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In the present article the author defines an institutional legal framework for public-private-partnership (PPP) as a new institute of Slovenian law. In the beginning of the article author opens the questions of EU law definition of PPP. According to his opinion PPP is not an unfitted and a regulated legal institute of EU law. The understanding of PPP differs from one Member State to another. Similarly does a question of public service definition. In the Slovenian legal system there are commercial and non-commercial public services. Two different legal regulations divide them. With a new law on PPP they are understood uniformly. In the next part of the article the author defines new forms of PPP as determined in the new law on PPP. These forms are two-fold: PPP as a special contractually-based PPP and PPP as a corporate-based-PPP. The former is a form of concession agreement or a form of public procurement agreement, while the latter being a form of a newly established or newly transformed legal person. In the next part of the article the author describes a new legal procedure and how the PPP arrangement will be constituted in the future. Author concludes the article with some open questions about the legal regulation of the PPP in the Slovenian legal system.

Key words: *Public-Private-Partnership, Public Service, Concession, Public Procurement, Public Enterprise, Public Institution.*

1. Introduction

Public-private partnership Act *(Zakon o javno-zasebnem partnerstvu, Official Gazette RS, No. 126/2006 - hereinafter PPPA)* was adopted on 23 November 2006. It was published in the Slovenian Official Gazette on 7 December 2006, together with a new Public Procurement Act *(Official Gazette, Nos. 39/2000 (102/2000 - corr.), 2/2004, 128/2006)* and Public Procurement in Water Management, Energy Transport and Postal Services Area Act *(Zakon o javnem naročanju na vodnem, energetskem, transportnem področju in področju poštnih storitev - ZJNVETPS, Official Gazette, No. 139/2006).* PPPA is a part of the statutory triad of the new regulation on public sector business operation. All three acts formulate fresh and new rules on the manner of public entities' future operation on the market and performance of public services. One of the legislator's intentions when adopting the legislation was also to regulate business performance of public sector entities more similar to the rules in force for commercial entities on the free competitive market.

PPPA entered into force after the 90 days period, determined by the legislator for citizens and users to get acquainted with its content. It started to be applicable on 7 March 2007. The legislator determined 90 days of *vacatio legis*, despite the Constitutional provision that this period should be at least 15 days.[2] In the 90 days period for enforcement of the PPPA the Slovenian Government and primarily the Ministry for Finances needed to prepare several executive acts, which will enable practical applicability of the new rules and institutes of the PPPA. The law itself, without the executive acts, namely cannot be applied in practice.

Nomotechnically[3] the PPPA contains nine chapters and 154 Articles. In line with its substantive nature it defines new terms, institutions and principles. In line with its formal nature, however, it also regulates institutions and procedure for future establishment of public-private partnership. The Act is at the same time also *lex posterior*, which essentially intervenes into substantive and procedural regulation in certain legal fields.

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[2] See Article 154 of the Slovenian Constitution (Of. G. RS. Nos. 33/91, 42/97, 66/00, 24/03, 69/04, 68/06, hereinafter URS) - Validity and Publication of Regulations: Regulations must be published prior to coming into force. A regulation comes into force on the fifteenth day after its publication unless otherwise determined in the regulation itself.

[3] The word 'nomotechnique' derives from the Greek word nomos (gr.: Νόμος, pl. Νόμοι) meaning law. Nomotechnique refers to professional rules and principles on the legislative technique, which stipulate the way provision, especially law, should be written (*op. cit* B. Tičar).

Public-Private Partnership is a legal institute *sui generis* in Slovenian law, derived from the English PPP. In English law this is not a specific legal institute, but rather a defining element, which includes different forms of cooperation between public and private entities. In the Slovenian law, however, the notion of public-private partnership became a formal legal institute, which will manifest itself through the following two basic forms:

1. *private investment in public projects;*
2. *public co-financing of private projects with public interest.*

This legal institute became part of the Slovenian binding legal regulation on the basis of programme provisions of the Green Paper on Public-Private Partnership (hereinafter: Green paper), adopted by the European Commission on 30 April 2004. The Commission's understanding of the Public-Private Partnership as defined in the Green Paper is supplemented by the « Report on the Public Consultation on the Green Paper » of 3 May 2005 and « Communication of the Commission to the European Parliament, Council of EU, Economic-Social Committee and Committee of Regions on Public-Private Partnership » of 15 November 2005.[4] Public-Private Partnership is not uniform in the EU and it is not regulated as a specific institute of EU law. Accordingly, this term is not regulated in legally binding manner by an EU legal act, either with a regulation, which is directly applicable in all the Member States, nor with a directive, which should had been implemented by the Member States.

Accordingly, understanding of the Public-Private Partnership derives from the programme directions of the Green Paper only. However, some Member States have – for practical reasons – transposed it differently into their respective legal systems. This institute is mostly related to the national regulations on public procurement and concessions and only occasionally it is regulated with a specific legal act.[5] Slovenia has followed the latter system and has regulated these legal relations in a special law.

[4] See the proposal of the PPPA (Predlog zakona o javno zasebnem partnerstvu (PPPA) – first reading – EPA 1025, Poročevalec Državnega zbora Republike Slovenije, Ljubljana, 8 September 2006, Year XXXII, No. 91, p. 8.

[5] See *ibidem*, p. 9, as for example Ireland by the State Authorities Public Partnership Arrangements Act, 2002.

2. Principal Characteristics of the Legal Regulation on Public-Private Partnership in Slovenian Law

Slovenian regulation defines public-private partnership as different projects of private investment in public projects and public co-financing of private projects, especially related to:

- Building of public infrastructure (building, maintenance, management),
- Performance of commercial public service and
- Performance of other public services or related activities in public interest.

Public-Private Partnership is primarily an economic partnership. According to the general substantive definition of public-private partnership it is a joint venture of two or more entities investing money and/or assets, intended for performing a joint business, which share their profit, loss and risks. Public-private partnership may be established by at least two entities, where at least one of them being a public entity and at least one a private entity.

Substantive reasons for co-operation between public and private entities are advantages for both of the parties. From the private sector point of view a public-private partnership is a market investment with low market risks and assured, in advance arranged profit, whereas from the public sector point of view this is an investment with economic effective and more successful provision of public services or public investment in infrastructure in case of lack of budget assets. Substantive reasons for future formation of public-private partnerships are[6] lack of budget assets for consistent assurance of public services and goods in public interest in accordance with the principle of social state, provided in Article 2 of the Slovenian Constitution; lack of public infrastructure premises; growing environmental standards, determined by the contemporary modern states and finally in the fact of private sector having more experiences in management and performance in the framework of providing quality goods and services.

For successful introduction of public-private partnership in the Slovenian practice it is important that at least the following minimal conditions are fulfilled: political support (of the Parliament, Government and local communities); appropriate legislative framework (specific act on public-

[6] See Miranda Groff Ferjančič in: *Reforme javnih financ in notranje revizije* (2006). Ed. Helena Kamnar, zbornik referatov, Ljubljana: Zveza ekonomistov Slovenije, articles on public-private partnership.

private partnership); appropriate institutional framework (institutions of state administration and at the level of local communities); professional human resources at the side of both parties; determination of standards and norms on quality of goods and services, which are ensured in public interest; and consistent legal control of the private partner by the public one.

The PPPA concept originally derives from the regulation of public-private partnership in the field of commercial – especially municipal – public services. The ambition of its author has been to clear corporate law form of public undertaking and to separate it from companies, which in addition to their market activities also perform commercial public services. During the inter-institutional adjustments and legislative procedure the concept of public-private partnership has been widened also to the so-called non-commercial part of the public sector. In addition to the commercial public services these are so-called *other public services.*

The adopted regulation on the PPPA entirely includes both parts of the public sector: the one performing commercial public services and the one, which is concerned with the public interest in the fields of social activities. The latter includes public undertakings and public commercial institutes on one hand and public institutes, public funds and public agencies on the other hand.

At this point it must be emphasised that the term commercial public service as defined in the EU law does not correspond to our substantive legal definition. The latter is contained in the Public Utilities Act *(Zakon o gospodarskih javnih službah – Official Gazette RS, No. 32/93, 30/98 – hereinafter PUA).* EU law definition of public services is substantive.[7] The European Court of Justice clearly stated in 2000 that every supply of goods and services on the market constitutes an economic activity.[8] According to the Court's case law this is also true for the activities that present so-called social (non-commercial) public services,[9] when performed on the market.

The dividing line between a commercial public service, as defined in the Slovenian law (PUA), and a non-commercial public service in the field of

[7] See Pirnat, Rajko (2006), Podelitev koncesije v negospodarskih javnih službah, XIII. Dnevi slovenske uprave, main subject: Governmental reforms and public sector and Slovenian presidency of the European Union, Portorož 20 - 22. 9. 2006.
[8] See ECJ judgement: C-180/184/98, Pavel Pavlov and Others v. Stichftung Pensionenfonds Medische Specialisten, Joint Cases (2000) ECR – I – 6451.
[9] See ECJ judgement: C-204/99 Henning Veedfald (2001) ECR I-3569, dealing with production of pharmaceutical products within a hospital and judgement C -475/99 Ambulanz Gloeckner, dealing with patients' transportation.

social activities is only a remainder of an obsolete approach of distinguishing commercial and non-commercial activities. This does not have any substantive ground in the contemporary EU law.

Despite this the fact that PUA regulates commercial public service and distinguishes it from other (non-commercial) public services, will influence the understanding of the new regulation of public-private partnership.

Accordingly, it should be understood in the above-mentioned context of distinguishing commercial and non-commercial public services, keeping in mind that PPPA provides sensible application of the PUA rules also for concession partnerships in the field of social activities. The dividing line of commercial and non-commercial public services' regulation will thus be blurred in favour of commercial public service understanding.

3. Statutory Definition of the New Regulation on Public-Private Partnerships

Statutory provisions of the PPPA lead us to a conclusion that the legislator establishes new legal rules on public-private partnership in the field of commercial public services, as well as in the field of non-commercial public services, primarily performed by public institutes. The rules will mostly be the same. In this regard it should also be emphasised that PUA will apply *mutatis mutandis* for concession public-private partnerships and Public Procurement Act for public procurement public-private partnerships and for corporate-based public-private partnerships, established by sale and purchase of public entities' shares, PFA will apply *mutatis mutandis.*

PPPA applies for procedures of concluding and implementing public-private partnerships as regards the questions, which are not differently regulated by a specific law. This implies that the PPPA is a general legal act *(a lex generalis)*, which applies for conclusion and implementation of public-private partnerships. In case that the legislator adopts specific laws for individual fields, the latter will override the PPPA regulation.[10]

The provisions of the PPPA are binding in the cases, when the Act specifically foresees the *supremacy of application*. Such cases include transformation of exclusive rights, terms of public procurement

[10] In case the legislator adopts a law on concessions in health sector, this law will be a *lex specialis* in relation to the PPPA. As a specific law it will override the latter. In case that certains fields of public-private partnership will not be regulated by a specific law, PPPA as a general provision will apply (*op. cit* B. Tičar).

partnership, competitive dialogue, building concession etc. In these aspects the PPPA is a *lex specialis* and is applied as a specific provision.

Public-private partnership is a cogent[11] or coercive institute of administrative law. This means that public partners are – when so provided by law – liable to perform the procedure for collecting proposals, decisions, call for proposals and select the private partners. For these reasons it is even more important to determine, which entities are liable under the PPPA. Article 5 of the PPPA leads us to the conclusion that the liable persons are primarily public partners. Their future legally binding activities are obligatorily provided by the PPPA and they allow certain degree of free action only when determining the form of public-private partnership. This can be a contractually-based (concession or public procurement) or a corporate-based partnership. Before defining the forms of public-private partnership, I will deal with a more precise definition of the liable entity according to the PPPA – i.e. public partner.

A public partner in the legal relationship of public-private partnership at the state level is the Republic of Slovenia. It is a statutorily *(ex lege)* defined partner and systematically does not need further (executive) regulations to conclude a public-private partnership. The Government of Republic of Slovenia is taking care of public-private partnerships on behalf and on the account of the state. More specifically, according to the PPPA the Ministry for Finances of the Republic of Slovenia deals with PPP within the Government.

A public partner is also a self-governed local community. According to the present legal regulation this includes towns and other municipalities. Once the legislation on regions will be adopted, however, also they will be public partners according to the PPPA. In this regard it must be emphasized that local communities are not autonomous when determining public-private partnership in the same degree as the state. Before adopting a decision on public-private partnership they must namely act in accordance with regulations (most probably according to rules of procedure) stipulating justifiability and feasibility of the investment or of a project. The executive regulations must be adopted by the minister for finances upon the effectiveness of the PPPA.

[11] The latin term *ius cogens* describes coercive law in contrast to the lat.: *ius dispozitivum* describing voluntary law. Parties may either adopt their own legal provisions in accordance with their agreement or not. Cogent norms are contrary to the voluntary or dispositive norms, they are coercive and characteristics for those legal fields, where rules protect public and state interests, e.g. administrative, penalty and criminal law. Dispositive norms are, on the other hand, characteristic for civil law contractual relationships, which depend on autonomous will of the entities entering into the legal relationship (*op. cit* B. Tičar).

In addition to the term ‘public partner’, the PPPA also refers to the ‘other public partner’. This does not imply the state or a local community, but instead a public law body, established by the state or a municipality (e.g. a public institute, public agency, public foundation etc.). These legal entities may act in the capacity of public partners only if so determined by a specific law or executive rules, based on another law. Such specific laws or executive rules have not yet been adopted in Slovenia, for this reason public institutes may not directly act in capacity of public private relationships as public partners upon the PPPA entrance into force. For the present being this legal status is thus reserved for the state and municipalities.

Under the basic definitions statutory definition of ‘other public service’ must be explained. According to the PPPA this refers to the activity, which is statutorily defined as non-commercial, social public service. According to Article 22 of the Institutes Act public services perform activities, determined by the law or a municipality or town decree, or activities, which are not directly defined, but on the basis of law. They can be of unlimited duration and their undisturbed performance is assured in the public interest by the state, municipality or town. The Institutes Act does not define non-commercial public service, however, it does indicate in Article 1 that this sort of public service implies regulated activities of education, science, culture, sport, health, social care, children’s care, disable’s care, social security or other activities, when the aim of the activity is not profit-making. For this reason, taking into account the diction of the Institutes Act and PPPA, I am of the opinion that the legislator, when defining ‘other public service’, had primarily in mind this sort of activities, which are more precisely regulated by sectoral regulations. This additionally supports the argument for using PPPA in the public institutes’ fields of work.

The general part of the law implies a general rule that all public partners are obliged to follow the law when forming a public-private partnership; however, it also guarantees certain autonomy. The law namely binds public partners to act according to the PPPA, when the value of the future public investment exceeds 5.278.000 euros. In cases of a higher value the public partner may perform a purchase of building constructions or services only in case that on the basis of economic and other circumstances of the project it is established, that the procedure cannot be performed in one of the forms of public-private partnership.[12] In other cases, when not differently stated

[12] See Article 8 PPPA.

in specific regulations, the parties of the public-private partnership may regulate the relationships in accordance with the law on obligations.[13]

PPPA has two main aims:

1. The first aim of PPP is to enable private investment in public interest. PPP is performed in the field of financing, projecting, building, supervision, organisation, management, maintenance and performance of activities in public interest.
2. The second aim of PPP is to ensure transparency, competitiveness, non-discrimination and fairness of procedures for formation, conclusion and performance of specific forms of public-private partnership, as well as protecting public interests in this relationship.

The legislator has foreseen to attain these two aims by defining more precisely the future relations of public-private partnerships, as well as by general definition, which shall be valid for all forms of public-private partnership on the basis of PPPA. General fundamental principles, which shall be valid for every public-private partnership, contractually-based as well as corporate-based, are as follows:

1. Principle of Equality means that a public partner does not create circumstances, which geographically, objectively and personally discriminate between the candidates;
2. Principle of Transparency is an obligation of a public partner to transparently publish all the procedures on the basis of PPPA. It is necessary to publish calls on the website;
3. Principle of proportionality means that a public partner may use only those measures that are necessary to attain the aim. This includes the measures, which less excessively limit the private partner and are comparable to the importance of the aim as regards their scale and consequences;
4. Principle of equilibration of risks in the relationship of public-private partnership means that all the risks must be arranged in such a way that the party bearing the risk most easily handles it. A private partner or a performer of the public-private partnership must bear at least part of the business risk. In the opposite this is a public procurement;
5. Principle of competition means that a public partner may not hinder competition among the candidates during the procedure of concluding public-private partnership;

[13] This is the Code of Obligations (Obligacijski zakonik – OZ; Official Gazette RS, Nos. 83/2001, 32/2004, 28/2006 Const. Court: U-I-300/04-25).

6. Principle of procedural autonomy means that the parties are entitled to regulate the relationships in accordance with the rules on obligation, unless PPPA provides otherwise;
7. Principle of ancillary liability means that the public partner is ancillary liable for the damage, caused by a performer of public-private partnership to the recipients of the services or to other persons;
8. Principle of cooperation finally means that a public partner assists a performer of the public-private partnership in assuring the necessary property and other rights and various authorisations, which the latter cannot acquire by himself.

Public-private partnership will in the future actually face the process of privatisation, which by itself does not imply liberalisation of public services and regulated public activities. It does, however, mean a transition of performing activities in the private instead of in the public sphere. Until the terms and prices of goods and services are regulated and controlled by the public partner, the activity is not liberalised yet. This becomes true, when it is freely left to the market.

Privatisation may be functional or formal. Functional privatisation is substantive and refers to privatisation of public activity (public service of performance of public authorisation). Formal privatisation, on the other hand, is proprietorial and implies the establishment of corporate rights over the transformed public entity or the newly established public-private legal entity. From this point of view it will in the future be possible to establish a public-private partnership in the form of:

1. **Contractually-based public-private partnership** or as
2. **Corporate-based public-private partnership.**

AD 1) Contractually-based public-private partnership will be based on an obligatory contract. However, since all the public-private partnerships aim towards the increase of effectiveness and successfulness of attaining public interests, also all the contractually-based public-private partnerships will have public law elements. For this reason a contractually-based public-private partnership will be established in two forms: (A) in a form of concession contractually-based public-private partnership or (B) in a form of public procurement contractually-based public-private partnership.

Both forms will be characterised by concluding a special contract as a basis of privatising of commercial or non-commercial public service. Substantially the concession form of partnership distinguishes itself from

the public procurement form in view of economic risk burden to provide a public service. In case of the concession partnership most of the risk to provide goods and services in the public interest burdens the private party, whereas in the case of the public procurement partnership most of the economic risk is born by the state or a local community. PPPA does not contain precise criteria for the assessment of a future public-private partnership. For this reason I am of the opinion that the assessment of the risk bearing will be in discretion of the public partner.

However, even in the case of public procurement partnership at least a part of the risk must be born by the private entity. In the contrary this would no longer be a public-private partnership, but a public procurement, regulated by the Public Procurement Act.

AD 2) Corporate-based public-private partnership describes a specific legal relationship, when a public partner (state or municipality) confers the performance of rights and obligations to assure public interest (public services or public powers).

According to the statutory definition a corporate-based public-private partnership is a relationship, established between a public and a private partner in a manner that the state, one or more self-governed local communities or other public law entities, as well as other public partners confer the performance of rights and duties of the public-private partnership to the performer of the latter.[14] The performance of the rights is awarded by:

- Establishing a legal entity,
- Selling a share of the public partner in a public undertaking or other legal entity of public or private law,
- Purchasing a share of an entity of public or private law, by additional capitalisation or in any other way, which is legally and factually related and comparable to the enumerated forms;
- Transferring the performance of rights and duties, which arise for the person concerned from the public-private partnership.

A corporate-based public-private partnership means a specific legal relationship, when a public partner confers the performance of rights and duties of assuring the public interest in the following ways:[15]

[14] See Article 96 PPPA.
[15] See Article 98 PPPA.

- By establishing a legal entity, the founders of which are the state, one or more self-governed local communities or other public law entities, as well as other public partners and one or more private law entities, and by a transfer of performance of rights and duties, which arise for the legal person from the public-private partnership (partnership by establishing a legal entity);
- By selling a part of a share of the state, self-governed local community or other public entity or of another public partner in a public undertaking or in another legal entity to a holder of special or exclusive rights or public powers and by transferring the performance or by continuing (preservation) of performance of rights and duties, which arise from the public-private partnership for the legal person concerned (partnership by selling a share);
- By purchasing a share of the public partner in a public entity or other legal person to a holder of special or exclusive rights or public powers and by transferring the performance of rights and duties, which arise from the public-private partnership for the legal person concerned (partnership by purchasing a share).

4. Due Process as a Condition for Formation of a Public-Private Partnership Relationship

The procedure for granting a public-private partnership is uniform for all entities. In the starting phases it is uniform, regardless of whether it concerns a contractually-based or a corporate-based public-private partnership.

In the concluding phase the procedure ends by adopting a selection decision after the performed public call. This decision may be in a form of an administrative decision on granting a public-private partnership in cases of public procurement and concession contractually-based public-private partnership. However, in the case of a corporate-based partnership the public partner will adopt a business act on the basis of the selection decision. This act will either be in the form of a contract on transformation of the public entity into a public-private partnership's entity or a contract on establishment of a new public-private partnership's entity.

From the public institutes' point of view there are no specifics. The procedure for establishing a public-private partnership is already explained in the chapters above. At this point it is briefly summarised. The procedure for establishing a public-private partnership will (by way of simplification) include the following phases:

1. The procedure commences on public partner's own initiative or on the basis of an interested private partner application.
2. Assessment of chances for a PPP is performed as a preliminary procedure of a public-private partnership. The future public partner at this point determines justifiability of the public-private partnership in accordance with the criteria, adopted by the minister for finances.
3. Public partners annually call the promoters. The promoters are candidates for new public-private partnership or potential private partners, which present projects to the potential public partner. The call must be published after the inclusion of the project into the development programmes' plan at the latest, i.e. three months after the adoption of the budged.
4. Public partner adopts a decision on the public-private partnership. The decision is a regulatory act in the legal form of a public-private partnership's act. At the state level a decision on the public interest for a public-private partnership is adopted by the Government of the Republic of Slovenia and at the level of municipalities the decision is adopted by the municipal council. The act, which will be a legal basis for a public-private partnership will thus be a governmental regulation or a municipal decree (comparably to an act of concession).
5. This is followed by a call for selecting a private partner.
6. On the basis of the call the future public partner selects a performer of the public-private partnership. The selection is performed by the adoption of an administrative act – selection decision.
7. Finally, on the basis of the selection decision it adopts a business act: a contract for public procurement or concession contractually-based public-private partnership or a contract on establishment (transformation) of a new legal entity in the corporate-based form of public-private partnership.

5. Transitional Provisions of the PPPA

The transitional and final provisions of the PPPA, especially Articles 141, 142 and 143, provide that the existing public undertakings, which perform a commercial public service may, according to the law on companies, be transformed into a company or preserve the status of a public undertaking according to the Act. A decision on the form of transformation must be taken by the founder in three years after the enforcement of the Act at the latest. In this regard also the founders of public institutes will similarly in the next three years take decisions on whether an institute is an appropriate form for transformation in a public-private partnership entity.

Furthermore, it is stated in Article 141 that without prejudice to the above-mentioned solution the existing public undertakings holding private shares must in one year after the enforcement of the Act, i.e. 7 March 2008 at latest:

- according to the law on companies, be transformed into a company, or
- preserve the status of a public undertaking according to the Act in case of private shares' transfer to the Republic of Slovenia, in case of a public undertaking performing a state commercial public service, or to a self-governed local community, in case of a public undertaking performing a self-governed local community public service or in the case that private entities' investments in these public undertakings cease in any other way.

According to Article 144 PPPA the rules on transformation of public undertakings mutatis mutandis apply also to public institutes and public commercial institutes.

From the point of view of regulation on public undertakings and public institutes it is important that the PPPA derogated Article 80 j of the Public Finance Act (PFA).

The provision of Article 80 j of the PFA namely regulated a possibility of privatisation of public institutes as well as public commercial institutes and public undertaking before PPPA. Article 80 j PFA in general froze all privatisation initiatives, since it did not allow a transfer of capital investments or establishment rights of the state or a municipality in public institutes. Privatisation was possible only if so provided by a specific law on performance of public service on a specific field. However, since such specific laws have not been adopted after 2002, these procedures have been frozen. PFA amendments in 2002,[16] including Article 80 j, in practice froze any possibility of public-private partnership by way of corporate transformation of public institutes or by selling shares in the fields of all social public services. Only after the 7 March 2007 PPPA sets this free.

Following the new regulation of transitional Article of the PPPA and by removing Article 80 j PFA it will in the future be possible to transform also a public institute. The transformation will in general be possible into a corporate-based public-private partnership or into another legal form, since no general provision expressly prohibits it. It is true, however, that

[16] See Of. G. RS, No. 30/2002.

individual sector regulations define public institutes as exclusive corporate forms, which purpose is to perform certain public services.

6. Conclusion

It can be concluded that legal regulation of public-private partnership will be valid for entities in the field of commercial public services, as well as for performers of other (non-commercial) public services. Private entities will have the initiative for concluding future relationships, whereas public entities will make the decisions. The reason for establishing public-private partnerships is from the public point of view to increase effectiveness and successfulness of the public interest project and from the private point of view the reason for a PPP are monopolisation of profit and lowering market risks. The determination of the acceptability threshold will depend on proficiency and skills of the public partners.

To conclude, the new regulation can certainly be saluted, since it introduces entrepreneur spirit into the public sector. It will nevertheless be necessary, from legal certainty point of view, to adopt executive regulations and specific laws, which will further, as clearly as possible, regulate the new complex future regulation.

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