



DIRECTORATE GENERAL FOR NEIGHBOURHOOD
AND ENLARGEMENT NEGOTIATIONS – DG NEAR

Short Term High Quality Studies to Support Activities under the Eastern Partnership HIQSTEP

ANALYSIS OF LICENSING AND FISCAL FRAMEWORKS FOR CONCESSION AGREEMENTS

BACKGROUND NOTE

This report has been prepared by the KANTOR Management Consultants Consortium. The findings, conclusions and interpretations expressed in this document are those of the Consortium alone and should in no way be taken to reflect the policies or opinions of the European Commission

1 Introduction

The study on *Analysis of Licensing and Fiscal Frameworks for Concession Agreements and PPPs Study* was carried out in the framework of the EU-funded “(HiQSTEP) High quality studies to support activities under the Eastern Partnership”. The overall objective of the study was to support rationalising and streamlining the concessions and PPP (Public Partnerships) in the energy sector.

The study:

- 1) assessed the legal framework in Eastern Partner countries for energy concessions/PPPs;
- 2) identified PPP Units and their tasks and mandates;
- 3) developed standard procedures for awarding concessions and PPPs;
- 4) established an online portal for the project.

2 Key findings of the study

With two new directives adopted in 2014, the EU acquis for energy now comprises three important directives related to agreements on concessions and PPPs:

- Directive on Concessions (2014/23/EU)
- Directive on Public Procurement (2014/24/EU)
- Directive on Conditions for Granting and Using Authorisations for the Prospection, Exploration and Production of Hydrocarbons (94/22/EC)

The main purpose of the directives is to secure transparency, equal treatment, non-discrimination, competition, public announcement, reasonable timeframes and known criteria for winning a project and the risk allocation.

Careful analysis of these directives reveals some challenges in separating concessions from PPPs. In reality it is a question of risk allocation – a concessionaire has a higher risk compared to a PPP.

As regards the Eastern Partner Countries, most made serious efforts to adjust their legal frameworks to the directives, with assistance from various international donors. Legal frameworks are in constant development. Almost all Eastern Partner Countries have or are making legal frameworks on concessions/PPPs and PPP Unit are established or planned to be in 5 countries. A PPP Unit is a public institution established to guide other public sectors in procurement for concessions or PPPs. As it is often complicated to understand the full extent of the legislation with regard to procurement and finalisation of a contract, the role of the unit is to provide necessary assistance and evaluate the compliance with existing legislation. It is the Study Team’s impression that the new PPP Units in the Eastern Partners are providing a more extended service compared to “old” units in the EU countries.

The state of play in individual Eastern Partner Countries can be summarised as follows (by the end of data collection, in September 2017):

Armenia: A PPP Law was approved in June 2017, concessions were included. A PPP Unit is planned to be established.

Azerbaijan: A bit slower development as the focus is mainly on the large oil and gas resources. It is planned to introduce a PPP legislation by 2020 and to implement the 3rd Internal Energy Market Package. Later on, a PPP Unit could be the result of these initiatives.

Belarus: A PPP Law is being drafted; concession law exists and a PPP Unit is established.

Georgia: A PPP Law is being drafted, concessions are to be included in the law and a PPP Unit is planned to be established.

Moldova: A PPP Law exists and the concession law is in redrafting. A PPP Unit is established.

Ukraine: A PPP Law is being drafted, which is also the case for a new concessions law. A PPP Unit is established.

Typical energy projects in the Eastern Partner countries include:

- Oil/gas exploration and production, often as production sharing contracts;
- Hydro Power plants (some with feed in tariffs or power purchase agreements);
- Solar PV (some with feed in tariffs or power purchase agreements);
- A few wind projects (some with feed in tariffs or power purchase agreements);
- Distribution/transmission of electricity/gas and heat.

Typical PPP projects in other sectors are roads, healthcare, schools/kindergartens and elderly services.

In addition to mapping the state of play, the Study produced a manual for procurement and contracting in the energy sector with templates for contracts regarding oil and gas, electricity distribution services and establishment of IPPs for electricity generation. They will be published, together with the full text of this report and the Project's website <http://hiqstep.eu>

3 Important recommendations & follow-up activities

For all Eastern Partners:

- A supportive institutional, legal and regulatory framework should be created or enhanced to encourage long-term development of the countries' resources in accordance with best practices.
- Consistency of PPP projects with energy, environment and investment priorities should be ensured.
- Enforcement of practices related to disclosure of information on PPP/concessions should be improved.
- A transparent information system should be developed for PPP/concessions, as it is essential during contract management and monitoring. It could be a task for the PPP Units.
- PPP units can be useful because not all officials are fully experts into the legal framework, and mistakes can be avoided. Necessary capacity building should be secured.
- Weight quality and competence as much as price in evaluation of tenders – and avoid irregularities.

4 Indicative Steering questions

- Would it be more convenient to have one law including both concessions and PPPs?
- Are feed in tariffs or feed in premiums for electricity RES projects preferable?
- Will support for vulnerable consumers be secured in case of tariff increases?