

Appraisal of the proposed Regulation and Directive from a legal perspective and their concrete impact on Croatian ports

CRUP

Inland Navigation Development Centre Ltd.

- **Established in 2003 as public-private partnership**
 - Development and modernization of inland navigation
 - project management
 - research and development
 - software and hardware development
 - technical solutions and customer support
 - consulting
 - RIS – river information services
 - e-Port



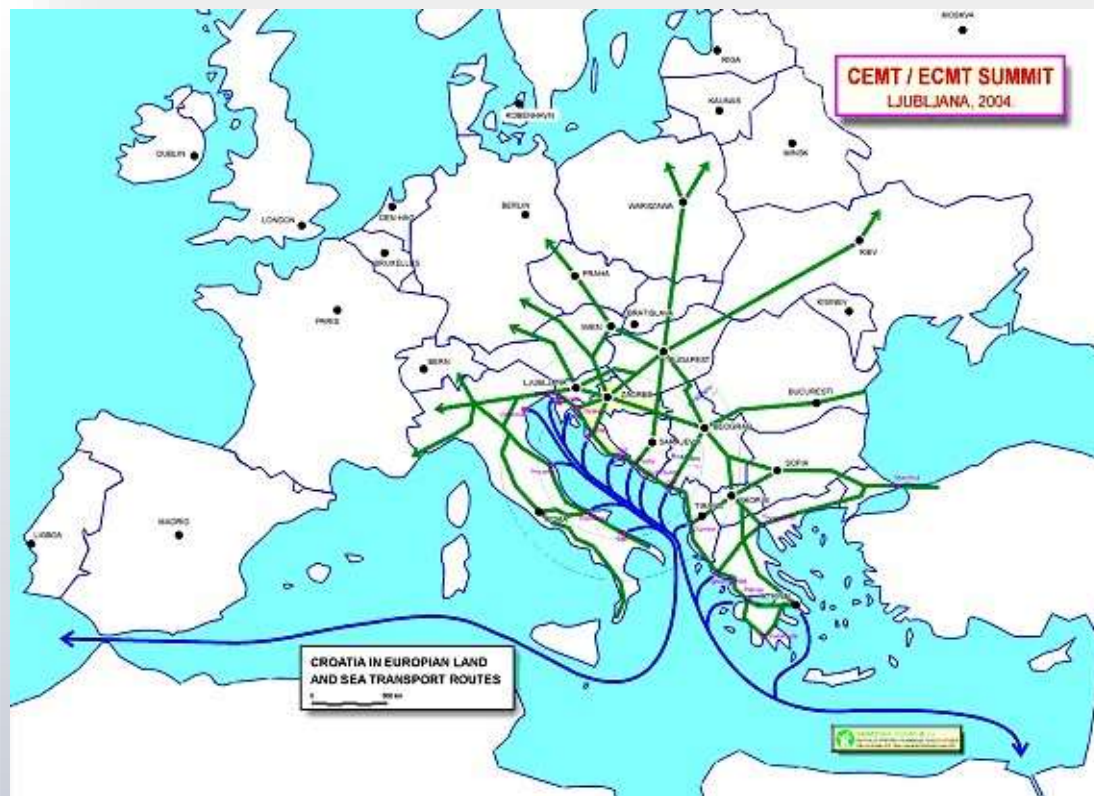
Republic of Croatia – youngest EU member



Temelji se na karti Kartografskoga odsjeka Ujedinjenih Naroda, broj (No.) 3740 izmjena (Rev.) 5. iz 2006.



Transport corridors



Concessions in Croatia

1990.

Concessions Act – 14 articles

1992.

Concessions Act – 10 articles

2008.

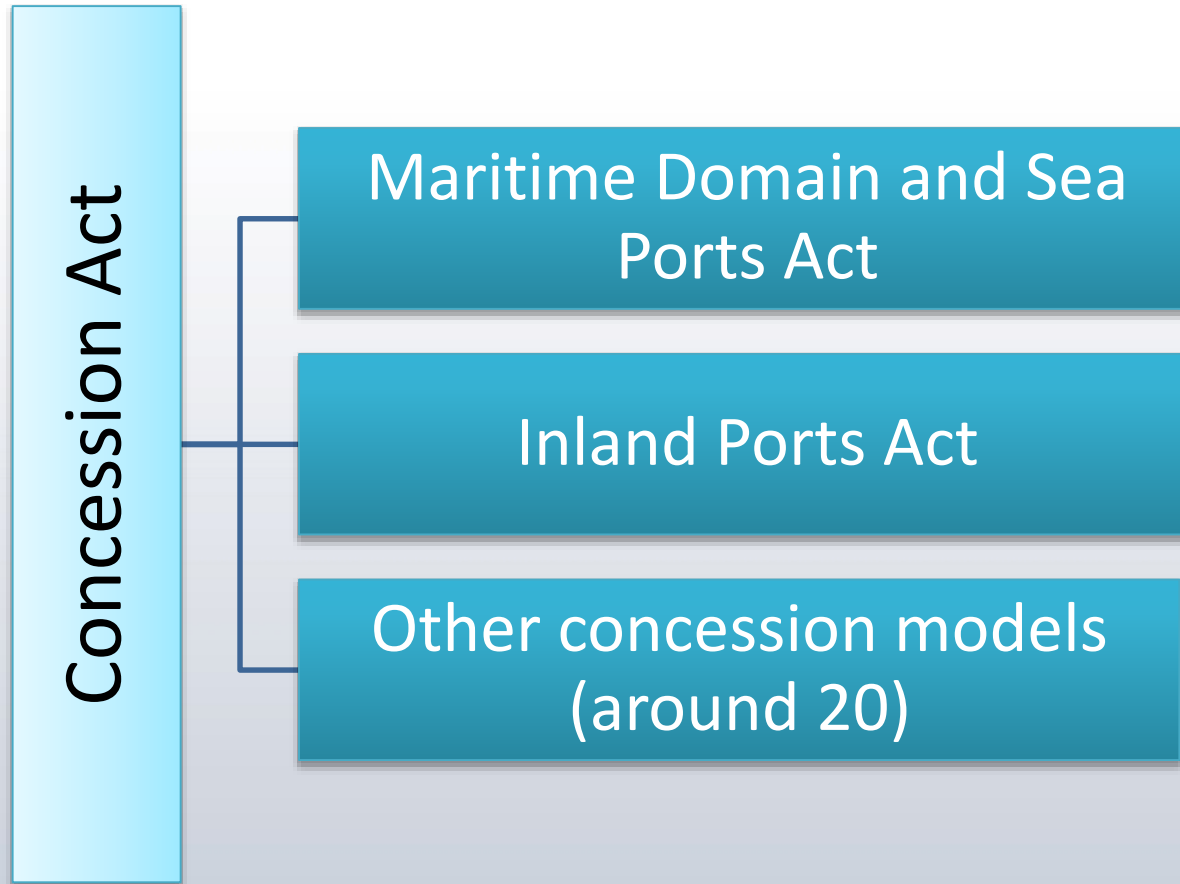
Concessions Act – 49 articles

2012.

Concessions Act – 65 articles



Since 1992



What have we done in 2012?



New regulation entered into force!

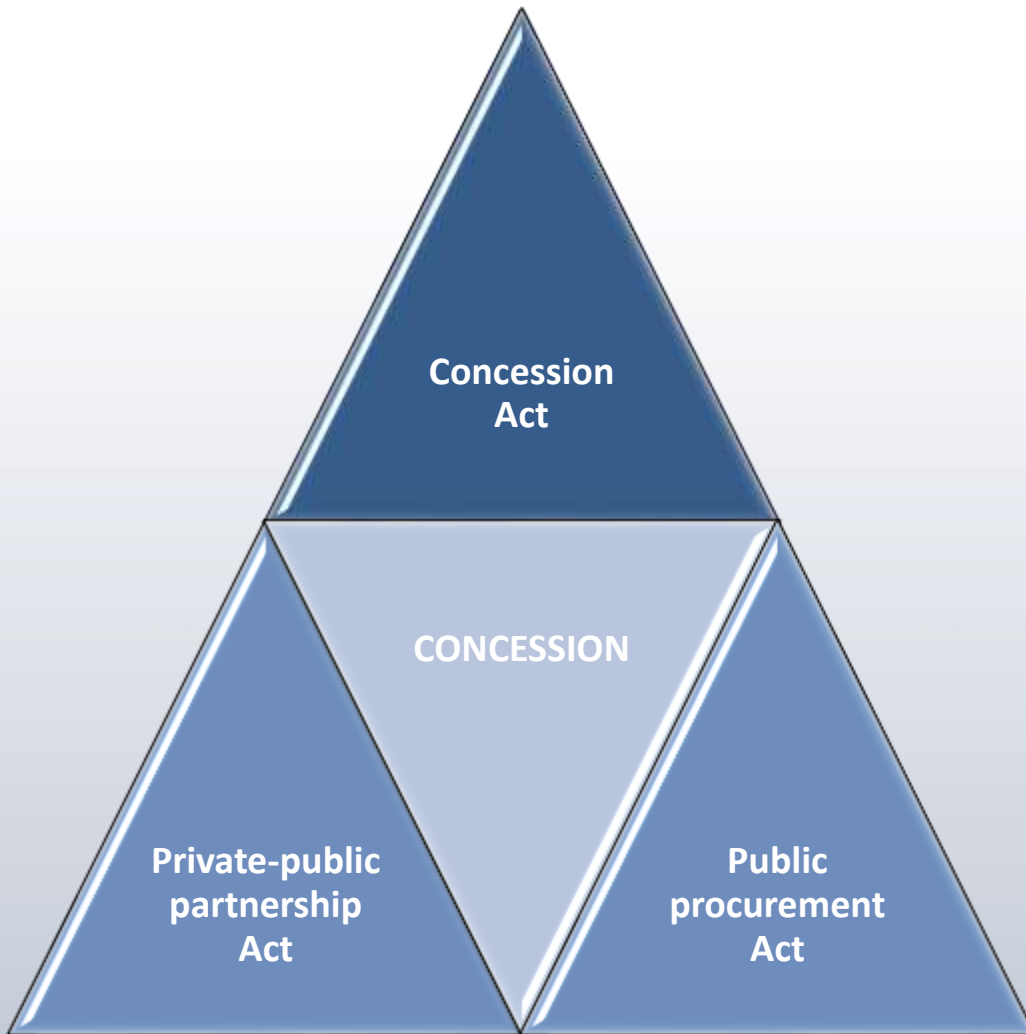


**New Concessions Act
was adopted on
December 7, 2012 and
published in Narodne
novine (Official Gazette)
No. 143 (December 20,
2012)**

**Entered into force
December 28, 2012.**



Subsidiary...



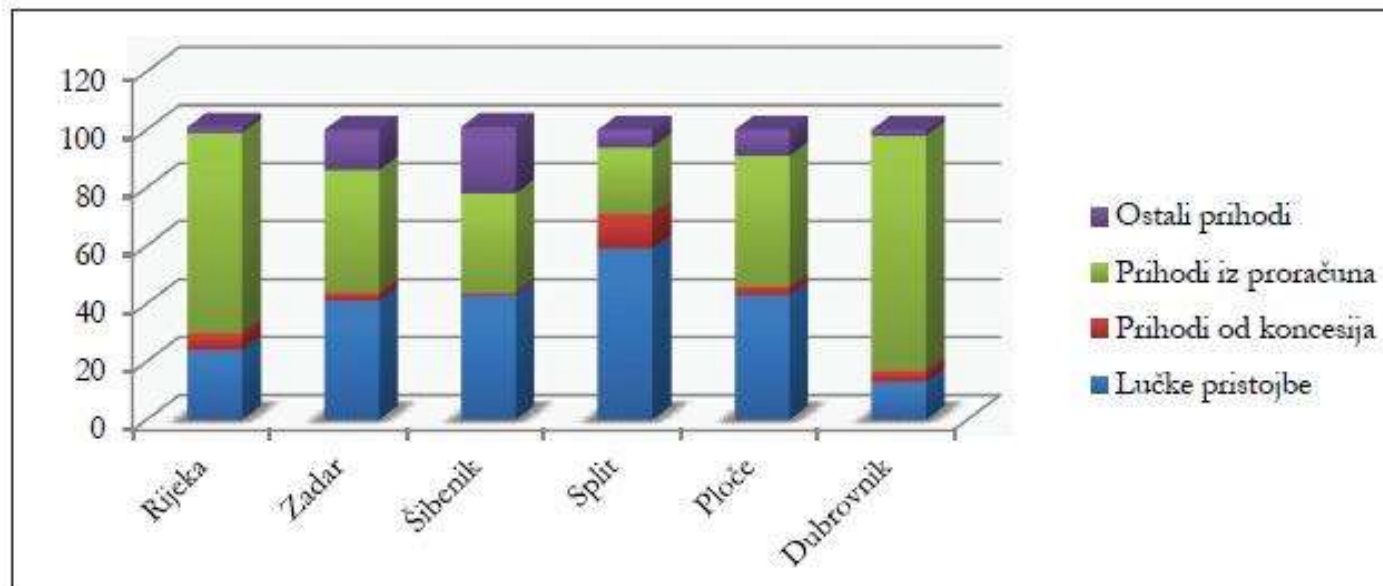
"The issues that are not regulated by this Act shall apply specific laws and regulations governing public procurement."

Plus General
Administrative
Procedure Act!

Why PPP?

Grafikon 1: Struktura prihoda lučkih uprava od osobitog međunarodnog interesa za Republiku Hrvatsku u 2009. godini

Figure 1 The 2009 structure of revenues of the port authorities of particular international interest for the Republic of Croatia

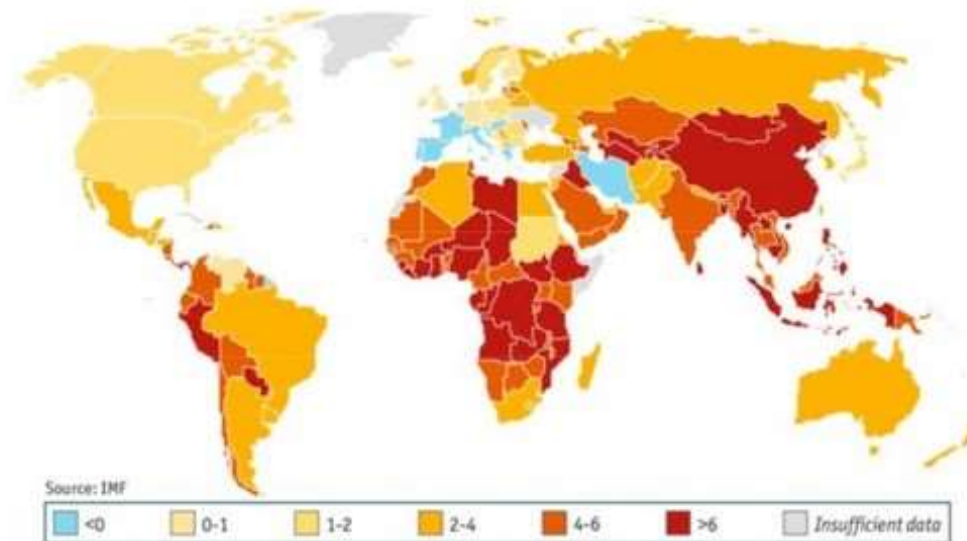


Izvor: Ministarstvo mora, prometa i infrastrukture, www.mmpi.hr, (01.04.2012.)

Source: Ministry of sea, transport, infrastructure, www.mmpi.hr (1st April 2012)

Europe needs PPP!

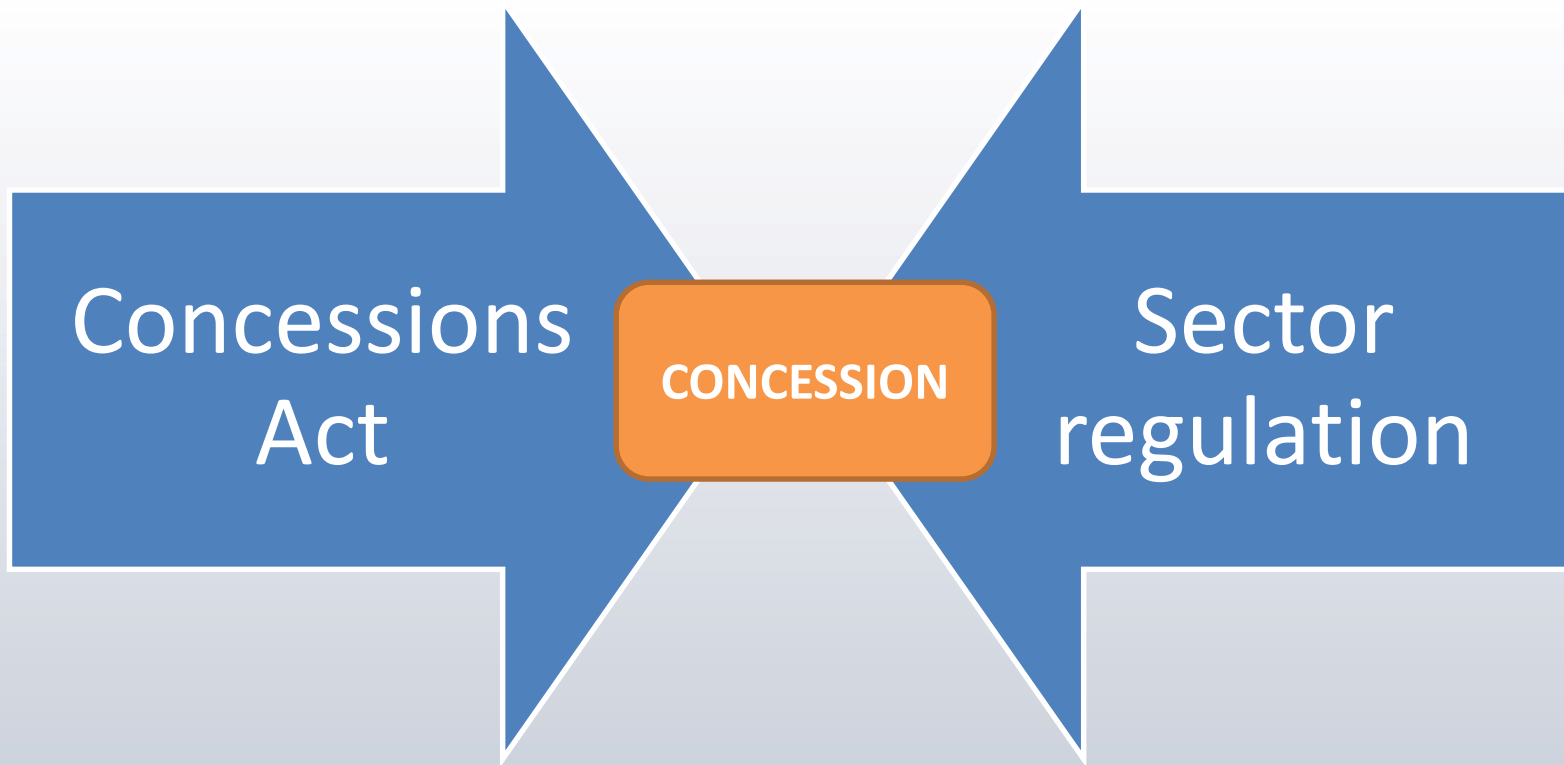
GDP Growth, 2013 forecasts (%)



Economy1.com/graphicdetail

GDP = The monetary value of all the finished goods and services produced within a country's borders in a specific time period, though GDP is usually calculated on an annual basis.
Source: The Economist.com/graphicdetail

So what we have now...



Basic classification in Croatian law

- „The concession is a right that is acquired under the contract.”
- Types of concessions are:
 - concession for the use of public domain (*Res communis*) or other domain,
 - concessions for public works,
 - concessions for public services.

What is public domain?

- Et quidem naturali iure communia sunt omnium haec: aer et aqua profluens et mare et per hoc litora maris, nemo igitur ad litus maris accedere prohibetur, dum tamen villis et monumentis et aedificiis absteineat, quia non sunt iuris gentium, sicut et mare. (Institutiones Iustiniani, II.1.1.)
- Similar: A.B.G.B. Allgemeines Bürgerliches Gesetzbuch 1811 - § 287. Freistehende Sachen; öffentliches Gut und Staatsvermögen



Who can be provider?

- Concession provider can be:
 - Croatian Parliament, Croatian government, state government, on behalf of the Republic of Croatia,
 - competent bodies of local (regional) self-government, on behalf of local and territorial (regional) self-government
 - separate legal entity duly authorized to grant concessions (*one of them – port authorities!*)



Extent of the Concessions Act

- (1) The concession is given in different areas and for different activities, in particular:
 - (...)
 - the maritime domain,
 - **for ports,**
 - for public transport,
 - the free zone.



General clause

- „Should bodies, legal persons authorized to approve concession, make a legal deal with economic subject in area and activity the concession refers to, which has important characteristics of concession contract, it will be considered such contract has been signed.”



Strategic concessions

- Croatian Parliament can declare a concession to the strategic interest of Croatia.
 - In such case, the procedure for granting such concessions and other issues related to the concession shall be regulated in accordance with the provisions of the Concessions Act.

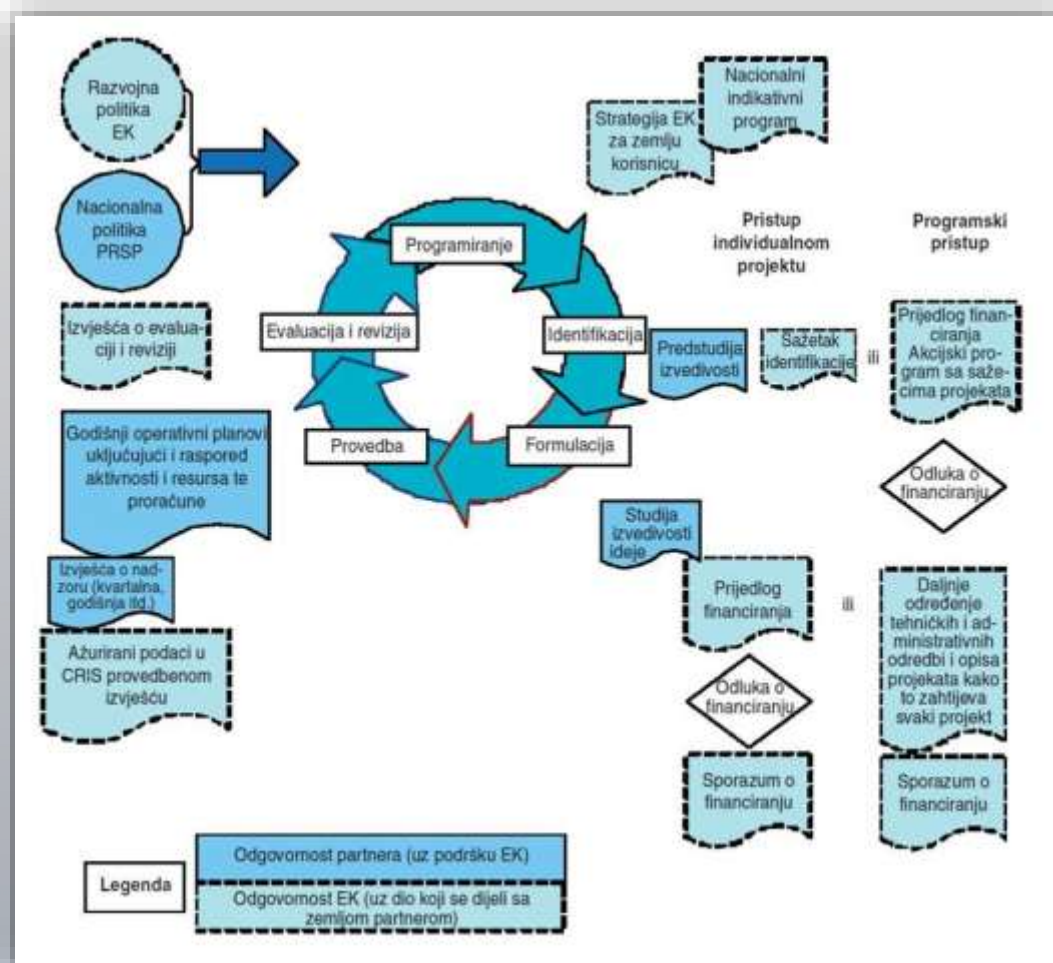


Medium-term (three-year) concession plan

- If requested by Ministry of Finance, **concession provider is obliged to provide mid-term (three-year) plan on concession** from its jurisdiction with clear estimations of economic effects of future contract implementation with proper regulations determining public finances; also **preparation, estimation and implementation of investment projects.**



Project Management Cycle

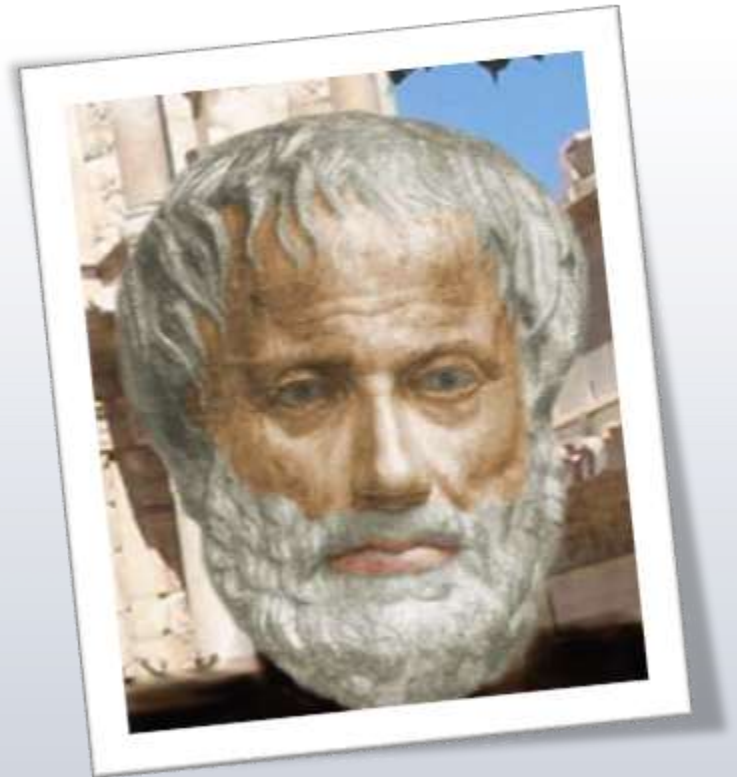


PCM can be a good methodology for making medium-term plans of giving concessions!

Source: EK, Smjernice za upravljanje projektnim ciklusom

Politics and policy...

- Concession provider must clear the manner compliance plan of giving concessions to the economic development framework and individual projects in accordance with the **public interest!**



Concession Annual Plan

- Concession provider shall – prior to the end of the current calendar year - prepare an annual plan of giving concessions within its jurisdiction for the next calendar year; standard form published by Ministry of Finance.
- Concession provider has to explain the difference in relation to medium-term plan, if there is any.



Feasibility study for the concession

- **Feasibility study** for the concession is made by the concession provider.
 - Feasibility study specifically takes into account the public interest, impact on the environment, protection of nature and cultural heritage, financial effects of the concession on the Croatian state budget or budget of local and territorial (regional) governments, as well as compliance with the economic development plans and concession plans.



Value under 2,000.000 €

- Public service concession of estimated value less than 2,000.000 EUR, no VAT included; and concession for economic usage of general duty, concession provider may submit concession providing analysis instead of feasibility study.



PPP

- Regarding concession for public service and public works with characteristics of public-private partnership, concession provider prepares project proposal in a way a public-private partnership is regulated.



Estimated value of the concession

- Concession provider account the estimated value of the concession as the total value of the concessions, expressed in HRK without value added tax (VAT), including any possible changes and options of the concession agreement and the maximum value changes.



The tender documents

- Concession provider draws up tender documentation.
- In the process of giving any concessions to the economic operator, comes the ability to take on an equal footing tender documents.
- **Public procurement rules!**



Notice of concession

- Notice of intention to grant concessions and correction notice of intent to award a concession must be published in the **Electronic Public Procurement Classifieds of the Republic of Croatia.**
- It also may be published in other media and on the website of the concession provider.



Bidding procedure

- Economic operators shall submit their offers in the period specified in the notice of intent to award a concession, in writing, in a sealed envelope and sent by registered mail.
- Concession provider conducts public opening of bids.
- Bids opened an expert committee for a concession.



Criteria

- The criteria on which the service concessions from the best offers are:
 - **The most economically advantageous tender in terms of the concession provider** (quality, inovative, functional, enviromental, running costs, support after delivery, delivery date, the cost of services for end users, concesion fee...)
 - **Those who offered the highest concession fee.**



The decision on granting concessions and contract

- Concession provider bringing the decision on granting a concession, after an expert committee review and evaluate bids. The decision on granting concessions is an administrative act.
- By signing the concession agreement the concessionaire acquires the rights and assumes liability for him arising from the concession agreement.



Changes to the concession agreement

- Changes to the concession contract may not change the type and / or subject matter of the concession agreement.



Concessions on request

- **Concession on request is the strict exception!**
- For example, if existing and / or planned economic activity of the undertaking in a particular location makes the subject of the concession for which the application is submitted, the inherent technological or functional unit, and the concession is only for the performance of the economic activity.



Legal protection

- Legal protection in the granting of concessions regulated by Croatian Concession Act shall be carried out in accordance with the regulations governing **public procurement**.
- **Granting Concession - State Commission for Supervision of Public Procurement.**
- **For concession contracts – trade court.**



Existing concessions

- **The new Act will have no retroactive effect.**
Concession contracts in place at its entry into force will not be affected for their entire duration.
- However, an extension of their duration may qualify as a new concession and therefore will have to comply with the rules of the new Directive, once the latter comes into force.



Concessions!

- What is the most difficult and most important – to change the way of thinking.
- Term of a concession is the same as 100 years ago, but the concept of concession is very different!
- After directive proposal – concessions are very different from those from classic legal doctrine. **Quality education is mandatory.**





CRUP

CENTAR ZA RAZVOJ UNUTARNJE PLOVIDBE
INLAND NAVIGATION DEVELOPMENT CENTER

www.crup.hr

Thank you for your attention!

goran.vojkovic@gmail.com