (prohibition on prorogation of foreign court or arbitration).

Article 139 of the *Public-Private Partnership Act* lays down that Slovenian law is applicable for relationships between the public partner and the PPP contractor and for relationships with users.

Article 40 of the *Public Utilities Act* stipulates that the disputes between the concession awarding authority and the concessionaire arising from the implementation of the concession contract are resolved by the ordinary court.

The mechanisms for resolving disputes in the field of public procurement are laid down in the *Legal Protection in Public Procurement Procedures Act*.

#### BULGARIA

(Article 73, paragraph 1) Disputes concerning the conclusion, performance, amendment and termination of PPP contracts are settled by the competent civil court.

(paragraph 2) In litigation arising from PPP contracts, expert on financial and economic matters are assigned to a registered auditor within the limits of Art. 262k, para. 3 of the Commercial Code.

#### HUNGARY

N/A

### GREECE

The Partnership Contracts and Ancillary Agreements contain the terms and regulations defined by the Public Entity in the relevant Invitation to Tender during the contract award procedure, and represent the sole contract framework binding the Public and Private Entities involved.

The Partnerships included under Law 3389/2005 are subjected to the terms of the **Partnership Contract**, and also of the **Greek Civil Code**.

According to article 17 of Law 3389/2005, which defines the Content of the Partnership Contracts, among others requests that the Partnership Contract and Ancillary Agreements contain clear and detailed provisions for:

- The protection of rights of intellectual and industrial property.
- The applicable law.
- The procedure for resolving disputes.
- The procedures for the resolution of disputes that may arise, by an experts panel nominated by a joint decision of the involved parties.

According to article 31 “Resolution of disputes – Applicable Law” of the Law 3389/2005:

- **Applicable Law:** For the resolution of disputes arising out of the interpretation, application or validity of the Partnership Contract, Greek Substantial Law shall be applicable.
- **Arbitration:** Any dispute arising in relation to the application, interpretation or validity of the Partnership Contracts or Ancillary Agreements shall be resolved by arbitration.
- **Arbitration Rules:** In deviation from the provisions in force relating to public sector arbitration, the Partnership Contract or Ancillary Agreements set out rules for the nomination of arbitrators, the applicable rules of arbitration to be applied, the place of the Arbitral tribunal (or other body), the fees to be paid to the arbitrators (where fees are not specified in the applicable arbitration rules) and the language in which the arbitration shall be conducted. The arbitral award shall be final and irrevocable, and not subject to any further judicial or extra-judicial means; it shall be executed without any requirement of ratification by the regular courts, and the parties involved shall be committed to comply immediately with its terms and conditions.

### ROMANIA

Initially to mediation is entitled the Central Unit for the Coordination of the Public-Private Partnership. For the purpose of solving the complaints using the administrative-judicial approach, the aggrieved party has the right to address The National Council for Solving Complaints. The Court with competences for solving the appeal against the Council’s decision is the Court of Appeal, the contentious-administrative and fiscal section in the area of which the public partner has its premises. Except for the cases when the appeal has as object the fine, the Council is not a party in the case. Judicial authority is responsible for dispute resolution.

### AUSTRIA

The list of specific decisions taken by a contracting authority which are amenable to separate challenge and judicial review is lengthy and will vary according to the type of procurement procedure. The most important such decisions are as follows:

- those related to the tender documents
- the exclusion of a tender
- the award of a contract
- the cancellation of a procurement procedure
- non-admittance of a candidate to participate in a tender contest and/or
- negotiated procedure
- the invitation to tender

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- the decision to allocate prize money or payments (for contests)
- the selection of the procurement procedure (if it is a direct award)

A variety of other decisions related to framework agreements, dynamic procurement systems and the competitive dialogue may also be challenged before the Office.

### The Interim Procedure

The interim procedure serves as a temporary means of safeguarding legal rights by allowing for an applicant's claims to be preserved without creating a *faits accomplis* (e.g., the forced opening of tenders or awarding of a contract). As a result, the Office may adopt interim measures in order to suspend the procurement procedure for the time needed to investigate an applicant's claim.

An interim procedure is initiated by the candidate lodging an application for an interlocutory injunction with the Office. In turn, the Office shall immediately notify the contracting authority of the receipt of such application. The contracting authority is accordingly not permitted to open tenders, nor, in case of other nullities, to award the contract, nor, in case of other invalidity, to cancel the procurement procedure. In addition, the applicant must lodge a separate application for a review procedure with the legally prescribed time limit. Failure to do so shall lead to the interim procedure being discontinued without any formality.

The Office must decide on an application for an interlocutory injunction within one week, and it must do so under equal consideration of competing interests – to mean evaluating what effect adopting the injunction would have in each concrete case on the applicant, the contracting authority, other tenderers or candidates and, if applicable, the public interest. The opposing parties in an interim procedure are limited to the applicant and contracting authority – the other tenderers do not participate in the proceedings – with the responsible senate chairman deciding on the application in question. The chairman's decision is issued in writing and takes effect immediately.

### THE REVIEW PROCEDURE

The review procedure serves to enable certain decisions taken by a public contracting authority to be reviewed by a judicial agency before a procurement procedure ends (through a contract award or cancellation of the procedure). The key reason: The award of a contract establishes a legal relationship between the contracting authority and the winning tenderer, thus all tenderers/candidates must be given the opportunity to appeal decisions taken by the contracting authority – meaning those amenable to separate judicial review before the contract is formally awarded. In addition, this can help meet the goal of minimizing the overall procurement time and costs.

A review procedure has no suspensive effect. Thus, if an applicant desires to interrupt the procurement procedure – which, as a general rule, is an expedient choice to prevent the contracting authority from taking additional, irreversible steps – the applicant must also lodge an application for an interlocutory injunction.

### Time Limits

As a general rule, the decisive date with respect to time limits is the day on which the applicant becomes aware of, or should reasonably have become aware of, the contracting authority's separately challengeable decision.

Applications for the review of tender or contest documentation must be lodged

- within three days prior to expiry of the tender submission period when the tender submission period is less than 15 days.

- within seven days prior to expiry of the tender submission period in the following instances:

- for an "accelerated procurement procedure due to urgency" in accordance with the BVergG 2006

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- for a procedure in which the tender submission period has been cumulatively reduced i.a.w. with § 61 and, simultaneously, § 62 of the BVerG 2006
- when challenging an award decision for a procurement procedure undertaken using either an electronic auction or dynamic procurement system when challenging a decision to cancel a below-threshold procurement procedure i.a.w. the provisions contained in Sections 2 and 3 of the BVerG 2006
- for a direct award procedure
  - or within 10 days in cases other than mentioned above.

The Office must decide on the application within six weeks. As a general rule, oral hearings are held to which the applicant and contracting authority are summoned, as well as the prospective winning tenderer for those cases where the award decision is being challenged. Hearing dates shall also be announced on the Federal Public Procurement Office's

### The Declaratory Procedure

If an award decision has already been taken or a contract awarded, economic operators may have the opportunity to lodge an application for a declaratory procedure. However, this is true only in the following cases:

- an interest in the conclusion of a contract which is subject to the scope of the BVerG must exist
- the alleged unlawful decision has resulted in damages.

In such cases, the Office can determine

- if a decision to select a direct award procedure or procurement procedure without prior advertisement was unlawful
- an award was not made in accordance with the specifications of the tender invitation
- a notice of cancellation was unlawful
- the award of a contract directly to an economic operator without other economic operators having participated in the procurement procedure was manifestly unlawful.

### Time Limits

The application must be lodged within six weeks from the day on which the applicant becomes aware of, or should reasonably have become aware of, the contracting authority's decision. In any event, the right to a declaratory procedure expires after six months. In cases where a contract is awarded without participation in the procurement procedure by other economic operators, the time limit for lodging an application is 30 days.

The Office must decide on the application within six months. The decision shall be issued in writing and takes effect immediately; and the decision may be appealed before the Austrian Verwaltungsgerichtshof (Administrative Court) and/or Verfassungsgerichtshof (Constitutional Court).

## SERBIA

The »Law on public-private partnership and concessions« provides dispute resolution mechanism in the form of **arbitration**.

For disputes between the parties arising under a public contract the parties can agree to arbitration disputes before a domestic or a foreign arbitration. Arbitration based abroad can be arranged if the private partner occurs as a domestic legal or natural person or a consortium made up entirely of domestic legal and natural persons.

It is not stated in this Law which authority is responsible for arbitration. However, if parties did not agree upon arbitration to resolve disputes, exclusive jurisdiction have the courts of the Republic of Serbia.

**FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

Dispute resolution mechanism and procedures are not specified by the Law, but are covered by the contract. Also the authority responsible for dispute resolution is covered by the contract.



## 4 SOURCES

### COMMON SOURCES

- Study on Broadband Coverage in Europe in 2011
- Broadband, Delivering next generation access through PPP
- The Guide to Guidance: How to Prepare, procure and Deliver PPP Projects  
<http://www.eib.org/epec/library/>

### SLOVAKIA

#### National

- DAE in the conditions of Slovak Republic
- Information Society Strategy for 2009 – 2013
- Správa o pokroku v oblasti informatizácie spoločnosti za rok 2010
- Národná stratégia Slovenskej republiky pre digitálnu integráciu
- National Reform Programme of the Slovak Republic for 2011-2014
- Politika informatizácie spoločnosti v SR

*The above listed resources are available on <http://www.informatizacia.sk/aktualne-/11146s>*

- Politika informatizácie spoločnosti v SR <http://www.informatizacia.sk/starsie-/11147s>
- Zvýšenie prístupnosti k širokopásmovému internetu Operacný program Informatizácia spoločnosti prioritná osa 3: Ciastková štúdia uskutočniteľnosti (OPIS PA 3 Feasibility study)
- Popis východísk (Starting points description)  
[http://www.opis.gov.sk/data/files/2487\\_5452.pdf](http://www.opis.gov.sk/data/files/2487_5452.pdf)
- Analýza skutočného stavu (State of art analysis)  
[http://www.opis.gov.sk/data/files/2488\\_5453.pdf](http://www.opis.gov.sk/data/files/2488_5453.pdf)
- Návrh riešení (Solution proposal)  
[http://www.opis.gov.sk/data/files/2489\\_6194.pdf](http://www.opis.gov.sk/data/files/2489_6194.pdf)
- Národná stratégia pre širokopásmový prístup v SR  
<http://www.telecom.gov.sk/index/index.php?ids=125407>
- Priebežné vyhodnotenie plnenia Národnej stratégie pre širokopásmový prístup v SR
- Slovak Telekom – Annual Report 2011  
[http://www.telekom.sk/swift\\_data/source/o\\_nas/rocne\\_spravy/2011/index.html](http://www.telekom.sk/swift_data/source/o_nas/rocne_spravy/2011/index.html)
- Program rozvoja vidieka SR 2007 – 2013  
<http://www.apa.sk/index.php?navID=252>
- Online news on broadband development in rural areas, February 2013  
<http://www.zive.sk/pokryvanie-vidieka-internetom-asi-nebude-skrkli-ho/sc-3-a-307018/default.aspx>

#### European/International

- Developing successful Public-Private Partnerships to foster investment in universal broadband networks
- State aid SA.33151 (2011/N) – Slovakia: Basic broadband deployment in white areas of Slovakia  
[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_33151](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33151)
- SLOVAKIA 2011: Telecommunication Market and Regulatory Developments
- Law on public procurement no. 25/2006

[http://www.uvo.gov.sk/documents/10157/706651/00-uplne\\_znenie\\_z25\\_2006.pdf;jsessionid=E0C65C1774FC08F43B5EFE5D036147BB?version=1.1&t=1352296704650](http://www.uvo.gov.sk/documents/10157/706651/00-uplne_znenie_z25_2006.pdf;jsessionid=E0C65C1774FC08F43B5EFE5D036147BB?version=1.1&t=1352296704650)

- Web portal of PPP association

<http://www.asociaciappp.sk/>

Verejno-súkromné partnerstva alebo public-private partnerships (PPP) – informational brochure of Association for PPP

- **Methodological documents issued by Ministry of Finance of Slovak republic**

Available at <http://www.finance.gov.sk/Default.aspx?CatID=6678>

Procedure of PPP preparation and realization and controlling process (Postup pri priprave a realizácii PPP projektu a kontrolny process)

Approach to risk management in PPP projects (Pristup k riadeniu rizik PPP projektov)

Codex of management of the preparation and realization of PPP project (Kodex riadenia pripravy a realizacie PPP projektu)

Contents and requirements of feasibility study and Public sector comparator (Obsah a poziadavky na studiu uskutočnitelnosti a komparator verejného sektora)

- **Analysis of the legal environment in relation to feasibility of PPP project in the Slovak Republic and proposal for legislative measures for the field of PPP**

(ANALÝZA PRÁVNÝCH PREDPISOV VO VZŤAHU K REALIZOVATEĽNOSTI PROJEKTOV VEREJNO-SÚKROMNĚHO PARTNERSTVA (PPP) V SLOVENSKEJ REPUBLIKE A NÁVRH LEGISLATÍVNYCH OPATRENÍ V OBLASTI PPP)

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- Legal gateway to the European Union [www.europa.eu.int](http://www.europa.eu.int)
- Legal Information System of the Republic of Austria [www.ris.bka.gv.at](http://www.ris.bka.gv.at)
  
- Information System for European Public Procurement (SIMAP) [www.simap.eu.int](http://www.simap.eu.int)

### Major organisation of procurement at the national level

- **Name:** BBG Bundesbeschaffung GmbH (Public Procurement Agency)

<https://bbg.portal.at/>

The BBG Bundesbeschaffung GmbH was founded in 2001 as centralised procurement agency under the Ministry of Finance. Responsible for procurement of goods and services for public departments and public customers. In 2002 it procured goods and services for around 290 Mio €. Public procurement tenders can be searched via an online database.



- **Name:** Ministry of Finance  
Responsible ministry for Austrian public procurement rules, regulations and legislation.  
<http://www.bmf.gv.at>
- **Name:** Bundesvergabebamt  
<http://www.bva.gv.at/BVA/default.htm>  
Reorganized in 2002 within the framework of the streamlining of Austrian public procurement legislation and practices. Government agency to control and to rule upon public procurement procedures at the federal level. Tribunals in the sense of the EU directive to rule upon public procurement procedures conducted by public entities which fall within the competence of the Bundesländer, cities and municipalities.
- **Name:** Ministry of Defence  
Procurement of military equipment  
<http://www.bmlv.gv.at>
- **Name:** Auftragnehmerkataster Österreich  
[http://www.ankoe.at/ankoe\\_home.asp](http://www.ankoe.at/ankoe_home.asp)  
The Austrian cadastral agency (Auftragnehmerkataster) was founded in 2000 by the regional authorities and municipalities and other stakeholders. The institute administers a database of suitable and approved companies and provides support for economical procurement procedures for clients, tenderers and applicants.
- **Name:** Auftrag.at  
Electronic platform which provides the tender publishing and further services regarding manuals and tender documents. It also enables the tender procedure on the internet.
- **Name:** Beschaffungsservice Austria  
Information on sustainable (public) procurement.  
<http://www.ifz.tugraz.at/index.php/article/articleview/19/1/9/>
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<http://www.avm.rs/dokumenti2/Nacr%20Strategije%20RR%202010-2013.pdf>
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**ANNEX 1**

**PPP4 Broadband Project**

*Template for broadband development  
and  
guidelines for data collection*

## BROADBAND DEVELOPMENT IN SEE

### Instructions for partners

The purpose of the document is to gather as much information as possible on national frameworks related to broadband development in the countries participating in PPP4Broadband Project. Information provided by project partners will be compiled into a **summary report**, which is an output of activity 3.1 *National frameworks for PPP and Broadband development identification*, and will represent a highly relevant and representative set of information about SEE framework.

The document is intended to provide structured information on Broadband development, therefore it is organized into chapters. Project partners are asked to provide detailed information under each chapter. Any additional information not specifically requested is also very welcome if you feel that it might help us with the broader understanding of the situation of BB development your country.

Working language of this document is English, therefore we would like to ask you to provide **information exclusively in English**. If national documents are already translated into English, please use the English translations of these documents in order to avoid misinterpretation of official terminology.

Project partners might not be able to provide all the information requested because no such information will be available for their respective country. In such cases, please clearly indicate that information or data is not available.

When stating data or information, **always provide sources** from which these are taken.

There is no word limit for individual chapters but please point out only **relevant information** and do not copy-paste entire documents.

### 1. NATIONAL FRAMEWORKS FOR BROADBAND DEVELOPMENT

State all relevant national **strategic** and/or **operational documents** referring to broadband development.

**The description of each document should include the following:**

- ✓ The official **name** of the document
- ✓ The **timeframe** the document refers to
- ✓ The **general framework** of the document (e.g. whether it is a main strategic document of a country, how it is related to other documents mentioned, etc.)
- ✓ A short **description** of the part that refers to broadband development (please point out all important things concerning BB)
- ✓ Which organisation in your country is responsible for the **information society** and participating in **DAE implementation**
- ✓ Who is the **Digital Champion** in your country and what are his/her priorities (more information on digital champions on: <https://ec.europa.eu/digital-agenda/en/digital-champions>)

## 2. BROADBAND DEFINITION

Give definition of broadband in your country.

## 3. THE SITUATION OF BROADBAND NETWORKS IN RURAL AREAS

Give the definition of the term **RURAL AREA** in your country and give information on how many % of people live in rural areas.

NOTE: The definition used in the report *Broadband coverage in Europe in 2011* ( Appendix A1 p. 164) is the following: *Rural areas are those with a population of less than 100 persons per square kilometer when segmented at the NUTS 5 level ( also known as LAU 2, for Local Administrative Unit 2) NUTS 5 or LAU 2 areas are typically the smallest administrative units in regular use in a country.*

If the definition in your respective country corresponds the above definition, please state so. If not, please provide a different definition.

### 3.1. Broadband coverage

### 3.2. Penetration rate

How **many users** (households, public institutions, private companies) in rural areas in your country have access to broadband networks.

### 3.3. Technologies used

What **technologies** are used and in what percentage (you can check the document BROADBAND COVERAGE IN EUROPE IN 2011).

### 3.4. Situation on the market

Who are the **main operators and service providers** (if you have information, please provide their market share, influence, etc.)

## 4. MAIN OBJECTIVES FOR BROADBAND DEVELOPMENT IN RURAL AREAS

Describe the main objectives of broadband development in your country (as planned in official documents for 2007-2013 and 2014-2020) in terms of:

- ✓ broadband **coverage**
- ✓ **access** to services (private households, public users, companies)
- ✓ broadband **speed**
- ✓ **types** of technologies

What is the **deadline** to achieve these objectives?

Is there any difference between end users, public administration and private companies (in terms of access, speed, ...)?

## 5. FUNDING

- ✓ Describe the **plans and legal framework** (documents) according to which broadband development in rural areas is funded in the period 2007-2013. Add the information for the period 2014-2020 if available.
- ✓ What **type of funding** is used (EU, public, private)? Provide the information for 2007-2013 and 2014-2020 if available.
- ✓ What **amount of financial support** is intended for BB objective in the periods 2007-2013 and 2014-2020?
- ✓ Can you provide an amount that was used for PPP in broadband development in the period 2007-2013. If data is available please provide the same information for the period 2014-2020.

## 6. EXPERIENCE IN BB DEVELOPMENT IN RURAL AREAS

Please describe experience in broadband network development in rural areas in your country:

- ✓ If possible, give at least one example of BB development
- ✓ Try to find a sample of PPP use

**NOTE:** Chapter 6 has the same structure as chapters on case studies in the document published by EPEC: *Broadband – delivering next generation access through PPP (from p. 12 on)*. The document is available on [http://www.eib.org/epec/resources/epec\\_broadband\\_en.pdf](http://www.eib.org/epec/resources/epec_broadband_en.pdf). Please read the document; it will help you understand what types of information we would like to get.

### 6.1. Project scope and objectives

Describe the main characteristics of the project and funding mechanism.

### 6.2. Key characteristics

Characteristic	Description
Distinguishing features	
Ownership	
Wholesale	
Legal status	
Costs	

### 6.3. Finance and ownership

- ✓ Describe the **main characteristics of investment** (who is investing, how much money is being invested)
- ✓ What are/were the **reasons** for the selected **approach**

### 6.4. Legal status

What is the **legal framework** behind the investment

### 6.5. Business approach

- ✓ Describe the **procurement approach** (what were the award criteria)
- ✓ **Market competitiveness** (who is the owner of passive infrastructure, active network layer and service provider layer? Is it open market or not?)

- ✓ **Demand stimulation initiatives** (how is demand for services stimulated)
- ✓ **Management structure and business model** (who owns, runs the network, who provides the service)

#### 6.6. Cost issues

- ✓ **Overall budget** (capital investment, on-going operational expenditure)
- ✓ **Cost and risk reduction measures** (describe what measure have been applied to reduce cost and risks – e.g. by using public infrastructure and ducts, etc.)

#### 6.7. Network architecture, services and competition

- ✓ **Network architecture** (describe the network architecture deployed)
- ✓ **Services** (what services will be provided)
- ✓ **Competition** (describe the competition in the market)

#### 6.8. Project summary and lessons learned

### 7. SOURCES

List all sources that you used to provide the above information and if possible provide links.

**ANNEX 2**

**PPP4 Broadband Project**

*Template for public private partnership legislation  
and  
guidelines for data collection*



PPP FRAMEWORK IN SEE

Instructions for partners

The purpose of the document is to gather as much information as possible on national frameworks related to public-private partnership in the countries participating in PPP4Broadband Project. Information provided by project partners will be compiled into a **summary report**, which is an output of activity 3.1 *National frameworks for PPP and Broadband development identification*, and will represent a highly relevant and representative set of information about SEE PPP framework.

The document is intended to provide structured information on PPP, therefore it is organized into chapters. Project partners are asked to provide detailed information under each chapter. Any additional information not specifically requested is also very welcome if you feel that it might help us with the broader understanding of the situation of PPP in your country.

Working language of this document is English, therefore we would like to ask you to provide **information exclusively in English**. If national documents are already translated into English, please use the English translations of these documents in order to avoid misinterpretation of official terminology.

Information on PPP legislation is highly relevant to PPP4Broadband Project as it will be used throughout the whole project duration. **If you feel that your knowledge on legal issues or English language is insufficient to provide the requested information please use external experts** to help you compile the file (lawyers, translators).

Project partners might not be able to provide all the information requested because no such information will be available for their respective country. In such cases, please clearly indicate that information or data is not available.

When stating data or information, always provide **sources** from which these are taken.

There is no word limit for individual chapters but please point out only relevant information and do not copy-paste entire documents.

1. PPP LEGAL FRAMEWORK

How is **PPP legal framework identified** in your country (in a specific PPP law, in different laws, regulations, policy documents,...)?

- ✓ Provide the **name** of the law/laws/regulations
- ✓ **When** did it enter into force (year)?
- ✓ Give a short **description** of what provisions are included in the legislation (i.e. what is the content)

2. INSTITUTIONAL FRAMEWORK

Which **bodies/institutions** are involved in the **implementation** of PPP legislation and how is it organized (e.g. which ministry is involved, is there a special PPP unit, etc.)?

### 3. TYPES OF PPP

Please indicate which **types of procurement procedure** are possible for PPP projects based on your national legislation:

- ✓ Open Procedure
- ✓ Restricted Procedure
- ✓ Negotiated Procedure
- ✓ Competitive Dialogue

In case there are any legislative limitations for procurement procedures applied in your respective country, please explain them below.

### 4. PPP PROCEDURE

Describe the whole PPP procedure according to the national legislation.

#### a. Project assessment

- ✓ Are there any obligatory and **legally given steps for project assesment**? In case there are, please describe them.
- ✓ How are potential **PPP projects identified** (for example: do they have to go through economic, financial, legal, technical evaluation at different stages, is there any central governmental body approving PPP projects etc.)?
- ✓ Are there any **limitations for PPP procurers**? Can any public body or body governed by public law be a procurer for a PPP project ( i.e. can any city, municipality, county, regional government, but also association of cities/municipalities implement the PPP project)?
- ✓ Is there any **central governmental body that identifies** the projects? Or is the identification done by PPP procurers directly?

#### b. Procurement process

Describe the process and try to answer the following questions:

- ✓ What are the obligatory legal frameworks given by the national legislation for the **Procurement Notice, Prequalification, Shortlisting and Invitation to tender**
  - what are the rules for publishing a procurement notice,
  - are there any legally given preconditions for participants in a bidding procedure (i.e. owner transparency etc.)
  - are there any legal obligations for a shortlisting procedure
- ✓ What are the rules for **evaluation and selection of the preferred bidder**
  - are the evaluation criteria set out clearly in the law, or can they be drafted by a PPP procurer
  - is the selection done by PPP procurer directly or is there any central body on a government level participating in the selection procedure?

- ✓ Which **control mechanisms** are applied in your national legislation to secure the transparency, equal treatment, and fairness of selection procedure
  - is there any central public body controlling PPP procurement
  - is there a possibility for unsuccessful bidders to appeal against the selection of the winning bidder,
  - what are the consequences of a breach of the procurement rules?,
  - is there implemented in your national legislation the criminal liability of private companies – bidders?
  - is there implemented in your national legislation the criminal liability of public officers – PPP procurers?

**c. Contract design and risk allocation**

- ✓ Are there any provisions defining the **PPP contract structure**
- ✓ If yes, describe the provisions and the contract structure
- ✓ What are the **principles of risk allocation** (if included in the law)
- ✓ What are the **principles of financial agreements** ( if includes in law)

**5. PPP implementation**

**a. Duration of PPP projects**

- ✓ Are there any limitations on **duration of the PPP**?
- ✓ If yes, what are the **criteria** set to define the duration?

**b. Implementing any other changes in PPP projects**

- ✓ What are the principles and limitations for management changes in PPP projects **permitted in PPP contract**?
- ✓ What are the principles and limitations for management changes in PPP projects **not included in PPP contract**?

**c. Monitoring of PPP projects**

- ✓ Which government body is responsible for **monitoring** the project?
- ✓ What are its **powers** (e.g. can it override a PPP agreement?)

**d. Dispute resolution**

- ✓ Is there a **dispute resolution mechanism**?
- ✓ What are the dispute resolution **procedures**? (court proceeding, domestic or/and international arbitration, mediation, ...)
- ✓ What **authority** is responsible for dispute resolution?

**6. SOURCES**

List all sources that you used to provide the above information and if possible provide links to national legislation.