

COUNTRY REPORT ON INFRASTRUCTURE AND FINANCE ROMANIA

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I. COUNTRY INFRASTRUCTURE AND POLICY DIRECTION

Romania as member of the European Union effective January 01, 2007, required a well defined transport sector policy, objectives and market / demand oriented strategies to ensure a balanced and sustainable development of the nation's transportation systems and industry to match Western European performance and efficiency levels, as well as international safety and environment standards. In accordance with the commitments made by Romania during the negotiation process for EU accession within Chapter 9- Transport Policy, *the national transport infrastructure network has further to integrate into EU transport networks –TEN-T*.

Besides the preparation of the *National Strategic Reference Framework 2007-2013* (NSRF), sector-specific allocations by *Cohesion* (CF) and *European Regional Development Funds* (ERDF) required the preparation of the *Sectoral Operational Programme - Transport 2007-2013* (SOP-T) which was approved by the European Commission in July 2007. Since the preparation of the *General Transport Master Plan* (GTMP) coincided with the implementation of programme and subsequent realisation of projects, the Master Plan¹ needed to adequately reflect SOP-T and other relevant policy papers and strategic documents in the medium-term perspective 2008 to 2013 and within the long-term horizon until 2025.

Romania's transport sector policy and strategies also required being embedded in between national interests and transportation requirements, spatial development policy including its specific objectives and strategies², regional and other cooperation agreements (e.g. BSEC³, ECMT, UNECE⁴, UIC, ICAO, TRACECA and SECI), European transport sector policy regulations⁵ and, last but not least, the development of the Trans-European Network - Transport with the respective 'priority projects' located inside Romania, along TEN-T priority axis no. 7, 18 and 22. Furthermore, for funding of large scale transport infrastructure projects Romania has to liaise with, and to meet requirements and lending conditions of, international finance institutions (IFI), including EBRD, EIB, EC or the World Bank.

Policy issues in the field of transport have been addressed in Chapter 17 of the *Governmental Programme 2005-2008*⁶ and later in Chapter 13 –Transport Infrastructure within *Governmental Programme 2009-2012* defining 'strategies' (more precisely: objectives and measures) by sector that have been reflected in the *SOP-T 2007-2013*. In 2008 the Ministry of Transport and Infrastructure has also developed a *Strategic Plan*⁷ for the transport sector with Phase I focusing on and addressing management issues and Phase II on budgeting ones. Furthermore, the Ministry of Transport issued in March 2008 a

¹ General Transport Master Plan started in December 2006 and it was due to be finalized in December 2009, however till now still not published

² Regional Operational Programme 2007-2013 (ROP), Ministry of European Integration / MDPWH, Bucharest May 2007

³ JOINT DECLARATION on the further developments in the field of transport in the BSEC Region (Bucharest, March 15, 2006); Annex III to BS/TRM/R(2006)1

⁴ 'TEM and TER Master Plan' - Final Report, UNECE, New York and Geneva, January 2006

⁵ 'White Paper - European Transport Policy for 2010: Time to Decide', European Commission, Brussels DG TREN, September 2001

'Keep Europe Moving - Sustainable Mobility for Our Continent' European Commission DG TREN, Brussels, 2006

'Policy Guidelines by Sub-Sector' European Commission DG TREN, Brussels 2003 - 2006

⁶ Governmental Programme 2005-2008, Chapter 17; December 2004, Government of Romania

⁷ 'Plan Strategic in domeniul transporturilor: Etapa I - Componenta de Management, Ministry of Transport (Source: MT web page)

*“Strategy for Sustainable Transport over the period 2007-2013 and 2020, 2030”*⁸. In 2009 the Ministry has also published the Integrated Strategic Plan underpinning the updated monitored results in the implementation of SOP-T for the period 2007-2013.

The short and medium term transport sector policy is partly governed by the *Programme for Implementation of SOP-T 2007-2013*⁹ issued focusing on TEN-T corridors and their priority links in Romania, besides development of sustainable infrastructure by mode, including promotion of inter-modal transport.

According to the above-mentioned document the main priority infrastructure axes that were identified are:

- Modernization and development of TEN-T priority axes aiming at sustainable transport system integrated with EU transport networks

Key Areas Intervention:

- Modernization and development of road infrastructure along the TEN-T priority axis 7
These operations will aim at completing the construction of the motorway on the northern branch of TEN-T Priority axis 7 (Nadlac - Constanta) and preparation of motorway projects on the southern branch of the same axis. Attention is also given to works on the southern branch (including the direct link between Drobeta Turnu Severin – Calafat) through the assistance of other financial instruments like ISPA and IFI loans. In addition, with a view to accommodating the transport demand resulting from the growth in cross-border/transit traffic, operations under this key area of intervention will include all necessary preparatory studies, for motorway sections on the southern branch of TEN-T Priority axis 7 (Lugoj – Calafat).
- Modernization and development of railway infrastructure along the TEN-T priority axis 22
These operations aim at making the railway infrastructure inter-operable along the TEN-T priority axis 22; also at improving the quality of rail service by modernizing the railway infrastructure and raising the maximum operational speed to 160 km/h for passengers trains and 120 km/h for freight trains. These operations will aim at rehabilitating/upgrading/modernizing TEN-T Priority axis 22 (Curtici - Constanta). The focus of the operations will be on the northern branch (Curtici – Predeal), while all necessary preparatory studies will be envisaged for the southern branch (Arad – Calafat). In addition to modernizing rail infrastructure and in order to ensure effective interoperability, the project envisaged by this operation will include the introduction of ERTMS/ETCS level 2 systems. Romania will undertake to develop the ERTMS 2 in full cooperation with its neighbors.
- Modernization and development of water transport infrastructure along the TEN-T priority axis 18 This includes the River Danube along its full length, the Black Sea canal to the port of Constanta as well as Midia - Poarta Alba canal. It aims at developing the inland water transport infrastructure in Romania in order to increase its utilization. Initiatives for the Danube river and canals are mostly

⁸ Approved through Minister of Transport Order no. 508 / 2008

⁹ 'Framework Document for Implementation of Sectoral Operational Programme Transport Sector (SOP-T) 2007-2013'

intended to reduce the incidence of low water and therefore allow barge convoys to travel fully instead of part-loaded, and to increase average speeds by removing obstructions and reduce the need to wait for other vessels to pass. Some projects aim to increase the flow of the river, creating a self-dredging effect to reduce bottlenecks and ensure the minimum river depth of 2.5m at times of drought. The conditions for navigation on Calarasi – Braila and Sulina Branch sections of the Danube will continue to be improved the bottlenecks on the shared Romanian-Bulgarian Danube section will be addressed, and the Danube – Black Sea Canal banks will be strengthened and completed.

- Modernization and development of the national transport infrastructure outside the TEN-T priority axes aiming at sustainable national transport system

Key Areas Intervention:

- Modernization and development of national road infrastructure .Road infrastructure of national importance will be developed and modernized, allowing improved access to industrialized regions and population centers and generally to traffic generating nodes, as well diverting transit traffic away from population centers. As regards the development of transport infrastructure on Corridor IX as the main transport artery outside the TEN-T priority axes, it has to be noted that attention will be given through the SOPT, but also other financial instruments. The latest financing means include an innovative PPP approach for the Ploiesti – Focsani motorway, as main component of the Bucharest – Chisinau link. Another main transport infrastructure under construction in Romania in 2007-2013 will be Brasov-Bors motorway.
- Modernization and development of national railway infrastructure These operations aim at achieving rail inter-operability on the national rail infrastructure outside TEN-T priority axes by modernizing rail sections, and by rehabilitating railway stations, bridges and tunnels.
- Modernization and development of river and maritime ports .These operations aim at financing the modernization and development of Danube and Black Sea selected ports, with a view to increasing efficiency and attractiveness for users and raising traffic for this transport mode. In order to capitalize on the potential of offered by the Rhine-Main- Danube axis, the development of Danube and maritime ports, in particular port of Constanta becomes a major objective.
- Modernization and development of air transport infrastructure These operations aims at financing the modernization and development of selected Romanian airports, with a view to increasing efficiency and attractiveness for users and raising capacity utilization, as well as connecting effectively to Community and International points.

According to the *Strategy for Sustainable Transport over the period 2007-2013 and 2020, 2030* the policy directions for implementation of the identified transport investments are phased in three stages:

- 2007-2013 - national transport network reconfiguration action by assessment and prioritization of infrastructure projects on the national and European transport (TEN-T) network as well its connections to the national network by providing the technical and financial resources for conducting the actions initiated prior to the year 2007,

- 2014-2020 - action to achieve the gradual integration of the network to European one, by providing financial and technical conditions for gradual implementation of the modernization and development projects taking into account the strengthening modal restructuring trends, completing the liberalization of internal transport market and environmental policies and sustainable development principles
- 2021-2030 - actions for the advancement and completion of modernization and development networks by providing financial and technical conditions and taking into account the building of a transport integrated system as well as a widespread implementation of environmental policies and sustainable development principles

1.1 LEGAL AND REGULATORY FRAMEWORK FOR INFRASTRUCTURE

All types of legal instruments are available in order to fund the transport investment. The evolution of PPP models from concession to recently issued PPP fully regulatory framework worth to be mentioned. Also it will be observed from the below presentations, the legislative framework with respect to concessions is highly regulated. Below these are presented.

Concessions

The legislative framework regulating the public procurements and concessions in Romania was implemented and harmonized with EU Directives no.2004/17/CE, 2004/18/CE, 1989/665/CEE and 1992/13/CEE starting with 2006 when Governmental Emergency Ordinance -GEO no.34/2006 regarding the awarding of public procurement and concession contracts and its norms of application were enacted and currently represents an important domain of interest for both central and local administrations, contracting authorities and investors. The element of interest introduced by the Romanian legal framework is represented by the concept of concession which is defined as a form of public private partnerships (PPPs), i.e. a form of cooperation between the contracting authority and private investors for development of general interest projects. The key characteristic of concessions is that during the project, the concessionaire has the right to exploit the results of the works or services which make the object of the project. In case that the operating risk does not stay with the private partner, the contract will be qualified as a public procurement contract.

GEO no.34/2006 provides for two types of concession contracts, respectively concession of public works and concession of services. However, sometimes it is difficult to qualify a contract as concession of public works or concession of services, since most of the complex projects imply both the performance of public works and services. A public works concession contract will be chosen in case that the object of the concession especially aims at performing works as defined in the law, even if the contract includes some services which may be necessary for the performance of the respective activities. In other words, if the respective services are ancillary and represent a supplementation to the main object of the contract, they will not trigger the re-qualification of the public works concession contract. The opposite reasoning applies for qualifying a contract as concession of services.

To enforce the legal provisions, the National Authority for Regulating and Monitoring Public Procurement (NARMPP) was set up. This body has the role to develop public procurement strategies, ensure coherence with Community acquis, ensure conformity in the application of legislation, fulfill EU Directive obligations, monitor, analyze and evaluate the methods used

for awarding public contracts, as well as advice and train personnel involved in procurement activities. The NARMPP has set up the framework for Romanian national procurement methodologies and is providing advice and support.

All public procurement contracts will be awarded in compliance with the new harmonized national legislation. The principles applied in contracting are: non-discrimination, equal treatment, mutual recognition, transparency, proportionality, efficiency of used funds and accountability. The general procedures for concluding public procurement contracts are the open and the restricted tender, the competitive dialogue, the direct negotiation or offer request. The electronic auction and the dynamic purchasing system are foreseen by the law. The General Inspectorate for Communication and Information Technology is the operator of the electronic system for public procurement (ESPP). The contracts are published in the ESPP, in the National media and, where the relevant thresholds under Community Directives are applicable, in the Official Journal of the European Communities. The eligibility and selection criteria make reference to the personal situation, the ability to exercise the professional activity, the economic and financial situation, the technical and/or professional capacity, quality assurance and environmental standards. The awarding criteria are: the most economically profitable offer or, exclusively, the lowest price.

Traditionally, the key area for concessions are road transport, road construction, oil, gas extraction of other raw materials, water and sewage, various infrastructure construction and operation.

PPP Law

In order to fill the legislative gap and simplify the concession model in the PPP field it was adopted the law 178/2010. The new law regulates the manner of making a public-private partnership project that aims at public design, financing, construction, rehabilitation, modernization, operation, maintenance, development and transfer of a public good or service, as appropriate. The law's purpose is to regulate the initiation and realization of public-private partnership projects for public works in various sectors, with private financing. Public-private partnership can be achieved by various types of contracts under which private investors are transferred duties of the public partner, such as: design, build, development, rehabilitation, modernization, operation, maintenance, financing. Upon completion of the contract, the public good is transferred, free of charge, to the public partner, in good repair and free of any change or obligation.

Public-private partnership law applies to:

- Conducting a public-private partnership project between a public and a private investor partner, following the application procedures for design one of the private partner provided by the new law;
- Completion of the project agreement;
- Establishing and regulating the operation of the project company.

The law does not apply to a contract of public-private partnership if:

- The contract was declared secret by authorities, according to legal provisions in force;
- Public works concession contracts and concession services covered by the Government Emergency Ordinance no. 34/2006 on public procurement contracts, the public works concession contracts and services concession contracts, with subsequent amendments and related legislation;

- Fulfillment of the contract requires the imposition of special measures for safety and national security, according to legal provisions in force;
- Protection of state interests so require;
- Concession contracts of public property covered by the Government Emergency Ordinance no. 34/2006 on the concession agreements with public property and subsequent amendments and related legislation;
- Joint venture contracts regulated by law.

The law also does not apply to end public-private partnership agreement which:

- Is to purchase or rental, by whatever financial means, of land, existing buildings and other immovable property or rights thereon;
- Refers to the acquisition, development, production or co-production of programs for broadcast, by institutions and television broadcasting;
- Refers to the provision of arbitration and conciliation services;
- Refers to the provision of financial services in connection with the issuance, purchase, sale or transfer of securities or other financial instruments, especially the public partner operations performed in order to attract financial resources and / or capital, as well as the provision of specific services by a central bank National Bank of Romania;
- Refers to employment of labor, concluding that labor contracts;
- Refers to the provision of research and development services paid entirely by the public partner and whose results are not intended, exclusively, for its own benefit.

Law does not apply whenever:

- An international agreement concluded in accordance with the Treaty with one or more countries not members of the European Union and aimed at the provision of goods or execution of works, implementation or operation of a joint project with the signatory States, and only if agreement has been mentioned a specific procedure for awarding the contract;
- An international agreement on the stationing of troops and only if the agreement has been provided a specific procedure for awarding the contract;
- A specific application of international organizations.

Unlike the procedure of awarding public works concession contracts and public procurement services, provided by OUG. 34/2006, the law does not provide the bid procedure for awarding the public-private partnership contract, preferring the way of selection and negotiation.

Law regulates in detail:

- Stages of awarding a contract for public-private partnership;
- Minimum running time of steps for defining public-private project and selection of private investors;
- The conditions of initiation and termination of public-private partnership project,
- Issues regarding the content of public-private partnership contract;
- Principles and general rules for awarding the public-private partnership;
- Rules on the establishment of the project company, the company whose share capital is held by the public partner and private investors, the public partner participating with a contribution in kind.

Basic regulative and legislative acts handling concession /PPP aspects in Romania today are as follows:

Legal Framework in force:

- **Government Decision no.39/20/04/2011** on modification and completion of the Law no 178/2010 regarding public-private partnerships
- **Government Decision no.1239 of 8/12/2010** on issuing the norms for the application of Law no.178/2010 regarding public-private partnerships and for approval of measures for the reorganization of the Central Unit for Coordination of Public Private Partnerships within the Ministry of Public Finance
- **Law no.178/2010** regarding public-private partnerships
- **Government Emergency Ordinance no.34 of 19/04/2006** regarding the award of public procurement, the public works concession contracts and services concession contracts, approved by nr.337/2006 Act, as amended and supplemented , hereinafter referred to GEO 34/2006
- **Government Decision no. 71/2007** for approving the rules for implementing the provisions relating to the awarding of public works concession contracts and services concession provided by GEO 34/2006, hereinafter referred to GD 71/2007.
- **Government Decision no. 925/2006** for approving the rules for implementing the provisions on public procurement stipulated by GEO 34/2006 with further modifications and completions, hereinafter referred to HG 925/2006
- **Government Decision no.1660/2006** for approval of the application of provisions relating to the awarding of public procurement by electronic means from the Government Emergency Ordinance 34/2006, with further modifications and completions, hereinafter referred to GD 1660/2006.

Acquis communautaire

- **Directive 2004/17/EC** of the European Parliament and the Council of 31 March 2004 on coordination procedure for awarding the public procurement contracts in water, energy, transport and postal services
- **Directive 2004/18/EC** of the European Parliament and the Council of 31 March 2004 on coordination procedure for awarding public works , products and services contracts.
- **Directive 89/665/EEC** European Parliament and the Council of 21 December 1989 on the coordination of laws, regulations and administrative provisions related to procedures for appeals against the award of products and public works contracts
- **Council Directive 92/13/EEC** of 25 February 1992 on coordinating the laws, regulations and administrative provisions relating to the application of Community rules on public procurement procedures of entities operating in water, energy, transport and telecommunications.
- **Directive 2007/66/EC** of the European Parliament and the Council of 11 December 2007 amending Directives 89/665/EEC and 92/13/EEC as regards improving the effectiveness of appeals procedures against the award of public procurement contracts.
- **Regulation (EC) no.1564/2005** of 7 September 2005 establishing standard forms for notices in procurement procedures in accordance with public procurement Directives 2004/17/EC and 2004/18/EC of the European Parliament and the Council.

Repealed Legislative Framework

- **Government Ordinance no.16/2002** regarding the PPP contracts, approved by Law no.470/2002, with further modifications and completions.
- **Government Decision no. 90/2006** for the approval for the application of Government Ordinance no.16/2002.
- **Law no.219/1998** on the concessions regime with further modifications and completions.
- **Government Decision no.216/1999** for the approval of the Framework Methodological Norms for applying Law no.219/1998

1.2 DECISION PROCESS

Initiation of concession projects

The first part of the concession process is not public – falling within the exclusive competencies of the contracting authority – and commences with the issuance of a concession decision by the contracting authority, followed by a substantiation study (a study performed for further grounding the concession decision). For the projects which imply public investments (i.e. public funds are envisaged to be injected in the project), a feasibility study must also be performed, before the issuance of the afore-mentioned concession decision. These stages are performed by the contracting authority, which can appoint external experts for drafting specific documentation.

The timeframe between the inception of the concession project and the publishing of the participation announcement is not provided by the law. However, in this period, various decisions impacting the contemplated project have to be taken by the contracting authority, as the substantiation study and the feasibility study deal with technical, economic and financial analysis, environmental, social and institutional parameters pertaining to the project. After performing the substantiation study, which practically further grounds the concession decision, stating the opportunity and how the project should be implemented, the contracting authority performs the awarding documentation.

The participation announcement - the first step in making the procedure public

The point where the concession project is made public and the potential investors are able to get to know the project is the publication of the participation announcement in the Electronic System for Public Procurement (“SEAP”) and the Official Journal of the European Union, if the estimated value of the agreement, calculated based on the principles provided by GEO no. 34/2006, exceeds EUR 5 mn.

The participation announcement contains useful information with respect to the concession project, such as the contact details of the contracting authority, the location of the project, the deadline for submitting the candidatures, the personal, technical and financial conditions that have to be met by the candidates, the criteria used for awarding the concession contract and the contact details of the body competent to solve contestations.

The deadline for submitting the candidatures, mentioned in the participation announcement, cannot be shorter than 52 days from the publication of the participation announcement.

Details regarding the candidates - who can participate and possibilities of sub-contracting

Theoretically, any person can submit its candidature to a concession project, the law allowing for any individual, legal entity State or privately owned, or a consortium of such legal entities which activates in the field of supplying products, services and/or performing works to submit its candidature in a concession procedure. For major and multidisciplinary projects, usually the private investors prefer to use consortiums as instrument of their candidature in a concession procedure. In such a case, certain issues should be considered, respectively:

- the members of the consortium cannot be changed during the concession period, due to the fact that the concession contract was awarded to the whole consortium, taking in consideration the contribution of each of its members,
- when analyzing the qualification criteria, in case of restricted tender, negotiation and competitive dialogue procedures, certain conditions, such as technical and/or economical capacity and the capacity of exercising the professional activity have to be observed by all the members of the consortium; thus, in case that one of the members of the consortium fails to comply with such criteria, there is a risk for the whole consortium to be considered as incompliant with the qualification criteria and hence rejected;
- in case the project will be realized through a project-company formed by the concessionaire and the contracting authority, additional issues may arise when structuring the project company.

With respect to the project-company, the law only mentions that a concession project can be realized through a company which will be held both by the appointed concessionaire and the contracting authority. This possibility may be provided within the awarding documentation, indicating the availability of the contracting authority to perform the project as such. However, there are no mandatory provisions with respect to the structure and management of such company. Hence, the concessionaire and the contracting authority have the liberty of structuring the company in a convenient manner for both parties.

The concessionaire is allowed to sub-contract a part of the project to a third party at his choice. However, at the request of the contracting authority, the candidate has to mention the part of the agreement that he intends to subcontract and recognition data with respect to the proposed subcontractors. Also, when proving the compliance with qualification criteria regarding the technical and/or professional capacity, the candidate has to provide information regarding the proportion in which the contract is going to be performed by the subcontractors as well as their specialization. The subcontractor can be changed during the performance of the contract only with the authorization of the contracting authority.

In case of concession of public works, the contracting authority has the right to request that the concessionaire award contracts to third parties, in a rate of minimum 30% from the total value of the works, object of the concession.

Guarantee for participation

A participation guarantee, in a quantum of maximum 2% from the estimated value of the contract, can be requested by the contracting authority from the candidates. The quantum of the guarantee, the deadline for its subscription and the validity period must be provided

within the awarding documentation. The guarantee should be reimbursed by the contracting authority to the candidates in a term of 3 working days from the execution of the concession agreement. However, the guarantee can be retained by the contracting authority in case that the candidate redraws its offer during its validity period or in case that the candidate refuses to sign the concession agreement, if it had submitted the winning bid.

Procedures for awarding the concession contract

The contracting authority must use one of the following procedures for awarding concession contracts: open tender, restricted tender, negotiation with prior publishing of a participation announcement and competitive dialogue. Even though Romanian law stipulates that concession contracts should be awarded primarily through open tender or restricted tender, such procedures can only be used for basic projects, where the contracting authority has a clear view of the project and can clearly establish the technical specifications able to fulfill its needs, the financial structure and the legal framework for implementing the project. In case that these conditions cannot be met, the concession contract shall be awarded by using the competitive dialogue procedure. As regards this procedure, in a report regarding the Community law on public contracts and concessions it has been stated that competitive dialogue is the appropriate procurement procedure in the field of concessions, as its flexibility is as a rule suited to the complexity of concessions, without jeopardizing the principles of transparency, equal treatment and proportionality. The negotiation with prior publication of a participation announcement can be used only when, following the open tender, restricted tender or competitive dialogue procedures, no offers were submitted or none of the submitted offers were considered admissible.

The awarding procedures can be performed in one, two or three stages, as follows:

- the open tender is performed in one stage, respectively the submission of the offers by the candidates, based on which the contracting authority chooses the winning bid;
- restricted tender is performed in two stages, respectively the pre-qualification of the candidates and the submission of the offers by the qualified candidates;
- the competitive dialogue and negotiated procedures are performed in 3 stages, respectively qualification of the candidates, the dialogue/negotiation with the qualified candidates and submitting the final offers by the qualified candidates in case of competitive dialogue or submitting the final offer by the candidate which the candidate which, following the negotiations, presented the most advantageous offer from an economic point of view, in case of competitive dialogue.

Open tender and restricted tender do not allow the parties to negotiate the concession contracts in its important aspects. The awarding documentation should provide for a draft of the concession contract containing clauses in accordance with the requirements of the tender book which may not be further negotiated by the private investor

In case of competitive dialogue and negotiated procedure, with respect to the dialogue/negotiations phase, there is a limit related to how much the descriptive documentation/tender book can be changed further to the dialogue/negotiation phase. Thus, the tender book/descriptive documentation cannot be changed with respect to the technical specifications of the project, the only possible thing which can be subject to negotiations being the manner in which the project is realized.

Since the competitive dialogue and negotiated procedures are performed in 3 stages and no strict deadline is established by the law for performing this stages, it is expected that these procedures will be time consuming, taking also in consideration the complexity of the projects and the various aspects that have to be clarified.

Qualification criteria and documents that have to be submitted by the candidates

During the pre-qualification stage, used in restricted tender, competitive dialogue or negotiation procedures, the contracting authority can only use qualification criteria related to:

- the personal situation of the candidate;
- the capacity of the candidate of exercising its professional activity;
- the economic and financial situation of the candidate;
- the technical and/or professional capacity of the candidate (and)
- the compliance with standards for assuring the quality and standards for environment protection.

The law provides the documents that have to be submitted by the candidates in order to prove their compliance with these criteria. In this respect, documents like certificates, criminal records, registration documents, banking declarations, accounting situations, etc. may be requested by the contracting authority on a case by case basis.

Criteria for awarding the concession contract

A concession contract can only be awarded based on the criteria of the most economic advantageous offer from an economic point of view. The price alone cannot be determinative. The most economically advantageous bid is not straightforward to determine. In practice, often a combination of criteria is used to determine the best quality-price ratio of the bids. These could for instance be the level of royalties or the level of availability payments in combination with the risks allocation and the qualitative, technical and functional level of the proposed solutions in the technical bids.

When assessing the most advantageous offer from an economic point of view, the contracting authority should refer to one of the following awarding criteria mentioned in the law:

- the fees paid by the final beneficiaries;
- the rent (royalty);
- the risks undertaken by the concessionaire;
- the financing and development plans;
- the qualitative, technical and functional level of the proposed technical solutions;
- the environment protection requirements;
- the way of solving social issues
- the deadlines for completing the investments (and)
- the term of the concession.

Initiation of PPP projects

The development of a PPP project is a two-phase process, which can be briefly described as follows:

Phase I

- (a) publication of a notice of intent (based on a pre-feasibility study) by the public partner;
- (b) preliminary analysis and selection of private investors on the basis of certain evaluation criteria; and
- (c) conclusion of project agreement with selected private investors(the content of this agreement is not detailed)

Phase II

- (d) negotiation(based on pre-established criteria) with each of the selected investors;
- (e) presentation of the final offer by the selected private investor; and
- (f) conclusion of the PPP agreement.

The PPP Law mentions that if a PPP agreement cannot be concluded with the selected investor, the public partner can start negotiations with the next qualified investor down to the last one in the hierarchical valuation line. If no PPP agreement is eventually concluded, the public partner may decide to restart the project development and award procedure.

Initiation of SOP –T projects

In relation to any transport infrastructure projects funded through Sectoral Operational Programme-Transport:

Only state infrastructure managers may apply for the pre-established transport investment projects.

Each financing application form for any investment within Sectoral Operational Programme – transport 2007 – 2013 contains:

- A. Applicant Information
- B. Project Description
- C. Project Context
- D. Project Maturity
- E. Feasibility Study
- F. Cost – benefit analysis
- G. Environment Impact Assessment
- H. Justification for the public contribution
- I. Financing plan
- J. Annexes

Stages

- Submission of the application form by the SOP-T beneficiaries to Management Authority within Ministry of Transports and Infrastructure
- Validation of the application form from administrative point of view (if all the points from A to J are available)
- Checking of the eligibility of the application form(if the applicant belongs to the beneficiaries group mentioned in SOP-T Implementation Framework Document, capacity of the beneficiary to implement the project, applicant accomplishes the institutional, legal and financial provisions of the Applicant Guide, project is within the activities of the Framework Document, the project complies with public procurement legal framework, national and EU legal framework in the field of publicity, state aid sustainability and non-discrimination and eligibility of the expenditures, the project does not benefit in parallel from other public funds and is not a repetition of a public investment poorly implemented earlier, the applicant is able to co-finance the project as well as other non-eligible expenditures, the land for the investments are either in the property of the beneficiary or is easy to be expropriated)
- Technical and financial assessment of the application form
- Approval of the application form and contract signing
- Project Implementation

II. GOVERNMENT PERSPECTIVE ON THE ROLE OF PRIVATE SECTOR INVOLVEMENT

By application of the legal framework of the Public Private Partnerships Romania has obviously the political will to enhance private sector involvement. The adoption of this law was considered necessary by its initiators, by reference to already established legislation in Romania governing concessions (the “**Existing Legislation**”), which was deemed as “*not having produced the expected results in terms of development of major projects based on PPP*”; the intention for this new PPP Law was to set a separate regime for PPP in Romania and also to clarify and simplify the process for PPP in Romania.

The PPP Law expressly provides that it does not apply in a number of cases, including (i) concession agreements governed by Existing Legislation and (ii) classical joint venture agreements. However, provided that the conditions for a PPP are met and there is no public order infringement, the law can be applied to “relevant activities” defined by the Existing Legislation (including water, energy, transportation sectors).

The Norms issued in December 2010 detail and clarify the legal framework instituted under Law no. 178/2010, specifying a number of procedural-administrative elements, some of which cover the following issues:

- types of contracts that may be concluded under private-public partnerships (“PPPs”), i.e.:
 - Design – Build – Operate - Transfer;
 - Build – Operate – Develop - Transfer;
 - Build – Operate – Transfer;
 - Develop – Maintain- Operate – Transfer;
 - Rehabilitate – Operate – Transfer;
- form and content of feasibility studies and of studies substantiating PPPs, prepared by the public partner for initiating a public-private partnership project;
- evaluation procedure for letters of intent and negotiation procedure for final bids, along with basic applicable evaluation criteria;
- method for calculating project costs and reference comparative cost, main risk categories likely to be posed by a PPP project and a template for risks allocation between partners during project development;

Project companies through which PPPs are to be carried on are distinctly presented, with a special focus on their operation and the partners’ participation to the share capital. The Norms have a special chapter dedicated to PPP contracts, outlining the main structural elements, grouped in two large sections: general conditions (laying down general, specific and common terms) and technical requirements, which focus on the underlying features of a PPP, i.e. financing, building, operation, profit, etc.

As it can be seen there are no legislative constraints regarding private sector participation such as restricted ownership, legal possibility to establish a project company or any restrictions on international competition however there are other issues of concern that are detailed below.

Discussion points/selected issues of concern

(a) the applicability of the PPP Law is not clearly differentiated from that of Existing Legislation (on concessions), and this overlap could be regarded as an infringement of European directives in the field; also, confusion and difficulties could be generated in determining the legislative framework – the Existing Legislation or the PPP Law – governing a specific project;

(b) using for transparency purposes the SEAP (the electronic system for public procurement) for the publication of the notice of intent is not appropriate and may be regarded as an infringement of European laws;

(c) imposing a 2% guarantee for investors wishing to oppose the PPP award process may be seen as deterring free access to justice; and

(d) transparency is questionable as the procedure for the development of PPP projects replaces public tender with a selection and negotiation process which confers large discretionary prerogatives to the public partner.

The points above may be subject to legal controversy; however, it is important to note that the Parliament only slightly amended the PPP Law before releasing it once again; as such, the issues above remain open matters of concern. Further, it remains to be seen whether an EU infringement procedure will be initiated against Romania in this respect (and, in such an event, what will be the main points rose).

The PPP Law states that, except for public property, financiers can take security over any other assets of the Project Company, for the entire duration of the PPP agreement.

Further, the following issues may be worth exploring, as application norms will unfold and further details will become available:

(a) it is not clear whether direct agreements and step-in rights will be available to lenders financing PPP projects; albeit this is not specifically excluded by the PPP Law, the law does provide that neither public or private partner may assign their rights under the PPP agreement (and implications need to be explored);

(b) project risk allocation needs to be assessed, given the intended treatment of public assets destined for a project as “non government assets”, which implies that the private partner needs to bear construction and availability or demand risk;

(c) recourse/non-recourse principle is not addressed by the PPP Law.

Constraints in infrastructure development

Rising demand, constrained financial resources and existing bottlenecks in supply as well as the need for efficient demand management are challenges transport infrastructure operators will be facing in the next 20 years.

In what concerns Romania, where the need for developing infrastructure projects is stringent, the Romanian state should prepare a long term investment strategy the actual one is just until 2013. Even in the context of the current budgetary constraints, Romania must allocate consistent sums of money for the development of the transport infrastructure so as to maximize its potential to become a logistics hub of CEE, potential based on the proximity of the developed markets of Central Europe and the Black Sea access through the Constanta harbor.

The lower rate of absorption of EU funds combined with a lack of experience in applying the PPP agreements represents another hindering factor in infrastructure development

PPPs are explicitly mentioned in the Community Strategic Guidelines as a possible appropriate method of financing investment when there is significant scope for involving the private sector. Apart from the financial leverage positive impacts are expected on implementation and management of projects.

Experience with PPPs in Romania is limited. The intended PPP for the motorway Bucharest-Brasov has failed and lessons should be learnt. An important basic element for a successful PPP project is the fact that a project should be well prepared and mature. This seems to be one of the reasons for the failure of the Bucharest-Brasov project.

2.1 RESPONSIBLE AGENCY FOR PRIVATE SECTOR INFRASTRUCTURE PROCUREMENT

Centralized coordination and monitoring the performance of public-private partnership projects are performed by the Central Unit for Coordination of Public-Private Partnership, which is reorganized by a Government decision as a general directorate within General Secretariat of the Government.

The tasks of CUCPPP are:

- a) check each announcement of intent or other supporting documentation sent / transmitted by the public partner for publication in Electronic Public Procurement (SEAP) in the Official Journal of the European Union, if the project value exceeds 5 million;
- b) within two business days of receiving notice on SEAP, UCCPPP is obligated to either issue ESPP acceptance for publication of notice in question, if after the check is not finding errors / omissions or to reject the publication of the announcement, if it finds errors / omissions, while informing the public partner of this decision, and the manner in which errors / omissions can be remedied;
- c) annually develops national strategy for promoting and implementing public-private partnership projects and subject to the approval of Government;
- d) to follow, verify and report regularly to the Government implementing the national strategy for promoting and implementing public-private partnership projects;
- e) establish and promote procedures for identifying and carrying out projects of public-private and public partners to support all defined in the head. I Section 4 - "Public Partners" public-private partnership of the Law no. 178/2010, in preparing and implementing public-private partnership projects;
- f) represents and manages the integrated public database, unique and updated of all

public-private partnership projects announced, as well as those in progress or completed;

g) update and ensure the maintenance and functioning of the processing, collection and management information and statistical data on the progress of public-private partnership contracts in the central and local level;

h) ensuring and promoting the concept of public-private partnership projects;

i) issues based on their analysis and verification, synthesis documents relating to the conduct of public-private partnership projects;

j) participate, through representatives, at the invitation of public partners, according to legal provisions in force in the evaluation and negotiation committees established for choosing the private investor and the signature public-private partnership contract with him;

k) identify and ensure nationwide dissemination of best practices in public-private partnership;

l) to establish contacts and keep in touch on issues of investment through public-private partnership projects with government bodies and NGOs, as well as domestic and foreign investors;

m) facilitates contact between local and foreign investors and public partners for the joint project on the basis of public-private partnership;

n) may represent the Romanian Government meeting on public-private partnership organized nationally or internationally;

a) issuing recommendations on structuring public-private partnership projects, considering the impact on the level of public sector lending, and loan limits on national or local level;

p) monitor the evolution process with public partners to implement public-private partnership projects and coordinates the actions needed to implement them properly;

q) provide public assistance specialist partners and investors interested in all phases of a project's public-private partnership;

r) provide expert advice necessary for the establishment and functioning of public authorities in the internal units to coordinate public-private partnership projects, organized according to art. 39 of Law no. 178/2010. "

According to the application norms for PPP law each Ministry identifies the PPP projects which are approved by the government.

Currently there are certain major infrastructure projects in course of implementation and others are preparing to come of the pipeline.

For the time being the first PPP projects in course of implementation with regards to transport infrastructure were published on www.gov.ro.

These are as it follows:

- **Comarnic-Brasov Motorway** . Romania registered a resounding failure in terms of works for the mentioned motorway . Aktor Vinci consortium would have to design, fund and build Comarnic-Brasov, going for a period of 30 years, to manage the 55 miles of the section. However, the consortium has dropped, in the last minute, claiming the lack of funds. The contract was estimated at 4.7 billion Euros. Now it is looking for new investors.
- **Sibiu-Pitesti Motorway**. For its length of 116 km , the public authorities are struggling to find sources of financing. It is the only section of the Pan-European Corridor IV Nadlac-Constanta whose sources of financing have not been identified so far. Other sections will be made with European funding, but funding for Pitesti-Sibiu stretch is very difficult

because of the extremely high costs, estimated at around 3 billion Euros. Romania asked the European Commission and funding for Pitesti-Sibiu stretch, but did not come any favorable response in this regard.

- **Focsani-Buzau-Ploiesti Motorway.** In August 2008, the company Louis Berger Group was selected to conduct the feasibility study and technical assistance for a total length of 133 km
- **Targu-Mures-Iasi-Ungheni Motorway** It will make a new crossing of the Eastern Carpathians, thus supplying the two existing crossings (NR 12C and NR15). The works will be done for a length of 306 km. The feasibility study will be completed this year
- **South ring-road of Bucharest**
- **North ring-road of Bucharest**
- **Danube-Bucharest Canal** An abandoned project with an estimated value of 500 mill Euros. The channel is designed to have a length of 73 km and a width of 80 m, minimum water depth of 4.5 m difference in height of 53 m (10 m above sea level in Oltenita Port and 63 m in Bucharest). The plan includes four locks and three ports, two in Bucharest (near village December 1 - on Arges River and Glina – on Dambovita River) and one at Oltenita.
- **Road bridge over the Danube between Tulcea and Braila** with a length of 2450 m and an estimated value of 300 mill dollars

III. SOURCES OF FINANCING

3.1 NATIONAL

In Romania, the budget of various public administrations and its subsequent allocation to fund transport infrastructure continues to meet the general allocation principle. In other words taxes are not dedicated to a funding target such as transport infrastructures so what has been received from normal taxation to the public budget is not stored in a special fund. Ministry of Transport and Infrastructure renders a portion from GDP to its transport infrastructure investments and source of origin is not taking into account. Taxpayers are generally those who finance transport infrastructure. Special purposed tax allocation for transport infrastructure was a common practice in Romania between 1994-2002 as it was the Road Special Fund and Aviation Special Fund but these were dropped because of EU membership requirements. The current practice with respect of tax collection to the consolidated state budget related to road/rail use, is as it follows :

- road user charge (vignette) applicable to cars and vehicles;
- charge for access of railway infrastructure (IAC) applicable to rail freight operators and passengers;
- special taxes paid by road users such as bridge tax, works etc.

According to Sustainable transport strategy the set of funding strategy includes :

- increased effort to improve investment opportunities under investment and budgetary stability in the context of increasing public revenues by increasing profitability due to economic factors(crisis was not taken into account);
- continue investment funding having the source from state budget (including direct funding, external credits guaranteed by the state and their co-financing) as well budgetary allocations increasing to approx. 2 to 2.5% of GDP;
- increasing direct investment (own sources, commercial credits) to meet performance objectives over time , maintaining budgetary stability and commitments related to deficit reduction by reducing public expenditure;
- increase EU funding sources (grants) approx 20% of the investment.
- own sources and increasing involvement of the private sector using public-private partnership formula. It is expected the private equity increasing to approx 10% of total investment. The main use of the public works concession scheme will take place in port, road and to a lesser extent in rail infrastructure.
- greater involvement of users to infrastructure funding, having regard to considerations of European Union pricing policy for use of infrastructure

3.2 INTERNATIONAL:

EU Grants FUNDING:

Main instruments relevant to Romania were the Phare and ISPA programs during the pre-accession period.

PHARE- (Pologne, Hongrie, Aide à la Restructuration Economique)

Phare funding has mainly benefited interventions in the area of road transport. This was mainly due to the fact that access roads were eligible for funding under the Phare-supported regional development or economic and social cohesion schemes, whereas projects in the rail transport sector would have been i) too costly to be accommodated under these programs and ii) project preparation of rail transport projects was lengthier than for road transport.

Instrument for Structural Policies for Pre-Accession-ISPA

The implementation of ISPA was in line with the country's transport strategy priorities:

Modernization of well travelled sections of the three Trans-European corridors (IV,VII and IX) crossing the country while maintaining a balance between road, rail and waterways (with emphasis on improving cross border links).

ISPA funding was mainly benefiting road transport (EU contribution of 522.5 million Euro), followed by rail transport (381.3 million Euro). The three largest ISPA projects in terms of EU funding were:

- "Rehabilitation of the Bucharest Baneasa-Fundulea - Fetesti sections of the Bucharest
- -Constanta railway line in Romania " (2000/RO/16/P/PT/001/01): 231.7 million Euro
- "Rehabilitation of the section Drobeta Turnu Severin-Lugoj on the national road no

- 6" (2001/RO/16/P/PT/006): 138.0 million Euro
- "Rehabilitation of the railway section Campina - Predeal on the Bucharest - Brasov
- Railway line in Romania" (2003/RO/16/P/PT/007): 149.6 million Euro

Cohesion Funds

The Cohesion Fund was set up to help the less prosperous Member States resolve a dilemma: to provide the vital development of infrastructure needed for their trans-European transport networks and environmental protection while ensuring that the high costs of these major works does not undermine their budgetary efforts to meet the economic and monetary union criteria. The Fund was set up in 2003, and in 2004 extended its action to the 10 new Member States where it took over from ISPA. Member states whose per capita GNP is below 90% of the Community average and who are following a program of economic convergence. The focus of the Cohesion Fund is on the Trans European Network, of which the Romanian is part of . Funds are mainly allocated to projects that are within the fields of transport and environment. National authorities are in charge in selecting and implementing the projects. The Member States are responsible for implementing the projects, managing the funds, meeting the timetable and complying with the financing plan. The Commission makes regular checks and all projects are subject to regular monitoring.

European Regional Development Funds

ERDF is a part of the Structural Funds family. It aims to promote economic and social cohesion by correcting the main regional imbalances and participating in the development and conversion of regions. The ERDF finances, amongst others, the development of infrastructures. Most assistance is granted in the form of non-repayable grants or "direct aid", and to a lesser degree refundable aid, interest-rate subsidies, guarantees, equity participation and participation in venture capital. Eligible countries are member states whose per capita GNP below 75% of the Community average (objective 1 regions) or regions facing structural economic difficulties (objective 2 regions). The criteria for a project to be eligible for ERDF grants are:

- The project objective must correspond with one or more priorities for support in a regional programming document agreed with the EC;
- The project must have clear and attainable targets and offer additional and sustainable advantages to the economic development of the area;
- The project would not be able to proceed without ERDF support.

ERDF primarily supports productive investment, infrastructure and SME development. Public and private bodies may receive aid from the ERDF. These bodies are specified case by case in the calls for projects published by national or regional authorities when they implement program assisted by the ERDF. Within the framework of SOP-T, the total budget of 4.6 billions UE represent grants having the source from Cohesion Funds or and European Regional Development Funds.

TEN-T program

The Commission reached an agreement with the EP on future TEN-T financing. Total budget available is 7 billion € for the coming programming period. Financing can be up to 20%. It should be noted however that this financing is only a fraction of total cohesion financing (e.g.

Cohesion Fund financing for transport approximates 45 m€), while TEN-T funds are valid for all EU members. It is expected that TEN-T funds will be focused on cross-border TEN-T.

External Loans

EBRD

The European Bank for Reconstruction and Development (EBRD) has committed loans in Romania for the amount of 310.7 million Euro in the period 1993-2004 in 7 transport projects. A total of 220 million Euro is related to roads rehabilitation and construction of motorways. Furthermore, EBRD co-financed two rail rehabilitation projects and one port project (Constanta). EBRD will become more active in Romania, which is one of the countries mentioned to which EBRD resources will be shifted. It can be expected that important areas for EBRD investment will be road and rail rehabilitation, together private sector participation in airports. Both EBRD and EIB can also get involved if PPP constructions are considered through direct equity participations.

EIB

European Investment Bank's (EIB) involvement has been financing motorways and roads (11), metro (4), railways (3), inland waterways (1) and air fleet renewal (1) projects; in total 20 projects in the period 1994-2005. The total cumulative lending for motorway construction amounted to some 2.5 billion Euro. In 2005 EIB has granted a loan of 300 million for the rehabilitation and upgrading of railway section between Curtici and Simeria on Pan-European Corridor IV. As it be seen EIB has been very active in Romania in the previous decade, especially in supplying loans for roads and motorway investment, but also in railway infrastructure and investment in the Bucharest metro line. It is expected that the level of EIB involvement in the coming decade will be stable.

World Bank Group

The World Bank has been active in Romania since 1991 and has built up a portfolio of 30 operations totaling commitments of over US\$3 billion, of which around 21 projects totaling US\$1 billion are ongoing. With a view to Romania's accession to the European Union, the World Bank mission in Romania is to help citizens improve their living standards, create a favorable environment for private sector-led growth, and complete the unfinished social sector agenda. The Country Assistance Strategy (CAS) for Romania, for 2001-04 presented to the Romanian Government, envisages further financial support of up to US\$1.5 billion, depending on the absorptive capacity of the Romanian economy and the rhythm of reform and restructuring.

International Bank of Reconstruction and Development (IBRD)

IBRD supports middle-income countries, which generally have some access to private capital markets. IBRD offers loans at near-market terms but with long maturities. It finances wide range of activities aimed at creating the physical and social infrastructure necessary for poverty alleviation and sustainable development. Eligible countries must fall under the category of *middle-income* countries, which is per capita income of less than \$5,115. Also, that they have limited access to other loans on reasonable terms. Proposed project must represent a priority activity for the country's development.

IBRD allocates its resources evaluating "... where its involvement ... is likely to make the most impact". The project must also promote development goals of the country; financial return must generate sufficient revenues to meet debt obligations and finally, the project must be economically, environmentally and socio-economically viable.

- Facilities: Loans
- Length of facilities: 15-20 years
- Grace period: 3-5 years
- Repayment structure: Annual basis
- Interests/service charges: Variable or fixed spread, which generally represents app. 50 basis points over IBRD costs. (IBRD has a triple A rating)
- Currency denomination: One of the major currencies, some cases local currency

IBRD also offers different kind of guarantees; these are *partial risk*, *partial credit*, *enclave* and *policy-based guarantee*. Governments, government-owned entities, and privatized or private sector entities are all eligible. Service charges are manifold and include guarantee and standby fee (max 125 bps/annum), front-end and processing fee (up to 1,5%) and initiation fee (0,15% or US\$ 100.000). For guarantees provided in IDA only countries IBRD charges guarantee fee and standby fee (curr. 400 bps/annum), and front-end, initiation and processing fee. IBRD can make loans to any entity within the country, including any of its political subdivisions and any private company or other enterprise located in the country (requirement for a country guarantee). The average lead-time for an IBRD loan is approximately two years, during which time projects undergo extensive evaluation. The IBRD is much more involved in the activities of its borrowers than are most other financial sources.

Multilateral Investment Guarantee Agency (MIGA)

MIGA's mission is to promote foreign direct investment into developing countries, to support economic growth, reduce poverty and improve people's lives. MIGA promotes foreign investment by bringing together foreign investors, host governments, and project sponsors. MIGA provides investment guarantees against certain non-commercial risks to eligible foreign investors for qualified investments in developing member countries. Investment projects should contribute to host country needs, such as job creation, technology transfer, and export generation. The projects must also be financially, economically, and environmentally sound.

Investments: new, cross-border investments originating in any member country and destined for any developing member country. Also new investment contributions associated with the expansion, modernization, or financial restructuring of existing projects, and acquisitions involving privatization of state enterprises.

Applicant: must be a national of a member country other than the country in which the investment is to be made. Corporations or financial institutions are eligible if they are either incorporated in and have their principal place of business in a member country or if they are majority-owned by nationals of member countries. State-owned corporations are also eligible if they operate on a commercial basis.

Applicants submit a confidential preliminary application before the investment is committed. Once investment and financing plans are established, applicants submit a definitive application along with relevant project documentation.

Guarantees

- Transaction: Insures normally \$110 mill. per project, but can go up to \$200 mill.
- Coverage period: 15-20 years
- Coverage: Foreign investments that can be covered include equity, shareholder loans, and shareholder loan guaranties.
- *Equity investments* for up to (i) 90% of the investment contribution, (ii) 450 percent to cover earnings attributable to the investment. *Loans and loan guaranties*, up to (i) 90% of the principal, (ii) 135% to cover interest that will accrue over the term of the loan. *Technical assistance contracts* and other contractual agreements, up to 90% of total value of payments due under the insured agreement.

Repayment structure: Paid annually

Premium rates: Per project, according to the specific risks to be guaranteed

MIGA can cover against *transfer restriction, expropriation, breach of contract*, and against *war and civil disturbance*. Regardless of the nature of the project, an investor is required to remain at risk for a minimum of 5 percent of any loss.

Public-Private Infrastructure Advisory Facility (PPIAF)

PPIAF is helping developing country governments improve the quality of their infrastructure through private sector involvement. Launched in July 1999, PPIAF was developed at the joint initiative of the governments of Japan and the United Kingdom, working closely with the World Bank. PPIAF funds country specific or multi-country advisory and related activities in the following areas:

- infrastructure development strategies, capacity and consensus building, policy,
- regulatory, and institutional reforms, and pioneering transactions. Eligible infrastructure
- services include water and sewerage, solid waste, electricity generation, transmission and
- distribution, natural gas transmission and distribution, telecommunications, airports,
- ports, railways, and roads.

All activities must be consistent with PPIAF overarching objective of helping to eliminate poverty and achieve sustainable development. Country specific activities may be undertaken only where there is clear evidence of government commitment to the activity. The government must approve of the proposed activity in writing. PPIAF is a multi donor facility, and the activities it supports must be undertaken in a way that promotes effective coordination with the activities of official donors.

PPIAF can finance a range of country-specific and multi-country advisory and related activities in the following areas:

- Framing infrastructure development strategies to take full advantage of the potential for private involvement.
- Building consensus for appropriate policy, regulatory, and institutional reforms
- Designing and implementing specific policy, regulatory, and institutional reforms.
- Supporting the design and implementation of pioneering projects and transactions.

- Building government capacity in the design and execution of private infrastructure arrangements and in the regulation of private service providers.

Applications for PPIAF support should be obtained and submitted in accordance with the guidelines for obtaining and submitting applications forms. These guidelines can be downloaded at the PPIAF website. Applicants must answer all questions and provide sufficient information to allow the Program Management Unit to adequately evaluate the proposal. Incomplete applications may be returned or rejected.

Japan-Official Development Assistance loans (ODA loans)

ODA loans are Japan's official development assistance; the loans provide funds for development of long-term projects at low interest rates to developing countries. The loans carry interest rate ranging from 0,3-2%, and they can be extended to 15-40 years – including a 5-10 years grace period. Depending on the developing country's economic circumstances and creditworthiness, the loan conditions (interest rates, term) are changed to suit the country's ability to repay the loan and its economic conditions. Eligible projects and countries are broadly defined, and basically any country that falls under the category of developing or emerging can apply for funding. However, provision of loans for countries subject to debt forgiveness is not easy. Apart from the bilateral aid with ODA loans Japan channels the largest share of its ODA funds through multilateral institutions, such as the World Bank .In 1996 a loan of 12.8 billion JPY was granted to Constantza Port in order to construct a Container Terminal in South Part Pier no.2

As regards the constraints for infrastructure support by international financial institutions these are as it follows:

Project Cost-effectiveness

Cost-effectiveness or value for money stands at the core of any sound investment program. CBA is used as standard assessment methodology before granting new loans. The cost-effectiveness criterion is especially important if budget resources are limited. In this case cost-benefit analyses can be used to phase foreseen transport investment in time or to seek alternatives with a similar functionality that offer a higher value for money.

Availability of other sources of financing

Every IFI before granting new loans requires co-financing from the government which can increase the current account deficit or other sources of financing such as EU funding.

Administrative capacity

The institutional capacity within key agencies to program and/or implement transport infrastructure sector program is widely acknowledged as a significant problem in Romania. There is a growing acknowledgement on the part of both public sector bodies themselves and external commentators that administrative capacity weaknesses could constitute a major barrier to Romania successfully absorbing EU assistance and implementing its transport investment program