

The Bulgarian Experience in the Audit of Concessions

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Legal Framework

The primary legislative acts, which set the framework for concessions in Bulgaria are:

- ❑ The Constitution of the Republic of Bulgaria (promulgated in 1991 and subsequently amended)
- ❑ The Concession Act (promulgated in 1995 and subsequently amended)
- ❑ The Municipal Ownership Act (promulgated in 1996 and subsequently amended)

- ❑ The sector specific legislation applying to the different types of property and activities in respect of which a concession could be granted includes the Underground Resources Act 1999, the Waters Act 1999, the Forests Act 1997, the Civil Aviation Act 1972, the Railway Transport Act 2000, the Roads Act 2000, Inland Waterways and Ports 2000 etc.

Legal Definition and Regulatory Body

- ④ Under Bulgarian law concessions are commonly defined as a legal means whereby the State or municipality, while retaining its responsibility for protecting the public interest, is able to grant rights to a private party to utilize public property and resources and to engage a public services, which are otherwise exclusively reserved for the State/municipalities
- ④ The concessionaires operate under the regulations issued by Council of Ministers and corresponding Municipal Council

Some important facts

- ✚ With an amendment to the National Audit Office Act in 2001 concessions were included as a subject of our audit activity
- ✚ At this time we found over 900 concession agreements contracted during the period 1996-2001

The difficulties we face

- There is not enough synchronization in the legislation process
- Too many specific laws are applied to the different types of property and possible objects of State and Municipal concessions
- Great numbers of authorities make decisions for concession deals Council of Ministers, ministers, municipal councils and mayors
- Poor internal control over the concession granting activities
- Lack of monitoring system watching over execution of concession agreements
- Unreliable and inadequate information flows at all levels of the concession process
- We found poor management control over concession process
- We had no previous experience in such audit subject
- **Our time is limited and we need to make good use of it.**

What was our strategy?

- ✓ To spread all over the system as tried to understand how it worked at all levels and stages, how state authorities and managers accountable for granting concessions carried out their activities in the concession process throughout the period 1998-2002 by following the concession procedure steps:
 - adoption of a resolution for granting of concession;
 - carrying out of competitive bidding (tender or auction) for determining of a concessionaire or, direct award of the concession in the cases explicitly provided for by law;
 - execution of a concession agreement

What was our strategy? (continued)

- ✓ To form separate information flows
- ✓ To do diagnostic work examining processes and the results
- ✓ To look at the critical points and mechanisms making corruption possible
- ✓ To identify worthwhile lessons
- ✓ Regarding concessions granted by individual municipalities (263) we decided only to collect and analyze the information about all concession contracts they entered into, including the terminated ones, to find what is the subject of contracts and how many of them are terminated, whether the legal requirements and regulations are adhered to, what are the concessionary fees and proceeds, what are the main terms of concession agreement and how they serve the public interest

The outcome of the audit

Our examination of the concession process and responsible ministries achievements disclosed discouraging state:

- ⊕ We did not find any clearly formulated and sufficiently specific objectives that the authorities intended to achieve with concession deals
- ⊕ The decision to use the concession model to obtain useful results for society is spontaneous. The procedures for granting concessions are conducted at initiative of concessionaires themselves. Often they make all analyzes needed at the stage of preparation of the deal
- ⊕ Thus, the concessionaire interests dominated terms and conditions of the concession contract as well as the concession fees and financial terms
- ⊕ Overall management control has not been carried out systematically

The outcome of the audit (continued)

- ⊕ We found that the monitoring system over execution of the concession contracts is ineffective:
 - There was no information system truly reflects the execution of all concessionaire's obligations
 - Many of the concession contracts are not executed in general but they are not terminated
 - Most of the concessionaires do not pay the concession fees at the intervals specified in the concession contract. In some cases they defer their payments for years

- ⊕ Accounting mechanisms for recording, planning, controlling and making visible concession process are insufficient. They do not reflect the costs of the individual concession deal, nor do they give reasonable assurance that all concessionary fees paid by each of concessionaries have been paid, nor do they provide information for expected collection of concessionary fees

The outcome of the audit (continued)

- ⊕ The management information is not reliable. We found that data obtained at higher levels – Council of Ministers and Municipal Council was incomplete
- ⊕ The Council of Ministers and Municipal Councils have not used their major powers to obtain and examine the information available to the respective line minister or mayor, nor have they taken any actions to improve performance of concession granting activities



What did our strategy successful?

- ❑ If we look at one, two, or more concession deals we need long period of time to cover most of the 900 contracts we found
- ❑ The diagnostic work helps us to gain a better picture of management strengths and weaknesses of the authorities and to pinpoint possible areas and sectors for urgent future audit work as well as to single out some particular concession deals
- ❑ We believe that the auditor's main contribution is to act as a catalyst for change, by:
 - Providing an analysis of the current status to find good points as well as problems areas
 - Proposing ways in which improvements might be made

What did our strategy successful? (continued)

- Our outcomes promote improvements all over the system of concession granting activities:
 - With the view of ensuring transparency of the concessions an amendment of Concessions Act was adopted – it was established that the name of the concessionaire and its obligations would be announced publicly. The National Concession Register records are opened to the society
 - The responsible ministers and authorities took actions for:
 - strengthening ongoing control. The established Control Committees examining execution of the concession contracts recognized the urgent need to improve their activities and to keep up with the obligations of the concessionaires
 - terminating most of the contracts which were not executed in general
 - collecting concession fees regularly
 - improving the accounting system

What was our next step?

-  Following “Guidelines on Best Practice for Audit of Public/Private Finance and Concessions” and taking into consideration the specific character of Bulgarian background we set an Audit Standard For Examining Concessions which was adopted as an official standard of Bulgarian National Audit Office in 2003
-  This year we finished the examination of 12 concession agreements for collection and truck away of garbage contracted by 10 municipalities. We found that 3 of them were contracted contrary to the specific regulations and 1 of them in contradiction with The Municipal Ownership Act. We run into series of problems and risks concerning public/private partnerships. But I think that we can put off this topic until next meeting of the Working Group.