

Framework Contract for services PRS/2007/TA/CA/22 – Specific Contract N°1/2008

IDENTIFICATION OF SOURCES OF INFORMATION ON SERVICE CONCESSION AND ANALYSIS OF IDENTIFIED CALLS FOR TENDER

Introduction:

The following study is aimed to identify how public authorities in several EU Member States inform economic operators on their intention to award service concessions.

In particular, the purpose of the first task of the study is the identification of sources of information on service concessions; while the second task is gather specific information on characteristics of the total of concessions published in several EU Member States within a period of 6 consecutive months.

TASK 1: IDENTIFICATION OF SOURCES OF INFORMATION ON SERVICE CONCESSION

1. Task description:

Identify how contracting authorities in several EU Member States inform economic operators on their intention to award service concessions. The objective would be to identify existing sources of information.

2. Scope:

The study shall cover service concession contracts in the following 4 sectors:

- water industry
- waste management
- health services
- public transport by water

Geographically the study shall cover the following member States:

- Germany
- France
- Spain
- Italy
- UK
- Czech Republic (only 3 sectors, without public transport by water)
- Greece (only 1 sector: public transport by water)
- Portugal (only 1 sector: health services)

3. Definition of “Service Concessions”:

As a starting point, the College first goal was to ensure the **total understanding of the concept: service concession** by the experts; taking into account the differences in terminology per country and the peculiarities of every sector.

In order to guarantee the complete understanding of the task to be undertaken by the experts, operational guidelines were provided:

1.- As a basic start, a **general definition** of “service concession” was established based on Art. 1.4. of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the “coordination of procedures for the award of public works contracts, public supply contracts and public service contracts”:

“‘Service concession’ is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.”

This definition can not be taken apart from the concept of public service contract in order to fully understand the nature of the service concession:

“ ‘Public service contracts’ are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II. [...] ”

As a result by analysing both definitions provided by the Directive and its annexes, the experts obtained a clear explanation of what a service concession is. However, further clarifications were needed in order to shed light on this peculiar concept.

2. The next step to be followed was to establish **what a service concession is not**; in other words, to individualise the concept of service concession from other contracts that might bring some unclearness to the expert’s understanding of the study.

This being said, a clear knowledge of what a public work concession is, was fundamental. Directive 2004/18/EC defines public work concessions in its Article 1.3.:

“ ‘Public works concession’ is a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment.”

Moreover, in order to solve any possible doubt or uncertainty on this respect, further information was provided to the experts:

(a) Green paper on public-private partnerships and Community law on public contracts and concessions (04.05.2004) – COM (2004) 327, (FR version suggested);

(b) Commission interpretative Communication on concessions under Community Law (OJ C 121, 29.04.2000):

(c) Specific references to national legislation and case law.

3. Once the experts have acquired a clear awareness of the concept of service concession, it is crucial to complete this concept with the **reality of every country and sector** and therefore, experts were requested to obtain a clear vision on this respect; not only by the

definitions provided by the national legislation and doctrine, but also by the different terminology used to refer the concept of a service concession (please see reports per country and sector).

With this purpose, experts identified and analysed national legislation and doctrine and also the term/s used in their country to refer to all sorts of public contracts that might be considered service concessions. Special attention was paid in every different sector, in particular in health services.

Conclusion:

As a result, service concessions have been identified on the basis of the definition provided by the EU Legislation, the National Laws regulating public contracts and taking into account the basic criteria elaborated by the national doctrine on this matter.

Therefore, the study was developed analysing those acts attributable to the State whereby a public authority entrusts to a third party the total or partial management of services for which that authority would normally be responsible and for which the third party assumes the risk, with or without a payment in addition to the right to exploit.

4. Methodology applied:

Drawing from above, methodology should be defined as the theoretical analysis of the methods appropriate to a field of study or to the body of methods and principles particular to a branch of knowledge.

Understanding methodology as a set of inter-related phases, activities and tasks that define the project process from the start through to completion will allow us to ensure high quality on the results and the work carried out in every specific task.

Therefore, the methodology used, including the structure and the organisation of work, has been tailor-made designed taking into account the explicit characteristics of the task to be undertaken and other crucial circumstances, such as: i.e. timing, external cooperation of the active operators in the different sectors, etc...

In the current study, the essential elements of the methodology to be applied were:

- Phase 1: Theoretical approach;
- Phase 2: Organisation and work plan;
- Phase 3: Implementation;
- Phase 4: Reporting.

Therefore, in the following paragraphs we will explain in greater detail how the College satisfies, according to this definition, all the requisites established in the Specific contract n° 1/2008 – Task 1: “Research and identification of sources of information on service concessions” and therefore what methods were applied to ensure comparability and

exhaustiveness of the intermediate report and the specific *modus operandi* developed for the purpose of the study.

Phase 1- Theoretical approach:

In this preliminary stage of the study the parameters of the specific task were established in terms of timing, working plan and expert's approach to the particular task. The adequacy of this analysis, the factual accuracy of observations and the realism of assertions and interpretations was the goal of Phase 1.

Phase 2 - Organisation and work plan:

Complete understanding of the task to be undertaken by the experts = Operational guidelines were provided to National experts in charge of data collection and analysis.

Detailed guidelines in support to the group of experts were aimed to ensure coherency in research and homogeneity in the results as well as in their corrections when occurring, taking into account, of course, the differences per country.

As mentioned above, the College first goal was to ensure the total understanding of the concept: service concessions by the experts; taking into account the differences in terminology per country (languages) and the peculiarities of every sector (please see report per country and/or sector).

Once it was assured that the experts had the necessary understanding of the nature of the service concessions to effectively participate on the project; the next step to be done was to provide guidance to the experts and explain in greater detail the tasks to be undertaken and the nature of the research and work expected.

The management team familiarised the experts with the specific contract needs and provided them with the necessary specifications to support the tasks performance of the specific contract and established the different stages of study, notwithstanding the differences among the countries and sectors (please see report per country and sector):

- **Stage 1 - Carrying out a general research on the internet:** a first general research on the internet provided the experts with a preliminary approach to the task and the first results;
- **Stage 2 - Contacting the national authorities:** establishing contacts with the national authorities allowed the experts to face the official side of the task and in most cases obtaining useful information to continue the research in a more accurate direction, as well as be aware of the reality on the awarding of service concessions;
- **Stage 3 - Contacting relevant active operators per sector:** establishing contacts with the active operators in the relevant sectors permitted the experts to add useful information to their research; unfortunately most of the operators refused to cooperate or did not reply to our contacts (please see explanatory notice here below);
- **Stage 4 - Final advanced research on the internet:** the final advanced research on the internet, based on the results and information obtained in the previous stages of the study, allowed the experts to complete their research and contrast and validate the results obtained in the previous stages.

Phase 3 - Implementation:

The experts carried out the task with the permanent supervision of the management team who solved the basic doubts and questions of the experts.

Phase 4 - Reporting:

As specified in Article 2 of the specific contract: "*the preliminary report should be delivered no longer than one month after the date of signature of the contract by both parties*" – Final date of signature: 10/12/2008 – Final deadline – preliminary report: 12/01/2009.

Explanatory Notice:

Unfortunately the period covered by the study was the Christmas period and even though all efforts were made to establish contacts with the active operators in all sectors and countries most of the contacted operators were not available, or not eager to cooperate.

Final Conclusion:

Taking into account these facts, the methodology applied for Task 1 of the SC n° 1/2008 obtained the best results under the said circumstances and during the period of research which the specific contract established.

TASK 2: ANALYSIS OF IDENTIFIED CALLS FOR TENDER

1. Task description:

The College continued the study and gathered the following data about an average of 70 public service concessions advertised per month and per country:

1. Value of concessions advertised;
2. Names of publishing authorities/entities;
3. Number of concessions advertised;
4. Subject of contract;
5. Sector in which the contracting authority operates;
6. Scope of information published in the contract notices:
 - a. Selection criteria;
 - b. Award criteria;
 - c. Weighting or order of importance of award criteria;
 - d. Mode of payment/exploitation;
7. Type of procedure used to award concessions.

2. Selection Criteria applied

In general, for the distinction between service contracts and concessions three model approaches have been used:

1. "Label": meaning that the terminology used in the contract indicates that it is a service concession;
2. "Not label": the information included in the concession (in particular referring to payment and exploitation) indicates that it is a service concession;
3. Others.

For individual countries the following criteria have been used:

France

Two approaches have been utilized:

"Label" - research using all synonyms of service concession (e.g. *délégation*, *régie intéressée*, *concession*, *affermage*) and "public service" and a second research with "contract and/or *partenariat public privé*" (PPP); and

"Other" - some sectors are considered as concessions by nature as defined in the "loi Sapin" (water industry and waste industry): sectors that must be a public service but which is delegated to a private company.

Spain

"Label" – according to the description/ terminology used in the contract notice; some examples are: "Servicio de gestión integral de retirada, traslado e eliminación de residuos sanitarios.." or "Servicio para la prestación sanitaria de la Sede Central de la Agencia Estatal de Meteorología".

Italy

All three approaches have been employed. Concession notices not raising special concerns were identified by:

"Label" – according to the specific legal terminology identifying a service concession, i.e., "*affidamento in concessione dei servizi*"; and

"Not label" - there were clear indications in the notice of the fact that we are dealing with a service concession:

- (i) First of all, the notice explicitly states that the contract is regulated by Article 30 of the Law 163/2006, which is specifically dedicated to service concessions;
- (ii) Secondly the notice refers to the fact that the concessionaire bears the risk involved in operating the service (notably financial risks linked to the recovery of the investment), which is a distinctive feature identifying a service concession;

"Other" - In case of notices raising some concerns, it was not possible to confirm with certitude their very nature as service concessions because they did not refer to any provision of law or terminology specific for service concessions; however, the very low level of formalities required to participate to the tender and the fact that the term "*affidamento del servizio*" is recurrent, can lead to consider (with reservation) that we are dealing with service concessions.

UK

The "Label" approach together with "Not label" approach was used. The notices were searched according to relevant terminology (main search terms used: *concession/s*, *services*, *exploitation*). Subsequently, the content of the notices was checked whether it actually offered concession (a lot of "concessions" were actually service contracts).

Czech Republic

The “Label” attitude was used in combination with “Not label” method – there is a special form used for publication of service concession notices. At the same time the content of the notice was checked.

Greece

All the contracts analysed fall in the category of "Not Label" - the classification was made according to the description of the payment in the notice.

Portugal

The “Label” approach was used – the terminology used in the contract notice.

Germany

Based on the results obtained in the Part 1 of the current study and after thoughtful deliberation with the Commission’s services, in the case of Germany the study was decided not to be carried out.

NOTE: *All information provided in the service concessions identified in the study will be included in the pertinent section; in cases where cells remain void the information regarding that specific section was not available or it has been impossible to obtain for the current study.*

3. FINAL REPORT

The Final report consists in Excel spreadsheets containing the information required in task 2 (same Excel presentation as for the Defence SC ref; 10/2006 – Framework contract ref. PRS/2006/TA/C/08);

France

In France the most reliable and complete source of information is the website of the French Official Journal, more precisely le *Bulletin Officiel des Annonces des Marchés Publics* (BOAMP).

It was very difficult to distinguish the contract notices relating to service contracts from those relating to delegation of public services. However, some sectors are considered as concessions by nature as defined in the "*loi Sapin*" (e.g. water industry and waste industry).

During the period of April to September 2009, 128 concession notices were published in the sectors of waste management, water industry and public transport by water; there were no concessions in the health sector.

Spain

In Spain public authorities facilitate access to information on open contract notices in the area of service concessions in the sectors covered. Furthermore, the Spanish authorities have done a remarkable work with the setting of the website "*Plataforma de contratación del Estado*" which contains all information regarding contract notices in order to improve the use of electronic means in the area of public procurement and more in particular to improve publicity, notification and the timeframe to present proposals. All these public services are for free.

There has been 263 concessions identified during the period of study in the sectors of health industry, waste management and water industry; however, no concessions in the field of public transport by water.

Italy

For Italy it was not possible to identify a reliable or even useful source of information (public or private; at national, regional or local level) for developing a comprehensive study mirroring the *status quo* concerning public service concessions in Italy.

Following the absence of any legal provision imposing specific mandatory publication for the award of public service concessions, contracting authorities normally do not publish at all contract notices on public service concessions, considering that the most widespread practice is to inform only those economic operators included in their "official lists" of trustful service providers or identified by the means of calls of interests, in line with Article 30, paragraph 3 of the Law 163/2006.

Finally, from the legal analysis of the identified contract notices, it emerges a quite confused and uncertain framework as for (i) the use of legal terminology, which is often not appropriate and leads to inconsistencies and difficulties in order to distinguish service concessions from public service contracts; and (ii) the absence, in a relevant number of notices analysed, of any reference to the provisions of law regulating the contracts, which does not appear to be an

appropriate and good practice.

There were 15 concessions identified (although some of them with certain degree of uncertainty) in the sectors of public transport by water, waste management and water industry but no concession in the field of health services.

UK

The lack of a Government-run database in the UK, gathering all publicised notices for public contracts (services concessions, in this case), leads to the UK Public Authorities (at national, regional and local level), complying with their EU treaty obligations, by advertising their invitations to tender for public contracts in their own websites. UK Government has taken its first steps towards centralisation of information on published contract notices with the launch in June 2006 of the portal Supply2.gov.uk; but at present, this portal offers limited services, targeting only small business (below £100,000).

Only one concession in the field of water industry was identified within the selected period. It is important to bear in mind that Public Service provision for some sectors in the UK, mainly water and waste management, is highly privatised. Concessions were directly assigned to private companies for certain amount of years (25 years in the water sector); this practice raises concerns about the lack of competition in the supply of those public services and the potential prejudice for the recipients of those services.

Czech Republic

In the Czech Republic the comprehensive source of information on concessions is represented by Information System on Public Contracts (ISVZ) accessible on-line on <http://www.isvzus.cz>. There is a statutory obligation to publish notices on service and works concessions as well as on public contracts in this database (service concessions, work concessions and public contract are published on different forms). It is accessible free of charge and allows for search by multiple criteria.

In the Czech law the definition of concessions corresponds to that in EC public procurement directives and ruling of ECJ. No substantial problems about its definition have been identified.

The frequency of use of concessions in the Czech Republic is, mainly for historical reasons, quite low; however, its use has increasing tendency. In the period of April to September 2009 only one concession notice in the water sector was published. There were no notices concerning the other two sectors covered.

Greece

The main resource of information on concession in the sector of public transport by sea is the website of the Ministry of Mercantile Marine. Additionally, information on public service concessions can be found in the website of the complement of the Official Journal of the EU. It appears also that these websites are identified as the main sources of information by the agents (shipping companies) acting in this sector. Another source is the Journal of the Government of the Hellenic Republic. Access to this website is restricted, so this appears as a less popular source of information in comparison to the other two.

4 service concessions notices in the sector of public transport by sea have been published during the period of April to September 2009.



Brugge

College of Europe
Collège d'Europe



Natolin

Portugal

In Portugal, the publication of the contract notices is obligatory in the “Diário da República” (Official Journal of Portugal); making it the most complete and reliable source of information. It is accessible also on-line on www.dre.pt. Another source is the main website dedicated to public procurement (Portal dos Contratos Públicos) accessible on www.vortalgov.pt; this site is divided into sections for specific sectors (for health sector, it is www.vortalhealth.pt).

During the period covered only one concession in the health sector was published. It can be concluded that the number of concessions in the health sector in Portugal remains low due to the reason described in the final report (mainly the structure of the sector and the ways of providing of health services).

4. Conclusions:

It can be concluded that there are differences between the member states covered concerning the publication of concession notices in the sector that were subject to this task. As results from the phase 1 of the study, sufficiently complex and reliable source of information on service concession exists in France, Spain, the Czech Republic, Greece and Portugal.

There are also differences concerning the definition of service concessions or more precisely the way service concessions notices can be distinguished from service contracts notices. It seems that certain problems in this sense might exist above all in France, Italy and UK.

The number of contract notices published during the period of April to September 2009 in the member states covered differs significantly. Only in Spain and France the number reached several hundred (263 and 128). Italy with 15 concession notices lies in the middle. All other countries had only one or few (Greece) concession notices. There also differences between sectors covered by the study; even in countries with high number of concession some sector was totally missing.

Part A: Research and Identification of sources of information on service concessions

a. Research of Sources

Both Act No 137/2006 in the Czech Collection of Laws (Coll.) on Public Procurement (PP) and Act No 139/2006 Coll. on the Concession Contracts and Concession Selection Proceedings (CCP) came into force 1 July 2006.

While CCP does not explicitly provide for subsidiarity of PP, it refers to it on numerous occasions.

Article 16 of CCP defines a service concession as a contract where the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment. The concessionaire bears a substantial part of the risk of exploitation.

This definition corresponds to the understanding of service concessions in the EU. It is the contracts falling under this definition that have been included in this study. In particular, within the scope of this study, these contracts include those with the following considerations

- treatments of and dispositions with water, including waste water treatments and hot water provisions,
- treatments of and dispositions with waste of all kinds including household, industrial and hazardous waste (such as disposal, collection, separation, recovery, recycling and reuse),
- health related services (awarded by hospitals and similar establishments with the exception of non-health related services).

The following methodology has been used:

1. General Research on the Internet

A query using key words “service concession contract” and its variants in the Czech language have been submitted to several major Czech search engines including: URL <<http://www.seznam.cz/>>, URL <<http://www.centrum.cz/>>, URL <<http://www.atlas.cz/>>. The queries returned a large number of results (around 700) a vast majority of which referred to legislative or legal documents. The only source of information about real concession contracts identified this way was SOURCE 1 (below). In six (6) cases references to SOURCE 1 were found.

2. Information Obtained from the Competent Authority of the Central Government (URL <<http://www.mmr.cz/>>)

The central authority competent for concessions in the Czech Republic is the Ministry for Regional Development. The author of this study established contact with the relevant department responsible for public procurement and concession contracts within the Ministry which informed him that they are not aware of any alternative sources of information about concession contracts. They suggested that alternative sources are unlikely to exist given the exhaustiveness, the completeness and the authoritative character of SOURCE 1 as well as the low number of concessions awarded in the Czech Republic. To the best of their knowledge, in rare cases where information concerning service concessions is published, SOURCE 1 is referred to.

3. Enquiries to Major Economic Operators on the Market

The author has proceeded to contacting selected economic operators on the market in the sectors examined in this study. A representative sample of operators of various scopes of operation and from various geographical areas of the country has been identified so that a critical mass of economic operators was addressed. This has been done by a general research on the Internet (same as above) and by contacting associations of operators such as the Hospital Association (URL <<http://www.ancr.cz/>>) or the Water Management Association (URL <<http://www.svh.cz/>>). Specific contact details contained in the document "CZ_Annex" CD attached has been obtained from the internet websites of the individual operators or from a directory of Czech firms on the website URL <<http://www.zlatestranky.cz/>>.

In general it shall be noted that the willingness of the operators to provide any information about their economic activities including the sources of information about contract to unknown "enquirers" is extremely low and the information obtained this way is hence very limited.

4. Enquiries to Public Awarding Authorities

Efforts have been made to obtain information from the winners of the concessions identified. To this end, the author established contacts with the public authorities awarding these concessions to enquire about their winners. The results can be found in the table under "b. - Identification of Public Service Concessions" below.

The methodology applied to this research consists of several stages, which logically progress from general to more specific information. Multiple sources of information on each level have been used and the results obtained have been verified by cross-checking other available sources. Open sources of information as well as personal contacts with experts in the field responsible for concessions on the central governmental level have been exploited. Information has been processed and presented by standard methods usual in similar studies. All information can be easily verified and compared by following the described methodology in the Czech Republic or elsewhere. This shall guarantee a reasonably high degree of consistency, completeness and exhaustiveness of this study.

A. Internet

I.

Article 31(1) CCP provides that only notices of the commencement of public concession proceedings concerning public work concessions exceeding a set limit shall be published in the Official Journal of the EU (OJ EU).

II.

Pursuant to Article 6 CCP the concession selection proceedings shall be initiated by a publication of a notice; to this end in accordance with Article 31 CCP, notices of the commencement of public concession proceedings shall be made public in the information system for public procurement notices established under PP. Article 31(3) refers to PP concerning detailed rules on the publication of notices.

The obligation to publish the notices of the commencement of the selection proceedings is stipulated in Article 26(1 and 4) PP and particulars detailed in Articles 146 and 147 PP. These provisions refer to Article 157, which provides for an information system on public procurement managed by the Ministry of Regional Development (MRD). MRD shall grant the authorisation to administer the system and publish a notice thereof in the Collection of Laws.

Pursuant to Notice of MRD No 137/2007 Coll. on the authorisation to administer the information system under PP, the state-owned company "Česká pošta" (Czech Post) has been granted the requisite authorisation. It runs the system on the Internet at URL <<http://www.isvz.cz/isvz/>> (SOURCE 1).

Details of publication are to be found in the regulation No 330/2006 Coll., which contains in particular the necessary forms.

Notices of the commencement of proceedings on granting both public procurement and public concession contracts are published in SOURCE 1, which is available at distance free of charge.

SOURCE 1 is fitted with a search engine, which allows easy search by multiple criteria. The basic search can be executed under bookmark "Notices of the commencement of proceedings with the exception of public works concessions above the limit", which corresponds to the scope of the concessions of this study. Additional search criteria include type of proceedings, object of the contract, main field of activity, main CPV code, price of the object and others. On top, the time period of the search can be easily set.

When search criteria are selected, a list of matching notices with basic data is generated. In the next step, more detailed information concerning every contract can be obtained by simple clicking on the identification number of the item.

Due to the statutory duty of publicity SOURCE 1 is complete in that it includes all published notices of public concessions. The quality of the data available in the system is adequate and includes the following items:

- Identification number
- Scope (below or above the limit)
- Type of the form
- Date of the submission of the notice
- Date of the publication of the notice
- Details of the contracting authority
- All contact details of the contracting authority
- Person responsible for the public concession on behalf of the contracting authority
- Sources of additional information
- Sources of contract details
- Address for the submission of bids
- Type of the contracting authority
- Object of the contract
- Description of the object of the contract
- Place of performance or delivery
- Main place of performance or delivery
- Code NUTS
- Estimated value of the object of the contract
- Estimated revenue of the operator
- Qualities and qualifications of the operator/participant
- Documents to be submitted certifying the fulfilment of the conditions for participation
- Economic and financial requirements
- Technical requirements
- Individual criteria for evaluation including preliminary ones and their weight

III.

Besides the official SOURCE 1, some Ministries, offices of the central government, local authorities and other public entities publish notices of the public procurement contracts, whose contracting authorities they are, on their respective Internet websites. A review of the websites of some of these entities has been conducted but no notices of public concessions have been identified.

B. Other Sources

I.

Information can be obtained in written or other forms on the basis of Act No 106/1999 Coll. on free access to information, as amended. For the purpose of the current study, the above mentioned Ministries, offices of the central government, local authorities and other public contracting authorities would clearly be subjected to the obligation to provide information under Act 106/1999. This information shall be provided on (nominal) payment detailed in Government Regulation on charges and fees for the provision of information under Act

106/1999. Information shall be provided within 15 days from the receipt of the request by the public body.

II.

There are no other written sources of information such as official bulletins or other journals intended for publication of concession notices. Admittedly, information concerning a particular concession could be the subject of media coverage in individual cases. This would however be rather accidental and sporadic, thus of little value for this study in terms of completeness and credibility of information.

In fact, there is no national or regional source of information concerning public concessions in the Czech Republic. In the course of this analysis, a large group of bodies have been reviewed including in particular the Czech Chamber of Commerce, the Confederation of Industry of the Czech Republic, the Association of the Chemical Industry of the Czech Republic, the Association of the Pulp and Paper Industry, and the Union of Town and Municipalities of the Czech Republic. As a result, it has been established that these bodies do not publish information on public concession contracts. This appears to be case not only for public concessions, which are rarely used in the Czech Republic, but also for public procurement contracts. In rare cases when public concessions are mentioned, SOURCE 1 (see above) is referred to (e.g. the Internet Platform of the Public Administration or the Ministry of Finance).

III.

Next, additional sources of information could be identified by making direct enquiries to winners of individual contracts to see how they learnt about the public concessions which have been awarded to them. Winners of the public concession contracts can be found directly in the individual contracts published in the "Index of concession contracts" in SOURCE 1. This data is available in SOURCE 1 as of 1 July 2006, i.e. the date of entry into force of CCP, whose Article 32 stipulates the obligation to publish the concluded concession contracts in SOURCE 1. By law, the Index shall contain information on the public concession contracts concluded pursuant to CCP during the whole period of their validity (please see further information in the document "CZ_Annex" CD attached).

IV.

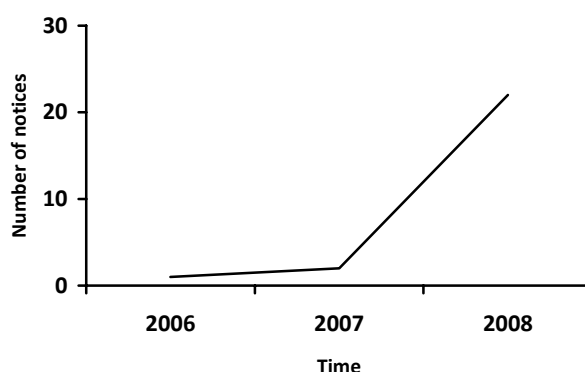
Lastly, economic operators in the specific sectors determined for this study could provide information on additional sources of information concerning public concession contracts. A representative number of economic operators of various sizes, from various geographic areas and operating on various levels, both nationwide and in a specific region, have been contacted by email and by phone to enquire about their sources of information concerning concession contracts. An overview of these contacts is provided in three separate tables, one for each sector, which are include in the CD attached to this report as "CZ_Annex". This method, however, has not led to any new sources of information about public concessions. A large majority of operators were either unable or unwilling to provide any information. Only two operators in the sector of water industry stated that they used SOURCE 1 to obtain information about public concessions.

b. Identification of Public Service Concessions

During the reference period determined for this study, June – December 2008, merely 17 notices of the commencement of the public concession proceedings have been found in SOURCE 1. Due to this very low number, the reference period has been extended to cover the period of force of CCP (and PP), i.e. from 1 July 2006 to present (December 2008). During this extended reference period, 27 concession notices have been found in SOURCE 1. Out of these notices of the commencement of public concession proceedings two (2) concerned works. Hence 25 notices were subjected to further analyses.

It has been observed that the first notice published under CCP dates 18 December 2006, which is almost half a year after the CCP came into force. During the whole of 2007 merely two (2) additional notices were published. In 2008, the remaining 22 notices were published. It can be claimed that while concessions are still being used in low numbers, they have shown a

progressively increasing tendency.



The following table shows the breakdown of the notices into the reference sectors:

SECTOR	NOTICES
water industry	6
waste management	0
health services	0

As the number of noticed published during the extended reference period remains low, public concession notices published under Act on Public Procurement No 40/2004 Coll. effective between 1 May 2004 and 1 July 2006 have been also analysed.¹ During this additional period, 28 notices of public concession contracts have been identified, which break down into reference sectors as follows:

SECTOR	NOTICES
water industry	0
waste management	0
health services	0

In sum, during the period from 1 May 2004 to December 2008 the total of 53 notices of the commencement of public concession proceedings has been published, out of which only 6 (six) fall in the reference sectors of this study. In fact, they all concerned water industry. There have been no notices of concessions in the sectors of waste management or health services published.

After the above public concessions had been identified, the identification of the winners ensued in order to enquire directly from them about possible alternative sources of information (point B.III above). It has been found out, however, that no contract on these concessions had been published in the Index in SOURCE 1. Consequently, no direct contact

¹ It shall be noted that the system of publication under Act 40/2004 differs in form from the one introduced by CCP and is available in SOURCE 1 in an archive. This difference can however be neglected for the purpose of the current study as the scope and quality of data contained in noticed published under both Acts are identical.

with the winners could have been established. As three concessions have only been published very recently (November and December 2008), it is unlikely that winners are known yet. Concerning the remaining three concessions, contracting authorities have been contacted with request for information about their winners. The following table provides an overview of the situation:

No	Contracting Authority (Address)	Date of Publication of the Notice	Enquiry	Result
1	Region Jih, Všestary 141 Všestary, pošta Strančice 251 63	28 Nov 2008	-	n/a
2	Municipality Velká Hleďsebe, Plzeňská 32 Velká Hleďsebe 354 71	24 Nov 2008	-	n/a
3	Water Works Tábořsko Ltd, Kosova 2894, Tábor 390 02	8 Dec 2008	-	n/a
4	The city of Ostrava, Prokešovo náměstí 1803/8, Ostrava 729 30	19 May 2008	Phone call	In progress
5	The city of Bruntál, Nádražní 20, Bruntál 792 01	11 Jan 2008	Phone call	In progress
6	The city of Hostomice, Tyršovo nám. 165, Hostomice 26724	20 August 2007	Phone call and email	No reply

Direct enquiries to contracting authorities No 4 and 5 above revealed, that contracts have not yet been concluded and no further information was released. In case of concession No 6, despite repeated attempts to contact the contracting authority by phone, this has not been successful.

Regrettably, this method of obtaining information about additional sources of data has not proved effective.

c. Feasibility report

Overview of Internet sources of information:

1	http://www.isvz.cz/isvz/ (SOURCE 1)
2	OJ EU
3	Websites of the individual public contracting authorities

Sources 2 and 3 do not provide exhaustive and complete information on public concessions, hence appear unsuitable.

For the purpose of the present study, SOURCE 1 has been identified as a suitable source of information for the following reasons:

- the scope of data concerning the individual concession proceedings is sufficiently wide,
- items can be searched by multiple criteria,
- availability of data is ensured at all times,
- delays of response are reasonably short,
- data is available free-of-charge.

Overview of paper sources of information:

1	Request of information pursuant to Act No 106/1999
2	Other paper sources, e.g. bulletins, journals

Taking into account the quality and comprehensiveness of SOURCE 1, completion of the information contained therein by resorting to paper sources of information listed above appears redundant for the purpose of this study.

The total number of 53 notices of the commencement of public concession proceedings has been published during the period from 1 May 2004 to December 2008, out of which only 6 (six) fall in the reference sectors of this study. In fact, they all concerned water industry. There have been no notices of concessions in the sectors of waste management or health services published.

As a result of these low numbers, the assignment to identify 30 concessions in each of the reference sectors for this study cannot be completed.

Even in case of a substantial decrease of the number of concessions required for analyses in the individual reference sectors, the intended study could not be fully conducted in the case of the Czech Republic due to the fact that no concessions have been identified in the sectors of waste management or health services.

d. Conclusions

SOURCE 1 has been identified as the most suitable source of information on public concessions in the Czech Republic. The information on individual concessions contained therein is sufficiently detailed, complete and authoritative. Moreover, SOURCE 1 is easily available anytime at distance free-of-charge.

As a result of extensive research and consultations with experts in the field, a number of alternative sources of information on public concessions have been identified and examined. It has been established, however, that these sources are of limited value to the present study due to the lack of consistency and completeness of information they contain. Additionally, their availability and credibility make them unsuitable to obtain reliable data for the intended study.

Moreover, substantial efforts have been made to acquire additional data by establishing direct contact with successful bidders for public concession contracts. These efforts have not been successful due to the fact that final concession contracts indicating the winning contractors have not yet been published.

Additionally, enquiries to economic operators in the three sectors determined for this study have not revealed any additional sources of information about public concession contracts. The economic operators addressed in the conduct of this study have been found in large part unwilling to provide information about their business activities – participation in public competitions. Additionally, it has been confirmed that economic operators often do not distinguish public concessions from public procurement contracts. It has also become apparent that economic operators show little interest in public concessions whose number has been very insignificant in the Czech Republic. The inquiries to economic operators hence confirmed that the only source of information about public concessions used by them is SOURCE 1.

The first concession notice published under CCP dates to 18 December 2006, almost half a year after its entry into force. During the whole of 2007 merely two (2) additional notices were published. In 2008, the remaining 22 notices were published.

These numbers suggest that public concession contracts are rarely used in the Czech Republic. One reason may be their short existence in the Czech legal system (since 2004) as well as the amendment of their legal regulation in 2006. Another explanation of the low figures could be the fact that public contracting authorities incorrectly apply PP instead of CCP. This option has however been refuted following a review of 197 public procurement contracts on services published during the first quarter of 2008.

In all, while the number of public concession contracts remains unusually low in the Czech Republic, the figures obtained in the course of this study clearly show their increasing tendency.

Part A: Research and Identification of sources of information on service concessions

Preliminary Information/Definitions:

The following definition of a service concession was used to identify “service concessions” for the purpose of this study:

- “ *A public service concession is a contract of the same type as a public works contract except for the fact that the consideration from the contracting authority for the works to be carried out/for the provision of the services consists either solely or partly in the transfer of the right to exploit the works/service that is the object of the contract, or in this right together with payment.* ”
- *The right to exploit the works/service implies a transfer to the concessionaire of a substantial part of the risks inherent in operating the works/service. Exploitation includes the right for the concessionaire to collect fees from the users of the works/service, if the service is provided upon payment. Payments made by contracting authorities in return for work carried out or services provided must not eliminate a substantial part of the risks inherent in exploitation.”*
- The relevant information to assess whether or not the contract in question was under the above definition to be considered as a service concession was taken from the description of the content of the contract in the publication notice. In some cases the publication notice was also advertised to be a “service concession.”
- In Germany the word for service concession is “Dienstleistungskonzession”. However does not exist a legal definition of what exactly is a Dienstleistungskonzession. But as this term is strongly interrelated with Community law it appears that the general use of the word Dienstleistungskonzession corresponds to the definition as explained above.
- Publication notices meeting the above definition of a service concession where considered as service concession for the purpose of this study.

Methodology Research of sources

- In general a service concession was identified (i) if and when the text of the procurement notice itself used the term service concession (“Dienstleistungskonzession” together with a short description of the nature and content of the concession) or (ii) due to the nature of the description it could be qualified as service concession.
- The sources have been identified through a comprehensive search on the internet with regard to the publication of all kinds of procurement information. For conducting the search different search engines (e.g. Google, yahoo etc) have been used. As key words for the search - amongst many others - the following words where used. e.g. service concession, procurement notice, procurement online eprocurement etc. The results obtained have been crosschecked with other secondary information about procurement publication practices (e.g. general information websites with regard to public procurement). For Germany a number of publications on regional level was identified and analyzed (for details please refer to point III below of the report).

- Through this search the below mentioned online procurement information systems where identified and analysed.

Contacting operators

Operators of procurement information systems where identified and contacted. The operators where identified through an Internet research as described above. The operators where questioned whether or not there were some additional information on the publication of service concession available. However no further information could be obtained. The contacted person in generally referred to the already known publication resources and had no knowledge of any further sources or publication practices of tendering entities.

An overview of these contacts is provided in the document “DE_Annex_1” (please see CD attached). This inquiry, however, has not led to any new sources of information about public concessions. A large majority of operators were either unable or unwilling to provide any information.

- The following below mentioned public available resources¹ of information regarding the (potential) publication of call for tender notices / award notices for service concessions in the selected fields have been (i) identified and (ii) analyzed.
- It has to be mentioned that from the study conducted it seems that the official sources identified below under item II and III are to a major extent the only sources with primary information (meaning the original source that received the tender information directly from the tendering entity). All other sources seem to have taken over to a large extent the information from original sources.
- There are numerous, as it seems non original sourced “tendering platforms”, available whose business concept is simply to collect tender information and combine such information with a search function and to offer such information service against a user fee.
- However, for efficiency reasons consolidated platforms are most convenient and efficient to use when looking for tender opportunities.
- In the document “DE_Annex_2” (please see CD attached) there is a list of all German print publications (newspapers) which to some extent have a presence in the internet. Through the use of standard internet research tools no indication could be found that any online version of these papers are used for publishing tendering information about service concessions. It may be the case that tendering authorities use these newspapers to publish information regarding the tendering of service concessions.

I. European Level

- TED Database
http://www.europeantenders.de/etis-workxl/partnertracking.do?partnerId=391&qclid=CLH4w6_suJcCFQQJ3wodq1zkSQ
 Price: free

II. Federal Level

- Official web page of the German public administration which has a subchapter dealing with procurement and procurement notices:

Only sources available on the www have been subject to the study. However, also internet portals of selected classic paper newspapers have been analysed.

http://www.bund.de/nn_177356/DE/WuW/A-Z/V-wie-Verkehr/Vergabewesen/Vergabewesen-knoten.html_nnn=true

Price: free

- Official German public administration electronic tendering platform

<http://www.evergabe-online.de/n>

Price: free

III. Regional Level (Bundesländer)

- Baden-Württemberg

Staatsanzeiger Baden-Württemberg

<http://www.staatsanzeiger-verlag.de/new/>

Price per year 258 €

- Bayern

Bayerischen Staatsanzeiger

<http://www.bayerische-staatszeitung.de/>

Activation fee one time 155€, quarterly fee of 90 €

- Berlin, Brandenburg and Mecklenburg-Vorpommern

www.bi-online.de

Price per year 228 €

- Hessen

Staatsanzeiger für das Land Hessen

<http://www.staatsanzeiger-hessen.de>

Price per year 228 €

- Niedersachsen, Schleswig-Holstein, Bremen, Hamburg

Deutsches Ausschreibungsblatt

www.deutsches-ausschreibungsblatt.de

Price per year 230 €

- Nordrhein-Westfalen

www.deutsches-ausschreibungsblatt.de

Price per year 230 €

- Rheinland-Pfalz und dem Saarland

Price per year 140 €

www.deutsches-ausschreibungsblatt.de

- Sachsen

Sachsenanzeiger

<http://www.sdv.de/cms/de/ausschreibungsdienst/index.html>

Price per year 140 €

- Sachsen-Anhalt

www.ausschreibungsanzeiger.com

Price per year 140 €

- Thüringen

Price per year 175 €

<http://www.thueringen.de>

IV. Consolidated Information Platforms

- Vergabe 24 das Vergabeportal für Deutschland
<http://www.vergabe24.de>
Price: 792 € per year offers access to all tenders notices published on federal level as well as tenders published on Regional (Bundesländer) level. Test account for limited time period is free.
- Deutsches Ausschreibungsblatt
www.deutsches-ausschreibungsblatt.de/
Online Price: 281,00 Euro per year offers access to a the tenders published on federal level. Test account for limited time period is free.
- Dg Market
<http://ausschreibungen.dgmarket.com/>
- Submissionsanzeiger
www.submission.de
- Deutscher Ausschreibungsdienst
<http://www.dtad.de/>
45 Euros per month

After evaluating above mentioned resources www.vergabe24.de seem to be the best resource as with its full German wide search function it covers both all official publication notices made on a federal level as well as publications made on a regional level (Bundesländer).

V. Other sources

The following possible other public available resources regarding the publication of tenders have been identified.

- Tenders for the Construction Industry
<http://www.webvergabe.de/>
Licence Fee has to be paid

- Die Auftragsplattform
<http://www.subreport.de>
Licence Fee has to be paid

Auftragsbörse
<http://www.auftragsboerse.de>
Regional (Rhein-Neckar) Procurement Information Portal
Cost free registration

Stadt Köln
<http://www.stadt-koeln.de/>
Local information website with procurement information

Stadt Berlin Vergabeservice
www.berlin.de/vergabeservice

General Website on Procurement Publication Information
<http://www.submission.de>

Info-Dienst Ausschreibungen
www.infodienst-ausschreibungen.de
74 Euros per months for all regions

a. Identification of public service concessions

As an introductory note it can be mentioned that in comparison with the identified notices for call for tenders for service concession a relative high number of notices for call for tenders of concession related to construction activity where found.

Identification of the amount of public service concessions notices published in the identified sources²:

Sector	Number of Concessions	Source	Comments
Water industry	0		
Waste management	0		
Health services	1	www.vergabe24.de	
Public transport by water	0		
Other Service Concessions	5	www.vergabe24.de	

Analyzes of identified public service concessions notices:

Sector	Scope	Source	Tendering Entity	Additional Information
Other	Operation of Regional Railway Transport	www.vergabe24.de	Bayerische Eisenbahngesellschaft mbH	Anticipated date of award: : 22.10.2008
Other	Transportation of handicapped persons with buses	www.vergabe24.de	Bau- und Liegenschaftsbetrieb NRW Aachen	Anticipated date of award: 7.10.2008
Other	Construction Operation and maintenance of following networks within a building complex: heating, cooling, gas, power, water, data- and telephone lines:	www.vergabe24.de		Duration of contract: 25 years
Health services	Design and operation of a Platform for electronic price estimates for health services	www.vergabe24.de	Techniker Krankenkasse Bramfelder Str. 140, D-22305 Hamburg	Award Notice.
Other	Delivery and sale of ice cream to the GartenschauPark in Rietberg and all restaurants on this premises	www.vergabe24.de	GartenschauPark Rietberg GmbH	
Other	-Design, Development and Sale of merchandising articles and related product assortment for castles and other sights.	www.vergabe24.de	Staatliche Schlösser, Burgen und Gärten Sachsen	

² Information published until the 15.12.2008 is included.

b. Feasibility report

According to the information obtained in the course of the study part A the following can be said with regard to the feasibility of the study part B.

There are consolidated internet resources that cover tender publications that fall within the scope of the publication rules of the EC Procurement Directives and corresponding national legislation. These resources are to some extent freely available for “demo purposes” from 1 to 3 weeks depending on the source. Thereafter a certain fee has to be paid to gain access. Hence these sources can at no excessive costs be monitored whether or not tender publications in the selected sectors for service concessions will be also published there.

However there are concerns that might hamper the feasibility of the study. Considering the fact that only a very small number of notices regarding service concession could be identified.

It is questionable whether call for tenders for service concessions are:

(i) Published at a significant level, that is also accessible to interested parties and where parties would anticipate looking for such publications. *(It may be the case that such publications are made on a very low level in communal or regional newspapers, community- or town magazines or on the web pages of the Contracting entity – obviously such sources are manifold and can not all be investigated. However the research could not reveal a hint that there is significant publication activity regarding service concessions to be found in such sources and on such levelk).*

(ii) Published at all.

d. Conclusions

From the results obtained so far the following conclusions and recommendations can be drawn:

- To monitor a consolidated resource e.g. <http://www.vergabe24.de> for a period of up to 6 months not limiting the scope on a certain sector to identify the number and nature of publications regarding service concessions. From the result estimations could be drawn whether or not the identified publication notices correspond to the number of service concession contracts that are estimated to be awarded in such timeframe.

Part A: Research and Identification of sources of information on service concessions

Introduction

According to the EC Procurement Rules, public service concession contract is defined as:

"[...] a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment."

In terms of terminology the Greek legal definition of service concession is strongly interrelated with Community law and the general use of the term corresponds to the definition as explained above.

Methodology:

In general a service concession was identified (i) if and when the text of the procurement notice itself used the term service concession together with a short description of the nature and content of the concession) or (ii) due to the nature of the description it could be qualified as service concession.

As first step, an internet search for terms related to the topic was carried out. More specifically, the research was focused on terms such as "public service concessions", "public service concession contracts" using Google search engine, restricting the domains to Greek ones. Additionally, searches using the respective Greek terms were performed. The results of these searches provided us with directions for the sources of information (governmental sites as well as other independent ones).

Consequently, we established contacts via telephone with officials from the Ministry of Mercantile Marine. We have been told to refer to the relevant websites of the ministry. The reason why we decided to contact this ministry rather than other governmental office is because this ministry is almost solely concerned with the issue of public transport by water.

We contacted operators of the sector which are mainly shipping companies. These companies are potential bidders for PSC contracts. We have sent emails to them and got only 2 responses. See document "EL_Annex" for details.

a. Research of Sources

All possible contracts for Public Service Concessions (PSC, Συμβάσεις Παραχώρησης Δημοσίων Έργων) are published the **Journal of the Government of the Hellenic Republic** (Εφημερίς της Κυβερνήσεως της Ελληνικής Δημοκρατίας). The relevant section of the Journal of such information is the Issue of Announcements of Public Contracts (Τεύχος Διακηρύξεων Δημοσίων Συμβάσεων, ΔΔΣ). This Journal is published by the National Printing Office.

The website of the Journal is <http://www.et.gr/>. This website provides a link to a comprehensible search engine. Searches can be run for specific sections of the Journal using keywords. The language used for this search engine is Greek, which is the only language used for the Journal. The access to the section of interest (ΔΔΣ), is restricted to registered users. Alternatively free access is provided in the reading room of the National Printing Office

(address: 8 Marni Street, Athens).

PSC contracts concerning public transport by water are also published in the websites of ministries of the government. These include mainly:

The Ministry of Mercantile Marine, The Aegean and Island Policy (<http://www.yen.gr>)

There is a specific department of the ministry dealing with these issues which is called Directorate of Sea State Transport (Διεύθυνση Θαλασσίων Κρατικών Μεταφορών, ΔΘΚΜ). Another department concerned with this type of contracts is the Directorate of Sea Transport (Διεύθυνση Θαλασσίων Συγκοινωνιών).

The Ministry of National Defence (<http://www.mod.mil.gr>)

The department dealing with these is called Athens Multinational Sealift Coordination Centre, AMSCC (Πολυεθνικό Συντονιστικό Κέντρο Στρατηγικών Θαλασσίων Μεταφορών, ΠΟΣΚΕΣΘΑΜ). This centre cooperates with the Directorate of Sea State Transport for the purposes of providing means of sea transport for military units of NATO and EU member countries.

The Ministry of Tourism (<http://www.gnto.gr>)

In the website of this ministry contracts related to public transport by water are published.

Additionally to the above resources contracts are published to websites of Local Government. Greece is organised in the following levels of local government (listed from the broader level):

Regions

<http://www.ypes.gr/periferiakh.htm>

Prefectures

http://www.ypes.gr/nomarxiakh_aut.htm

Municipalities

<http://www.ypes.gr/topiki.htm>

Contracts published at the local level are mainly directed towards local operators.

Finally, information for these contracts is published in daily **newspapers**. For many tenders, publication on daily press is a requirement specified by law. When this requirement occurs it is specified that the announcement should be made in at least three newspapers. At this point it should be stressed that usually announcements of this type do not always appear at the website version of the newspapers.

Other websites

- Smart Sea Transport (<http://seatransport.e-transport.gov.gr>)

This site includes information for contracts related to transport by sea, as well as funding opportunities for companies operating in this sector.

- **euro-info.gr** (<http://www.euro-info.gr>)

This site contains announcements on contracts related to transport by water.

- **National Strategic Framework of Reference 2007-2013** (<http://www.espa.gr>)

Εθνικό Στρατηγικό Πλαίσιο Αναφοράς 2007 – 2013: This site contains some contracts which are funded by the EU.

Moreover, economic operators active in the specific sector of public transport by water of various sizes, from various geographic areas and operating on various levels, both national and regional, have been contacted by email and by phone to enquire about their sources of information concerning concession contracts.

An overview of these contacts is provided in the document “EL_Annex” (please see CD attached). This method, however, has not led to any new sources of information about public concessions. A large majority of operators were either unable or unwilling to provide any information.

b. Identification of Public Service Concessions

We have found three PSC contracts for public transport by water during the period mentioned above. These have been found in the announcement section website of the Ministry of Mercantile Marine (<http://egov.yen.gr/wide/yen.chnm?prnbr=29275>). Other type of contracts have been found for the transport of military equipment and personnel, as well as for the transport of employees of state owned companies.

PSC contracts related to sea transport have been found for the construction, repair and use of marinas and ports and for storage of merchandise at the main ports of the country.

c. Feasibility report and Conclusion

It appears that the specific contracts constitute a new prospect for Greece. For the sector of public transport by water very few contracts (three) have been identified recently (last 6 months of 2008).

The low number of these possible contracts would not enable us to generalise the conclusions and make credible inference.

It should be mentioned that most of the contracts are published in governmental sources of information rather than external ones.

Referring to the information cited above, we can conclude that it is difficult at the time being to identify specific contracts matching the description provided. As a consequence there is not enough information on which a detailed report could be based on.

However, the **Journal of the Government of the Hellenic Republic** has been identified as the most suitable source of information on public concessions in the Greece. The information on individual concessions contained therein is sufficiently detailed, complete and accurate.

Part A: Research and Identification of sources of information on service concessions

Introduction

The purpose of the present report is the identification of sources of information on service concessions in Spain in the following 4 sectors: water, waste management, health services and public transport by water.

With regard to the methodology applied to the present study, we first assess the Spanish recent regulation on public procurement namely “Ley 30/2007” which transposes into Spanish Law the Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Directive 2004/18/EC defines in article 1.4. “Service concession” as a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment. The Spanish “Ley 30/2007” classifies the different contracts in the area of public procurement which are covered under this law. After a complete analysis and consultation to some material¹, as well as taking into account the basic criteria elaborated by the national doctrine on this matter, we concluded that the main object of our study was article 8 “contrato de gestión de servicios públicos” and also Article 11 “contrato de colaboración entre el sector público y el sector privado” which introduces public private partnerships (PPP)².

We then sought to understand the ways in which Spanish awarding authorities publish contract notices on concessions and how suppliers can obtain information on the contract notices published. In this regard, for the purpose of this study it was important to keep in mind the political structure and territorial organization of the State established by the Spanish Constitution of 1978 which divided the country into Autonomous Communities, provinces and local entities which have different degrees of competences.

We then investigated the different sectors and the different possibilities for suppliers operating in those sectors to obtain information on public service concessions.

Finally, we investigated and identified a number of concessions in those sectors published during the last 6 consecutive months of 2008.

The research is based on online consultations, contacts with the national authorities, telephone calls to services providers operating in the different sectors under study and consultations to other material such as books related to Spanish regulation in the area of public procurement³. In this regard, we first carried out a research on the internet with the aim to identify companies operating in the Spanish market for the different sectors under study. Establishing contacts with the national authorities allowed us to be aware of the reality on the awarding of service concessions in Spain. Once we identified a considerable number of companies operating either in the whole Spanish territory or in a specific Autonomous Community, we looked for all relevant information on the company as well as a contact person. We then tried to establish contact with them with different results (some of them were unable to provide us with a satisfactory answer and some were unreachable). A final more refine online consultation allowed to cross-check the results obtained in the different stages of our methodology.

¹ See also Contratación del Sector Público Local (Tomo I y Tomo II), El consultor de los Ayuntamientos y de los Juzgados, La Ley. Wolters Kluwer España S.A. 2008

² See also Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (IPPP)

³ See also Contratación del Sector Público Local (Tomo I y Tomo II), El consultor de los Ayuntamientos y de los Juzgados, La Ley. Wolters Kluwer España S.A. 2008

a.) Research of sources

General

A complete source available for the public to access the contract notices procured in Spain in all sectors is the **Boletín Oficial del Estado** (BOE), which is the Official Journal published daily by the Spanish Government (www.boe.es).

As mentioned above in the introduction, when analyzing information sources on public procurement in Spain, one has to bear in mind the political structure and territorial organization of the Spanish State as a decentralized country. The Autonomous Communities, provinces and local entities have different degrees of competences in the different sectors. The website of section V of the BOE gives therefore also the option to consult the contract notices publishes by the different Spanish Autonomous Communities, provinces and local entities. Furthermore, the website of section V of BOE contains a link called “Servicio de alerta” which informs daily about the latest notices published in BOE providing a link to the user of the service who receives all the information via e-mail. However, this service has an annual fee of 60,10 €

In addition, in 2008 the Spanish Ministry of Economy has created a website called “**Plataforma de contratación del Estado**” which contains all information regarding contract notices (www.contrataciondelestado.es/wps/portal/plataforma), including public private partnerships. This website has been created with the aim to improve the use of electronic means in the area of public procurement, and more in particular to improve publicity, notification and the timeframe to present proposals. According to the website, the final aim is to comply with the European Commission’s objective to simplify and modernize procurement procedures, by facilitating electronic procurement in the public sector. Article 42 of Ley 30/2007 also stresses the importance of using electronic means in the procurement procedures not only to inform about an open contract notices but also to inform on the documents needed and any other relevant information. Finally, Article 309 of Ley 30/2007 mentions specifically the above mentioned website establishing that all Spanish authorities and public bodies should publish contract notices on that website.

Other service offered by the Spanish public authorities to have access to information regarding contract notices is the website www.060.es. This website is also called the “**Citizens website**” and contains information in different areas such as taxation, etc. The website contains a link to the BOE where citizens can consult recent publications on contract notices.

We have also found **private entities** which provide information on all contract notices including service concessions. All of them have developed websites informing about their services. Private individuals and companies can contact these private entities via e-mail and/or telephone. There are several different types of procurement notices in the database of these companies. Notice type is determined by what is procured and by the contract awarding procedure.

In the majority of cases, the private individual/company has to register as User. As a registered user, the individual/company can receive automated email alerts whenever a tender notice that meets the specific business interest is published. Most of them offer a trial period of 15 days under which the service is for free, once that period is over the private individual/company should confirm their interest and agree with the payment of an annual fee. The service provider will then daily inform the user about all contract notices including service concessions published in the areas of interest. In addition, some of these entities offer also assistance in preparing the relevant documents when applying for a specific contract/concession. Some of these private entities classify all notices using Common Procurement Vocabulary (CPV) categories so that the user can obtain more targeted and precise alerts.

Here below a table with a list of the main private entities offering such a service in Spain:

Private entities	Description of the company	Contact person	Dates of contact
Gestboes www.gestboes.com +34 944 801 344	Gestboes is a private company providing information services on public procurement namely, publication and follow-up of contract notices, information on state aids and other public financial support to companies as well as information on legislation applicable in the area of public procurement. Information is available only in Spanish.	Mr. José Serrano	22 December 2008 28 December 2008 29 December 2008
Maninvest www.maninvest.com +34 902 100 574.	Maninvest is a private company providing information services on public procurement such as tender notices, contract awards, and bidding documents. Information is available only in Spanish.	Name of contact person not available Possibility to send request via e-mail to: info@maninvest.com	22 December 2008 28 December 2008 29 December 2008 7 January 2009 8 January 2009
Abconcurros www.abconcurros.com +34 91 878 70 42	Abconcurros is an electronic marketplace for public procurement information such as tender notices, contract awards, and bidding documents. Information is available in English and Spanish.	Name of contact person not available Possibility to send request via e-mail to: informacion@abconcurros.com	22 December 2008 28 December 2008 29 December 2008 7 January 2009
Infoconcurros www.infoconcurso.com +34 945 29 22 81	Infoconcurso is an electronic information service developed by Infobox Solutions, S.L.U. for government procurement information such as tender notices, contract awards, and bidding documents receive free email alerts on tender opportunities that fit the User business profile. Information is available only in Spanish.	The website offers the possibility to have an online chat with one of the members of the staff.	22 December 2008 28 December 2008 29 December 2008 7 January 2009 8 January 2009
Dgmarket www.dgmarket.com	DgMarket is an electronic information service developed by "Development Gateway Foundation, Inc" or government procurement	Name of contact person not available. Possibility to send request to: info@dgmarket.com	All information found on the website.

information such as tender notices, contract awards, and bidding documents.

With dgMarket, the User can access tender notices; View all larger government tenders of EU member states, US, and many other countries; receive free email alerts on tender opportunities that fit the User business profile and post procurement information for an international audience of suppliers.

Information is available in a range of several languages.

Some contract notices are also published in **national newspapers** such as El País, Abc, El Mundo, La Razón, El Correo, La Vanguardia, Expansión, Cinco Días y La Gaceta. However not all contract notices are published in newspapers. The Spanish regulation establishes mandatory publication in newspapers depending on the value of the specific contract notices.

By Sector

Water

With regard to contract notices on concessions for the water sector, in addition to the general sources mentioned above, the website of the Spanish Ministry of Environment (<http://www.mma.es/portal/secciones/licitaciones/>) provides also information on contract notices in this sector. More in particular, the website includes a link to the Water Directorate General in which one can find information on contract notices classified by type of contract (technical assistance, supply, water services, etc).

With regard to the competences of the Autonomous Communities, water is one of the sectors in which both regional and local entities have competences. In addition, in this sector the public authorities are increasingly making use of Public Private Partnerships (PPP).

We can find information in the website of the Autonomous Communities, in most of the cases in a link related to environment; e.g. website of the Autonomous Community of Castilla-León (http://www.jcyl.es/scsiau/Satellite?pagename=JCYL_Institucional/Page/PlantillaBuscadorLicitaciones)

We have consulted private companies operating in the water sector, in order to investigate how they get information on services concessions in this sector. Some companies informed us that they have an in-house person responsible for looking at publication of service concessions in the areas of interest. Some others use the service of private entities offering electronic information service on public procurement (see information above on general sources of information). In addition, we have also found that some companies published in their website information on the concessions they have been awarded.

Please see document “ES_Annex” in the CD attached including a list of the main operators active in the water sector which have been contacted.

Waste management

We have to consider the websites of the different Autonomous Communities which also include information on contract notices in the sector of waste management, in most of the cases in the link related to environment; e.g. website of the Autonomous Communities of Castilla-León
http://www.jcyl.es/scsiau/Satellite?pagename=JCYL_Institucional/Page/PlantillaBuscadorLicitaciones)

We have also consulted private companies operating in the waste management sector, in order to investigate how they get information on services concessions in this sector. Some companies operating in the water sector are also operating in the waste management sector, although the companies have established different departments/divisions for the different areas. As in the case of the water sector, the companies informed us that they have an in-house person responsible for looking at publication of service concessions in the areas of interest. Some others use the service of private entities offering electronic information service on public procurement (see information above on general sources of information).

Please see document “ES_Annex” in the CD attached including a list of the main operators active in the waste management sector which have been contacted.

Health services

Health services are one of the most representative sectors with regard to the decentralised competences in Spain as most of the competences have been transferred to the Autonomous Communities. Each Autonomous Community has a different health services model and that has an enormous influence in how are public concessions are published and awarded.

Therefore, when we are identifying sources of information for contract notices in this sector, it is very important to consider the websites of the different Autonomous Communities which publish information on contract notices in the health services sector for their specific regions; e.g. website of the Autonomous Community of Galicia
http://www.sergas.es/MostrarContidos_N2_T01.aspx?IdPaxina=70025.

In Spain, public concessions in the area of health services are characterized by an increasing use of the contract modality of “public private partnership”. Under this type of contract the public authority awarded a “work concession” to a private company in order to build a hospital. In some cases, the work concession is followed by a service concession by which the private company is entitled to manage the hospital for a period of time between 10-15 years with a possibility of extension to an additional period of 10-15 years. In this regard, the “Alcira model” developed by the Autonomous Community of Valencia was the first experience in this type of health services concessions. In 1999, the Autonomous Community of Valencia published a contract notice and awarded the management of the Alcira hospital to a group of private companies. In 2003, the Autonomous Community of Valencia extended the model to other hospitals such as the one in Torrevieja and the one in Denia. Although this model is still quite controversial, it seems that other Autonomous Communities are either already implementing it or analyzing the cost/benefit of implementing the same model in their own territories.

Having investigated the health services sector in Spain, we found some private companies providing health services. We have contacted some of these private companies and asked them how they get information on services concessions in this sector. The majority of respondents informed us that they use the service of private entities offering electronic information service on public procurement (see information above on general sources of information)

Here below a list of the main companies operating in the health management sector which have been contacted:

Please see document “ES_Annex” in the CD attached including a list of the main operators active in the health services sector which have been contacted.

Public transport by water

In Spain, this sector is limited to the transport of people and goods connecting Balearic Islands, Canary Island, Ceuta and Melilla with the Spanish mainland. It is therefore important to consult in addition to the national BOE, the BOE of those Autonomous Communities.

It is also important to consult the website of the “Organismo Público Puertos del Estado” (www.puertos.es) as contains a link to contract notices in the area of transport by water.

Consulting the website of “Organismo Público Puertos del Estado”, we found private companies operating in the public transport by water. We tried to contact of all them but we regret to inform that we did not get any satisfactory answer, either because they could not identified the person responsible who could provide us with the information because they did not reply to our phone call and/or e-mail.

Please see document “ES_Annex” in the CD attached including a list of the main operators active in the public transport by water sector which have been contacted.

Finally, here below we include a table summarizing the information sources (general and specialized) by sector:

Sector	General website	Specialised website
Water Industry	www.boe.es	http://www.mma.es
	http://contrataciondelestado.es/wps/portal/plataforma	http://www.mma.es/portal/secciones/licitaciones/tipos.jsp?unidad=Dirección%20General%20del%20Agua
	www.gestboes.com	
	www.maninvest.com	http://www.jcyl.es/scsiau/Satellite?pagename=JCYL_Institucional/Page/PlantillaBuscadorLicitaciones
	www.abconcursos.com	
	www.infoconcurso.com	
	www.dgmarket.com	
Waste management	www.boe.es	http://www.jcyl.es/scsiau/Satellite?pagename=JCYL_Institucional/Page/PlantillaBuscadorLicitaciones
	http://contrataciondelestado.es/wps/portal/plataforma	
	www.gestboes.com	
	www.maninvest.com	

www.abconcursos.com

www.infoconcurso.com

www.dgmarket.com

Health services	www.boe.es	http://www.sergas.es/MostrarContidos_N2_Tpx?IdPaxina=70025
	http://contrataciondelestado.es/wps/portal/plataforma	
	www.gestboes.com	
	www.maninvest.com	
	www.abconcursos.com	
	www.infoconcurso.com	

Public transport by water	www.boe.es	www.puertos.es
	http://contrataciondelestado.es/wps/portal/plataforma	
	www.gestboes.com	
	www.maninvest.com	
	www.abconcursos.com	
	www.infoconcurso.com	
	www.dgmarket.com	

b.) Identification of Contract Notices

YEAR 2008 FROM JULY TO DECEMBER:

Water Industry	The total amount of contract notices on service concessions published in the BOE from July 2008 to present is about 52.
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Waste management	The total amount of contracts on service concessions published from July to September 2008 is about 30.
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Health services	The total amount of contract notices on service concessions in the health services sector published from July to September is about 18.
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Public transport	We did not find any contract notice on service concessions
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by water

published during the last six months in this particular sector.

The total amount represents all contract notices found in the area of **services concessions** in the sectors under study for the whole Spanish territory including those published by regional and local entities and other public authorities such as municipalities, airports, etc.

All published contract notices identify the public authority awarding the contract, the object of the contract, a description of the object of the contract, formal proceedings and basis for awarding the contract, budget, contact points in order to obtain more information (some contract notices include also reference to websites), information on the documents needed, specific requirements that the private company should fulfil in order to obtain the service concession, and finally the timeframe.

c.) Feasibility report

According to the analysis of sources carried out in section A, we can identify the following sources as the most appropriate to obtain complete and reliable information in the area of service concessions awarded by Spanish public authorities:

1.- **Boletín Oficial del Estado** (www.boe.es). This is one of the most complete and reliable source as it facilitates information on all contract notices published for the whole Spanish territory. It allows searching using specific parameters such as public authority awarding the contract, sectors, specific dates of publication, etc. However, despite the fact that the website has a link to different languages' options, among them English and French, access to the content is only available either in Spanish or in the other official languages existing in the Spanish territory (Catalan, Basque and Galician).

The information provided by the BOE covers the following aspects of the announcement of the contract notices: Title of the contract notice, awarding authority, number of BOE, date of publication, object of the contract, type and form of procedure, budget, how to obtain more information and all documents needed, specific requirements that the contractor has to fulfill, announcement fees (whenever necessary), website where the public can have access to all information related to the present contract notice, for contract notices of services, the duration of the contract is normally specified.

2. - The website created by the Ministry of Economy "**plataforma de contratación**" (www.contrataciondelestado.es/wps/portal/plataforma) is also a very reliable source where one can find all contract notices and a special link to search according to the CPV. The website is available in Spanish and in other official languages existing in the Spanish territory (Catalan, Basque and Galician) but not in English or French. The information provided is similar to the information provided by BOE (see also above point 1): Title of the contract notice, awarding authority, number of BOE, date of publication, object of the contract, type and form of procedure, Budget, how to obtain more information and all documents needed, specific requirements that the contractor has to fulfill, announcement fees (whenever necessary), website where the public can have access to all information related to the present contract notice, for contract notices of services, the duration of the contract is normally specified.

3. - As regards the information provided on the **website of the Autonomous Communities**, it includes information on the contract notices to be performed in that region and not on contract notices covering the entire State. Therefore, the information is not a complete source when we are looking for information on contract notices in the entire Spanish territory but is a very complete source when we have an interest in a specific region. Information is available in Spanish and in the language of the Autonomous Community in the case of those with a second official language. Some also provide information in other EU languages such as

English and/or French.

4- As regards the identified **private entities** providing information services in the area of public procurement, after having established contact with some of them and having identified some companies using their services, it seems that the most extended and reliable sources are www.gestboes.com and www.maninvest.com.

d.) Final conclusion

In summary, we can conclude that in Spain public authorities facilitate access to information on open contract notices in the area of service concessions in the following sectors: water, waste treatment, health services and public transport by water. There are several public sources of information where private individuals and companies can obtain the information required. Furthermore, the Spanish authorities have done a remarkable work with the setting of the website "Plataforma de contratación del Estado" which contains all information regarding contract notices in order to improve the use of electronic means in the area of public procurement, and more in particular to improve publicity, notification and the timeframe to present proposals. All these public services are for free.

In addition, private entities provide also information on contract notices published in Spain. It seems that the use of such services is the most common way for private companies/ individuals to obtain update and complete information on contract notices. These services are however not for free and the private company/ individual have to pay an annual fee.

Finally, we should also mention that despite the fact that in principle all contract notices are open to companies located not only in the Spanish territory but also in any other country of the European Union, most of the sources of information are either in Spanish or in any of the co-official languages (whenever appropriate). We regret the fact that both public and private sources do not include relevant information in other EU language such as English and/or French.

Part A: Research and Identification of sources of information on service concessions

The following study identifies how public authorities in Italy inform economic operators on their intention to award service concessions.

a. The notion of public service concessions

Service concessions have been identified on the basis of the definition provided by the Italian Law regulating public contracts (Law 163/2006 - "Testo Unico Appalti"),¹ and taking into account the basic criteria elaborate by the Italian doctrine on this matter,² the definition of public service concessions by the Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and the definition of public work concessions provided by the Directive 93/37/EC.

- **Italian Law 163/2006 on public contracts**

The definition of public service concessions provided by:

- Article 3, paragraph 12: *"La <<concessione di servizi>> è un contratto che presenta le stesse caratteristiche di un appalto pubblico di servizi, ad eccezione del fatto che il corrispettivo della fornitura di servizi consiste unicamente nel diritto di gestire i servizi o in tale diritto accompagnato da un prezzo, in conformità all'[articolo 30](#)";*
- Article 30, paragraph 2: *"Nella concessione di servizi la controprestazione a favore del concessionario consiste unicamente nel diritto di gestire funzionalmente e di sfruttare economicamente il servizio. Il soggetto concedente stabilisce in sede di gara anche un prezzo, qualora al concessionario venga imposto di praticare nei confronti degli utenti prezzi inferiori a quelli corrispondenti alla somma del costo del servizio e dell'ordinario utile di impresa, ovvero qualora sia necessario assicurare al concessionario il perseguimento dell'equilibrio economico – finanziario degli investimenti e della connessa gestione in relazione alla qualità del servizio da prestare".*

- **Criteria elaborate by the Italian doctrine to identify public service concessions**

- The object of the concession is a "public service": *i.e.* activities whose nature and purpose, as well as the rules to which they are subject, are likely to be the State's responsibility and competence;
- The concessionaire has the right to exploit the service: the application of this criteria means that the concessionaire bears the risk involved in operating the service (*i.e.* the responsibilities and risks of exploitation are transferred to the concessionaire);
- Trilateral relation: *i.e.* public authority, concessionaire and final users to whom the service is provided. This implies that the concessionaire does not receive remuneration directly from the awarding authority. However, according to the Italian legislation (Law 163/2006, Article 30, paragraph 2) the consideration for the service(s) delivered may consist in the concessionaire's right to exploit such

¹ The Italian Law 163/2006, which transposes at national level the EC Public Procurement Directives (*i.e.* 2004/17/EC and 2004/18/EC), is available at http://www.simone.it/appalti/codice/codice_appalti.htm.

² Among others, Lino Bellagamba, "L'affidamento di forniture e servizi dopo la Finanziaria 2004", Maggioli Editore, II edizione.

service(s), or in this right plus a specific amount/value (i.e. public remuneration), for example in order to keep prices down for the user ("social prices").

- **Directive 2004/18/EC on the “coordination of procedures for the award of public works contracts, public supply contracts and public service contracts”:**

“Service concession’ is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.”

- **Directive 93/37/CE on public work concessions**

The definition of public work concessions provided by Article 1 (d) of the Directive:
“(...) a contract of the same type as that indicated in (a) except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment”.

As a result, the study was developed analysing those acts attributable to the State whereby a public authority entrusts to a third party the total or partial management of services for which that authority would normally be responsible and for which the third party assumes the risk, with or without a payment in addition to the right to exploit.

b. Research of sources and methodology

According to Article 30 of the Italian Law regulating public contracts (Law 163/2006 - “*Testo Unico Appalti*”), public service concessions do not fall under the scope of the Law and are not subject to the specific provisions requiring mandatory publication (i.e. publication in the Official Italian Journal, in the contracting authorities’ website, in the “[Osservatorio](#)” – official website dedicated to public contracts, in the Italian Ministry of Infrastructures and Transport’s website, and at least in two major national and local newspapers).

However, the award of public service concessions must be governed by the general principles concerning public contracts and by the principles deriving from the EC Treaty, namely the principles of transparency, non-discrimination, equality of treatment, proportionality and appropriate publicity (“*adequata pubblicità*”).

In this respect, the Law requires contracting authorities to invite at least five economic operators (if existing for the specific sector concerned) to the informal tender (“*gara informale*”), and to set in advance the criteria for the award of the contract.³ Nevertheless, the Law does not mention or refer to any specific means of publication.

Therefore, the Italian contracting authorities are not bound by any obligation to employ a specific means of publication for the award of public service concessions, unless it is required by specific provisions of law (which may exist for single sectors or specific contracts). Moreover, contracting authorities awarding public service concessions often do not publish contract notices at all, but invite those economic operators to the informal tender which are included in their “official lists” of trustful service providers for the specific sector concerned (“*elenchi delle imprese di fiducia*” o “*elenchi degli operatori economici qualificati*”).⁴

As a result, the situation in Italy is characterized by a very complex and articulated framework, which may lead to inconsistencies as to the way public authorities express their intention to award public service concessions, and to possible different scenarios at national, regional and local level. The fragmentation of the means of publications is also due to the fact that the public administration in Italy is composed of a high number of authorities, both at regional and

³ Article 30, paragraph 3.

⁴ This practice appears to be the most widespread practice within public authorities at regional and local level.

local level.⁵

- **Public means of publication**

Public means of publication are those legal means of publication available to public authorities at national, regional and local level in order to publish all their acts, not only public contracts or concessions, but also legal acts (e.g. national, regional and local laws and regulations).

These means of publication were identified through comprehensive internet researches. Moreover, most of the public means of publication identified in the report (e.g. Official Journal, contracting authorities' website, major national and local newspapers) are those required by the Italian Law 163/2006 ("Testo Unico Appalti") for mandatory publication of public contracts (Article 66, paragraph 7).

At the national level, there are three relevant public means of publication of contract notices concerning the award of public service concessions: i) the Official Journal (*Serie speciale* – special section for public contracts), organized in sub-sections according to the specific nature of the contracting authority concerned (Ministries, State authorities, regional and local public authorities, bodies governed by public law, public authorities for the health sector, etc.); ii) the relevant Ministry's website, for public concessions awarded within the competence of the Ministry itself; iii) national newspapers.⁶

At the regional and local level, contracting authorities may utilise various public means of publication: i) the Bollettino Ufficiale delle Regioni – BUR (Regional Official Bulletin)⁷ ii) the Albo Pretorio;⁸ the contracting authority's website (if existing)⁹ in the different Regions, Provinces and Municipalities;¹⁰ and iii) regional and/or local newspapers.¹¹

- **Private means of publication**

The list of private websites providing information on service concessions was established through in-depth internet investigations, while carrying out the study.¹²

It is important to stress that there are cases (for example, it occurs sometimes for public procurements concerning engineering services) where information on public contracts is only provided by means of paper publications under subscription. Therefore, it is likely that some private/business information services provide such information in the same way (i.e. only paper publications) for public service concessions. It is clear that paper sources are not detectable through internet investigations and that it appears impossible to identify such sources for the entire territory.

- **Contacting relevant active operators per sector**

Finally, economic operators active in the specific sectors object of our study of various sizes, from various geographic areas and operating on various levels, both national and regional, have been contacted by email and by phone to enquire about their sources of information concerning concession contracts.¹³

⁵ Italy is subdivided into 20 Regions (*Regioni*), and it is further divided into 109 Provinces (*Province*) and 8,101 Municipalities (*Comuni*).

⁶ In general, publication in a newspaper is quite expensive and only few contracting authorities use this means of publications.

⁷ Paper means of publication at the regional level. The online version of the BUR is available for all Italian regions (i.e. [Abruzzo](#), [Basilicata](#), [Calabria](#), [Campania](#), [Emilia Romagna](#), [Friuli Venezia Giulia](#), [Lazio](#), [Liguria](#), [Lombardia](#), [Marche](#), [Molise](#), [Piemonte](#), [Puglia](#), [Sardegna](#), [Sicilia](#), [Toscana](#), [Trentino Alto Adige](#), [Umbria](#), [Valle d'Aosta](#), [Veneto](#)).

⁸ Paper means of publication at the local level (for each *Comune*). Only on-the-spot consultation is possible.

⁹ Not all contracting authorities at local level have, in fact, websites where they published contract notices.

¹⁰ See footnote 5.

¹¹ See footnote 6.

¹² It cannot be excluded that other similar websites are available to economic operators for consultation.

¹³ For the methodology applied in order to identify the relevant active operators see the document "IT_Annex" attached to the report.

An overview of these contacts is provided in the document “IT_Annex” (please see attached CD). This method, however, has not led to any new sources of information about public concessions. A large majority of operators were either unable or unwilling to provide any information.

c. Identification of the means of publication

The following is an overview of the means of publication of public service concessions in Italy for the sectors of relevance for this study (*i.e.* waste management, water industry, health services and public transport by water).¹⁴ Such means are classified into “Internet sources” (public and private means of publication) and “Paper sources” (public and private means of publication):

Internet sources¹⁵

- Public means of publication

National level

- Official Italian Journal - [Gazzetta Ufficiale della Repubblica Italiana](#). Only numbers issued within the 60 days previous to the consultation date are available online for free. The access to the complete version of the database is possible upon payment of a 130€ fee (annual online subscription);
- Ministries’ website - [Ministry of Health](#), [Ministry of Infrastructures](#), [Ministry of Transports](#), [Ministry of Environment](#).

Regional and local level

- Regional Official Bulletin – BUR (online version);¹⁶
- Contracting authorities’ website (if existing) in the different Regions, Provinces and Municipalities.¹⁷

- Private means of publication

Private/business websites are available, in general, for the consultation of public contracts upon payment of a fee.¹⁸ These websites provide information mainly on public contracts and public procurement procedures in different sectors;¹⁹ however, they also offer²⁰ database services on public service concessions (if such public contracts have been published by the competent public authority),²¹ and on the notices published by contracting authorities in order to renew their “official lists” of trustful service providers for a specific sector (“elenchi delle imprese di fiducia” o “elenchi degli operatori economici qualificati”). Below follows a representative list of such private websites:²²

- [Telitel srl](#)

¹⁴ It has to be noted that public service concessionaires award public service contracts to third parties for the provision of specific services under concession (“downstream phase”). As for the “upstream phase” (*i.e.* public authorities awarding public service concessions), public service concessionaires must publish notices for the award of public service contracts (see in this sense, the Commission Interpretative Communication on concessions under Community Law (2002/C 121/02), § 3.2.2., and Directive 93/37/CE concerning the coordination of procedures for the award of public works contracts). These notices concern public service contracts and not public service concessions, therefore they fall outside the scope of this study.

¹⁵ All the internet websites providing information on public service concessions are user friendly websites.

¹⁶ See footnote 7.

¹⁷ See footnote 5.

¹⁸ The exact amount of the fee depends on different factors: i) the type of service provided (*i.e.* database service on public service concessions; database on notices for the renewal of the contracting authorities “official lists”; both of them); and ii) the number of Regions selected.

¹⁹ None of these websites is specialized in a specific sector.

²⁰ This information was provided after contacting all the websites in the list by phone or by mail.

²¹ See footnote 4.

²² As mentioned before, the list of private websites was established while carrying out the study. It cannot be excluded that other similar websites are available to economic operators for consultation.

- www.infoplus.gare.it
- www.telemat.it
- www.bandweb.it
- www.includo.it
- www.banchedati.biz
- www.lineappalti.it
- www.infogare.it
- www.arx.org/appalti.htm
- www.appaltiinlinea.it
- www.velcano.it
- www.InfoCenterServizi.it

Paper sources

- Public means of publication

National level

- The paper version of the Official Italian Journal reflects the online version and prevails in case of discrepancy between the two versions. The paper version is available upon payment of 295€ (annual subscription);
- Major national newspapers.

Regional and local level

- BUR paper version, available upon payment of a fee;²³
- *Albo Pretorio*;²⁴
- Major regional and local newspapers.

- Private means of publication

Paper version of the database service provided by the private/business websites listed above (when available).²⁵

d. Identification of contract notices – Year 2008

On the basis of the results obtained through a comprehensive search on the Official Italian Journal (online version) in the last 6 months (June-November 2008), about 165 contract notices were published.

Note: It is important to have in mind that concerning contract notices published before the 60 days time-period prior to the consultation date (i.e. not available for free consultation), it is

²³ In the *Regione Marche*, for example, the BUR is available upon payment of a fee between 100€ and 125€ (annual subscription), or between 55€ and 68€ (6 months subscription).

²⁴ See footnote 8.

²⁵ As mentioned before, it is important to stress that there are cases (for example, it occurs sometimes for public procurements concerning engineering services) where information on public contracts is only provided by means of paper publications under subscription. Therefore, it is likely that some private/business information services provide such information in the same way (i.e. only paper publications) for public service concessions. It is clear that paper sources are not detectable through internet investigations and that it appears impossible to identify such sources for the entire territory.

often not possible to establish if the contract notice refers to public service contracts or to public service concessions.²⁶ Therefore it is not possible to reliably estimate the number of contract notices published in the Official Journal.

For the purpose of the study and in order to establish the number of concessions over the period under investigation (*i.e.* June-November 2008), the investigation was carried out as follows:

- Contract notices published within 60 days previous to the consultation date (*i.e.* available for free consultation): the content of the notices identified has been analysed according to the criteria indicated in section a. of this document, in order to select the relevant ones;
- Contract notices published before the 60 days time-period prior to the consultation date (*i.e.* not available for free consultation): only those notices that, from the brief description available, seemed to match the criteria identified in section a. of this document, have been selected. In this respect, particular attention was made to: i) the reference to a “public service” and to the right to “exploit” the service; and ii) the possibility to identify a trilateral relation (*i.e.* public authority, concessionaire and final users, as the beneficiaries of the service provided). It is clear, however, that it is not possible to reliably estimate the number of contract notices published in the Official Journal, for this period.

Details of the results:

- **Waste management:** 73 contract notices;
- **Public transports by water:** 4 contract notices (1 for goods and 3 for persons);
- **Health services:**²⁷ 66 contract notices;
- **Water industry:** 22 contract notices.

Following a brief scrutiny of all contract notices available for free consultation in the Official Journal (*i.e.* published during the 60 days time-period prior to the consultation date), the information available can be grouped as follows:

Date of publication
Response date (deadline or expiry date)
Title of the contract (exact name of the contract)
Sector in which the contracting authority operates

²⁶ Contract notices published during this period, in fact, are not available for free consultation and often they only make reference to the award of a “public service” without mentioned the “nature” of the contract to be awarded.

²⁷ According to the case-law of the Italian Court of Justice, only public service concessions of social relevance and directly related to health issues (*e.g.* protection of public health) have been analysed. However, the study was carried out taking also into consideration works concessions, as expressly required by the Commission. Moreover, it is important to stress that the health sector in Italy is mainly based on a system of “convenzioni”, *i.e.* public contracts according to which an operator, which fulfils specific requirements and conditions provided by law, is authorized by the competent public authority to operate as a “qualified” operator (“operatore accreditato”) and to provide public health services. These contracts differ from concessions because the initiative comes from the operators and because the competent public authority cannot refuse to “qualify” an operator if all the required conditions are fulfilled.

Subject of the contract (specific service(s) to be performed)
Place where the contract has to be performed
Duration of the contract
Names of publishing authorities/entities and contact details (address, telephone number(s), email and website if existing)
Eligibility criteria and general conditions for applying to tender
Relevant documentation
Value of concessions advertised (it is included in most but not all records) ²⁸
Type of procedure used to award concessions

e. **Feasibility report**

It appears quite difficult to identify the most convenient sources of documentation to recommend for the second phase of the study.

- **Public sources of documentation**

At national level, the most complete source of documentation is the Italian Official Journal,²⁹ which, as mentioned before, contains sub-sections organized according to the nature of the different contracting authorities (Ministries, State authorities, regional and local authorities, bodies governed by public law, public authorities for the health sector, etc.). However, the analysis carried out and the meagre number of contract notices identified raises serious concerns on the reliability of this source for developing a comprehensive study mirroring the *status quo* in the relevant sectors in Italy.

Indeed, in the absence of any legal obligation to use a specific means of publication for the award of public service concessions, the following observations are made:

- First of all, not all contract notices concerning public service concessions (awarded or to be awarded) are published in the Official Journal, neither the parameters discerning what has and has not to be published are clear. Moreover, concerning contract notices published before the 60 days time-period prior to the consultation date (*i.e.* not available for free consultation), it is often not possible to establish if they refer to public service contracts or to public service concessions.³⁰ Therefore it is not possible to reliably estimate the number of contract notices published in the Official Journal.

²⁸ According to the Italian legislation the consideration for the service(s) delivered may consist, in fact, in the concessionaire's right to exploit such service(s), or in this right plus a specific amount/value (*i.e.* public remuneration).

²⁹ The relevant Ministries' websites, in fact, do not seem to be reliable sources to conduct the analysis at the national level. The researches carried out showed that only contract notices which fall under the competence of the Ministries themselves are published in their respective websites.

³⁰ As mentioned before, these contract notices are not available for free consultation and often they only make reference to the award of a "*public service*" without mentioned the "nature" of the contract to be awarded.

- Secondly, the criteria according to which contracting authorities publish contract notices at the regional and local level are unclear as well. Such analysis would require an in-depth analysis and scrutiny of the Italian legislation, highlighting the specific rules governing the publication of public service concessions in the relevant sectors.³¹

- **Private sources of documentation**

Private/business websites seem to be the most appropriate source of documentation, offering, through consultation of a single source of documentation, access to databases covering contract notices published at national, regional and local level.

Therefore, the information provided could offer a comprehensive picture of public service concessions in Italy. However, as such database services are only accessible for consultation under subscription upon payment of a fee, it was not possible to examine them and to verify the reliability and completeness of the information available.

f. Final Conclusions

Due to the complexity of the Italian public administration framework and the multitude of means of publication in place at regional and local level, it appears difficult to carry out a detailed research in order to get a comprehensive view of public service concessions in Italy.

First of all, the study does not appear fully feasible if based on the relevant public source of documentation at national level (*i.e.* Official Journal), due to its lack of reliability with regard to the completeness and the quantity of information available.

One option could be to extend the analysis to public regional sources of documentation, in order to integrate the information provided by the Official Journal, carrying out the investigation on a pre-selected sample of Regions covering northern, central and southern Italy. In this respect, in order to limit time and reduce costs, the study could be based on the online version of the BUR.³²

Moreover, it is understood that - according to the methodology - the analysis at the local level does not appear to be feasible at all, considering the high number of local administrations in Italy, and that most of the sources available at this level are paper sources (*i.e.* *Albo Pretorio*),³³ requiring on-the-spot consultations.³⁴

The second option could be to carry out the investigation through private/business websites' databases, which are available under subscription upon payment of a fee. As mentioned before, these websites, which are specialised mainly on public contracts and public procurement procedures, also offer database services on public service concessions (if such public contracts have been published by the competent public authority), and on the notices published by contracting authorities in order to renew their "official lists" of trustful service providers for a specific sector ("*elenchi delle imprese di fiducia*" o "*elenchi degli operatori economici qualificati*").³⁵

³¹ Moreover, the investigation of sources at regional and/or local level would require a scrutiny of all different means of publication (BUR, *Albo Pretorio*, etc.) available for each public authority (Regions, Provinces, Municipalities, etc.), which does not appear feasible and in line with time and price constraints for the submission of the final report.

³² The BUR should be considered the most reliable source of documentation at regional level. It is possible, in fact, that not all contracting authorities at this level have websites where they published contract notices.

³³ Not all contracting authorities at local level have, in fact, websites where they published contract notices.

³⁴ This methodology appears to be very problematic and could raise difficulties in coordinating the national source of documentation (*i.e.* Official Journal) - which includes a sub-section for notices published by regional public authorities - and the regional ones (*i.e.* BUR for each pre-select Province). Moreover, not to investigate sources at local level could prejudice the completeness of the study: due to the high number of local contracting authorities sources at local level seem to be the most relevant sources of documentation (in terms of quantity of information available).

³⁵ The advantage of this methodology is that it implies the consultation of a single source of documentation, but covering notices published at all different levels (*i.e.* national, regional and local level). Therefore, the information provided could offer a comprehensive view of public service concessions in Italy.

It appears of crucial importance to stress that under none of the methodologies suggested above it is possible to carry out a detailed research in order to get a comprehensive picture of public service concessions in Italy.

The problem, indeed, seems not to be to identify the most reliable, appropriate or convenient source of documentation in order to conduct the investigation. Difficulties are caused due to the absence of any legal provision imposing specific mandatory publication for public service concessions.

As mentioned before, the Italian Law regulating public contracts (Law 163/2006 - "*Testo Unico Appalti*") requires contracting authorities to invite at least five economic operators (if existing for the specific sector concerned) to the informal tender ("*gara informale*"), and to set in advance the criteria for the award of the contract.³⁶ Nevertheless, the Law does not mention or refer to any specific means of publication.

Therefore, contracting authorities are not bound by any obligation to employ a specific means of publication for the award of public service concessions. The only mandatory prescription of the Italian Law is to respect the general principle of appropriate publicity ("*adeguata pubblicità*").

In this respect, contracting authorities awarding public service concessions often do not publish contract notices at all, but invite those economic operators to the informal tender which are included in their "official lists" of trustful service providers for the specific sector concerned ("*elenchi delle imprese di fiducia*" o "*elenchi degli operatori economici qualificati*").

It is obvious that under this practice, which appears to be the most widespread within public authorities at regional and local level, there are no useful sources of documentation (public or private; at national, regional or local level) for developing a comprehensive study mirroring the *status quo* in Italy concerning public service concessions.

³⁶ Article 30, paragraph 3.

Part A: Research and Identification of sources of information on service concessions

a. Research of sources

Source principale nationale :

Diário da República (Journal officiel portugais).

Les art. 2 et 130 du Code des Contrats Publics (Décret-loi n° 18/2008 du 29 janvier) prévoit l'obligation de publier les avis de concours au Diário da República. L'art. 157 du CCP prévoit la procédure applicable à la publication des concours urgents au Diário da República (les délais sont plus courts).

Dans la 1^{ère} série sont publiés, entre autres, les décrets-lois ou actes législatifs de la compétence du gouvernement. Dans la 2^{ème} série, sont publiés tous les actes pour lesquels le législateur prévoit cette obligation. Dans la partie L de la 2ème série, appelée "Contratos públicos", sont publiés les avis relatifs aux procédures de formation des contrats publics.

Le Diário da República du jour est disponible librement on-line sur le site : www.dre.pt. Il est possible de consulter les journaux librement jusqu'à 45 jours à compter du jour de la consultation. Pour les journaux plus anciens, il est nécessaire de souscrire le service. De même, il n'est possible d'utiliser le moteur de recherche du site que si ont a souscrit le service. Par contre, il est possible d'accéder par ce site au DIGESTO, qui est une base de données centrale d'information législative, laquelle permet d'effectuer des recherches.

Concernant les régions autonomes, les avis sont publiés au « Jornal Oficial da Região Autónoma dos Açores » pour les Açores, disponible sur le site www.azores.gov.pt/JQ , et au « Jornal Oficial da Região Autónoma da Madeira » pour Madère, disponible sur le site www.gov-madeira.pt/joram .

Autres sources :

Le gouvernement portugais a entrepris une action de modernisation et de simplification des procédures administratives, en même temps qu'il a implanté une plus grande transparence dans les procédures relatives aux marchés publics, notamment à travers le programme Simplex. L'art. 3 du DL n° 18/2008 prévoit spécifiquement la création d'un site unique pour les marchés publics, dont le fonctionnement est défini par règlement (« portaria »). Par contre, il n'y a pas d'obligation de divulguer tous les éléments du concours sur les sites Internet. Un certain nombre de sites Internet publient les avis de concours :

- www.base.gov.pt est le site des contrats publics on-line (réglementé par la portaria n° 701-F/2008 du 29 juillet). La publication de l'avis sur ce site est obligatoire. Cette page ne contient que des informations très limitées sur les procédures de passation de marchés publics et il n'est pas possible de rechercher les avis de concours.
- www.ancp.gov.pt est le site des achats publics. Les différents services de l'administration publique portugaise ne peuvent acheter leur matériel que sur cette page. Les entreprises privées sont invitées à s'inscrire pour soumettre leurs services et leurs biens.

- La plateforme électronique pour les marchés publics est www.vortalgov.pt , laquelle se divise en plateforme spécifiques pour certains secteurs. La page correspondant au secteur de la santé est : www.vortalhealth.pt . La création et le fonctionnement des plateformes électroniques pour les marchés publics se trouve réglementé par la portaria n° 701-G/2008 du 29 juillet.

Vortal est une société anonyme qui a pour mission intégrer par voie électronique les procédures entre l'Etat et les entreprises, de manière à rendre les transactions plus sûres, confidentielle, plus rapides, plus simples et plus efficaces. Vortalhealth est dirigé à tous les opérateurs qui sont obligés de respecter les normes relatives aux marchés publics dans le secteur de la santé. Ce site permet de réaliser on-line toutes les phases du concours public pour l'attribution du marché, depuis la divulgation de l'avis jusqu'à la notification du résultat. Pour ce faire, il est nécessaire d'effectuer son inscription. Le formulaire d'adhésion demande toute une série d'informations concernant l'entreprise (identification du registre commercial, volume d'affaires...). Ce service est payant et le prix est fixé en fonction du volume d'affaires de l'entreprise. Certains concours prévoient déjà que la candidature et toute la procédure d'adjudication se fera à travers ce site.

Autres sources nationales :

- www.portaldasaude.pt est le site officiel du Ministère de la Santé portugais. Les concours dans le domaine de la santé publiés sur ce site n'ont pas été actualisés depuis 2007.
- www.aip.pt est le site de l'Association Industrielle Portugaise, laquelle dispose d'un service d'alerte pour la divulgation des annonces concernant les marchés publics internationaux. Ce service est payant (300 euros, avec 10% de réduction pour les associés).
- www.portaldaempresa.pt dispose d'une rubrique « opportunités » où figurent les adresses de plateformes électroniques publiant les avis de concours publics.

Sources régionales :

- Administration régionale de la santé du Nord, www.arsnorte.min-saude.pt ne divulgue que les concours ouverts par l'opérateur en question.
- Administration régionale de la santé du Centre, www.arscentro.min-saude.pt ne divulgue que les concours ouverts par l'opérateur en question dans la rubrique « informations ».
- Administration régionale de la santé de Lisbonne et Vallée du Tage, www.arslvt.min-saude.pt ne divulgue que les concours ouverts par l'opérateur en question.
- Administration régionale de la santé de l'Alentejo, www.arsalentejo.min-saude.pt ne divulgue que les concours ouverts par l'opérateur en question dans la rubrique « informations ».
- Administration régionale de la santé de l'Algarve, www.arsalgarve.min-saude.pt ne divulgue que les concours ouverts par l'opérateur en question.
- www.hospitaisepe.min-saude.pt contient les avis de concours concernant les hôpitaux EPE.
- www.catalogo.min-saude.pt est la plateforme électronique contenant le catalogue des approvisionnements des entités publiques dans le secteur de la santé.

Source européenne :

- La publication au JOCE n'est pas obligatoire, mais elle est prévue dans diverses dispositions du Code des Contrats Publics, notamment aux arts. 34, 35 et 131.
- Les avis de concours publiés au Portugal peuvent également être publiés sur le site

européen www.simap.europa.eu relatif aux marchés publics en Europe.

Les sources européennes ne sont pas complètes, puisque la publication sur des sources européennes n'est pas obligatoire.

b. Identification des concessions de service public

19 avis de concours ont été publiés entre juin et décembre 2008, dont seulement 3 sont qualifiés de « concessions » (deux concernent la concession de bars et restaurants et le dernier la concession de services bancaires, c'est-à-dire implantation d'une agence bancaire dans un hôpital). Le reste est toujours qualifié « d'acquisition de services ». Les résultats des procédures d'adjudication ne sont que notifiés aux candidats et affichés dans les locaux de l'opérateur qui a ouvert le concours.

Les montants en cause ne sont que très rarement spécifiés (seulement dans un des avis, dont le prix base a été fixé à 80.000,00 euros), ce qui peut s'expliquer par le fait que le prix le plus bas ou la proposition la plus avantageuse du point de vue économique sont les critères principaux d'adjudication de ces concours.

Les avis incluent les informations suivantes :

- Numéro du contrat et numéro de la publication au Diário da República (ils ne coïncident pas) ;
- Les codes CPV ;
- Les critères d'adjudication du marché ;
- Les délais de consultation des documents du concours, les délais de dépôt de candidatures, la date d'ouverture des dossiers de candidatures et la date d'affichage des résultats ;
- Les délais d'exécution du contrat ;
- Le nom et les contacts de l'entité publique, qui promeut le concours et où il est possible d'obtenir des éclaircissements et des informations complémentaires ;
- L'obligation ou non de dépôt d'une caution ;
- La date d'envoi de l'avis au Diário da República et s'il a été publié au JOCE ;
- Les plus récents contiennent également une référence à la publication ou non de l'avis sur une plateforme électronique (nous sommes encore en période transitoire, art. 9 du Code des Contrats Publics, par conséquent la divulgation sur un site n'est pas obligatoire).

Les altérations et prorogations au concours font l'objet d'une nouvelle publication, où il est fait référence à la première. Les critères de sélection des candidatures et le détail des critères d'adjudication figurent sur le cahier des charges et autres documents du concours, lesquels ne sont pas nécessairement publiés dans l'avis, mais doivent être demandés à l'entité publique et sont le plus souvent payants (cela va de 20 à 100 euros).

c. Rapport de faisabilité

1. Au vu des sources permettant l'identification des concessions de service public, le journal officiel portugais est une source fiable, facile d'accès et peu coûteuse. Il est possible d'obtenir la plupart des informations concernant le concours par la lecture du seul avis. Néanmoins, ces informations ne sont pas suffisantes, notamment en ce qui concerne les conditions de candidature et les critères d'adjudication. En outre, l'objet du concours est habituellement défini de manière très résumée dans l'avis, ce qui peut se révéler insuffisant pour déterminer s'il s'agit d'une concession de service public ou non.

Les plateformes électroniques relatives aux marchés publics ne sont finalement accessibles et n'ont d'intérêt que pour les entreprises, dont la taille est relativement importante et travaillant dans le secteur d'activité avec nombre d'entités publiques.

Par conséquent, la partie B de l'étude, concernant les concessions de service public pour 2008, demandera un certain temps, le temps nécessaire à l'établissement de contacts directs avec les opérateurs publics, et, en principe, aura un coût supplémentaire nécessaire à l'envoi du cahier des charges et autres éventuels documents.

2. Le nombre de concessions dans le secteur de la santé n'est actuellement pas très élevé. Par ailleurs, la qualification juridique attribuée dans les avis de concours rend difficile une correcte identification de l'objet des concours et, par conséquent, de la qualification de concession de service public. Il existe, toutefois, des projets de partenariats public-privé, dont une première vague a déjà été lancée, qu'il serait intéressant d'étudier.

d. Conclusions

Note explicative sur le secteur de la santé au Portugal

Au Portugal, dans le domaine de la santé, comme dans d'autres, le secteur public a connu des réformes ces dernières années, notamment avec l'introduction des techniques de gestion privée. Depuis fin 2002, les hôpitaux ont été transformés en entreprises publiques (EPE).

Au Portugal, les prestations dans le secteur de la santé sont assurées par un système public, le Service National de Santé (SNS) sur le Continent et par les Services Régionaux de Santé dans les Açores et à Madère. Il existe en parallèle un certain nombre de mécanismes de protection supplémentaire pour certaines catégories de la population par l'intermédiaire de sous-systèmes publics (ADSE pour les fonctionnaires publics, par exemple, encore que certains de ces sous-systèmes ont été éliminés récemment) ou des mécanismes privés (le SAMS, par exemple, est un système mis en place par les entreprises du secteur bancaire pour leurs fonctionnaires). En complément du SNS, les portugais souscrivent librement souvent des assurances santé privées.

A l'origine, le SNS fonctionnait sur la base du financement public et la prestation de services de santé par les entités publiques. Compte tenu des grands problèmes d'inefficacité et d'insuffisance de la capacité de réponse face aux besoins de la population, depuis la deuxième moitié des années 90, les services de santé ont été décentralisés. Actuellement, coexistent des services intégrés (centres de santé et hôpitaux publics) et des services souscrits (hôpitaux privés, pharmacies, moyens complémentaires de diagnostic et de traitement, entre autres). Les services souscrits ne constituent pas des concessions de services publics, mais s'effectuent sur la base de protocoles de coopération entre le secteur

public et privé.

C'est dans ce contexte que surgit l'implantation des règles de gestion privée dans les hôpitaux et le lancement de partenariats public-privé. Les unités ont été au préalable transformées en sociétés anonymes de capitaux exclusivement publics, pour être ensuite transformées en Entités Publiques d'Entreprise (Entidades Públicas Empresariais, ou EPE). Ces EPE, outre le mode de gestion privée et une séparation fonctionnelle entre le financement et la prestation de service, sont rémunérées en contrepartie de la prestation de services aux bénéficiaires du SNS. Leur activité est encadrée par des contrats pluriannuels de production et de convergence célébrés entre les hôpitaux et le Ministère de la Santé.

En 2005, ont également été célébrés des contrats-programme avec les hôpitaux qui se sont maintenus dans les administrations publiques. La seule différence dans ce cas est l'origine des ressources : le financement est défini en prenant pour base le budget de l'Etat.

Aujourd'hui, nous avons trois types d'hôpitaux : les EPE, les SPA (Sociedade Anónima de capitais Públicos) et les PPP (partenariat public-privé). Les PPP n'ont pour l'instant pas de poids significatif : la gestion du premier hôpital construit avec un partenariat public-privé a été transférée le 1^{er} janvier 2009 (Centro Hospitalar de Cascais). Concernant les autres hôpitaux, les procédures sont encore en cours. En tout, ils seront 10, mais la première vague ne concerne que 4 hôpitaux.

Sur la base du plan financier des projets PPP dans le secteur de la santé, la valeur nominale estimée des projets est de 5.631,1 millions d'euros, dont 5.534,8 millions pour les partenariats des nouveaux hôpitaux, insérés dans la première vague de PPP et 96,3 millions d'euros pour le Centre de réception du SNS et le Centre de médecine physique et réhabilitation du Sud (CMFR)¹. Toutefois, ces valeurs ne tiennent pas en compte les coûts à supporter par la gestion pendant les 20 ans qui suivent les dix ans du contrat de gestion.

Le Portugal n'a pas de régions en tant que division administrative, excepté dans le secteur de la santé.

Plusieurs personnes expertes dans le secteur de la santé et des contrats publics ont été contactées. La structure et le fonctionnement du SNS au Portugal fait qu'il existe très peu de concessions de services médicaux dans ce secteur, et rien ces derniers six mois. Actuellement, les entités publiques pour les actes non médicaux, exception faite de la gestion de bars (2 avis de concours pour l'octroi de concessions) et les services bancaires (installation d'une agence dans un hôpital), ont recours à ce qu'elles appellent une « acquisition de services », limitée dans le temps. Elles ne lancent plus de concours pour l'octroi de concessions, mais négocient des prestations de services.

De même, en ce qui concerne les services publics médicaux, les avis de concours ne mentionnent que des « acquisition de services ». Par ailleurs, le texte des avis est très succinct et ne permet pas d'identifier très clairement si le concours concerne en réalité une concession de service public, bien que l'objet du marché puisse donner une indication. Il faudrait pour cela demander le cahier de charge et les autres documents du concours, qui doivent être demandés à l'entité qui lance le concours et qui sont en règle générales payantes (les montants varient entre 20 euros et 100 euros). Les concours fonctionnent encore sur la base du contact direct, après lecture du Diário da República, auprès de l'opérateur. Il reste difficile d'avoir accès à toute l'information. Par ailleurs, l'administration publique a recours très souvent à l'acquisition de services pour combler les manques de personnel dans les hôpitaux et centres de santé, mais il n'y a pas transfert de l'exploration du service, ni transfert des risques. Ces prestataires sont, en outre, rémunérés directement par l'opérateur public. On ne peut pas, dans ce cas, qualifier ces acquisitions de services de concessions de service public.

M. Paulo Bastos, ingénieur du groupe Ambimed (le plus grand opérateur privé dans la

¹ Données de la Cour des Comptes portugaise publiée in *Relatório de acompanhamento das PPP – Saúde*, 2006, n° 1/07.

gestion de résidus hospitaliers dans la Péninsule Ibérique), qui était présent lors de la négociation des hôpitaux PPP, en tant que représentant du groupe, nous a informé que les négociations concernant les projets PPP dans le secteur de la santé sont au point mort depuis quelques temps. Seul le projet de Cascais a vu le jour, avec quelques difficultés, notamment avec le rapport de la Cour des Comptes portugaise.

Part A: Research and Identification of sources of information on service concessions

INTRODUCTION

Purpose of present report

The purpose of the present report is the identification of all existing sources of information used by the UK authorities to make public their intention to award contract notices on service concessions, and publicise the actual concessions awarded.

The research focuses in 4 sectors of public procurement: water, waste management, health services and public transport by water; and aims to provide an estimate of the number of concessions published during the period from April 09 to September 09, for the sectors under study.

From the various information sources used by the contracting authorities, to advertise their offer for public services concessions, this report attempts to recommend those that considers most convenient because their completeness and accuracy, as well as their accessibility by the operators interested.

Notion of service concession

Public service concessions in this study have been identified on the basis of:

- The definition of public service concessions provided by the Directive 2004/18/EC¹ on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Article 1.4:

"Service concession" is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

- The definition of public service concessions provided by the UK Law implementing the Procurement Directive 2004/18/EC: The Public Contracts Regulations 2006²

Article 2:

"Services concession contract" means a public services contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract".

- The distinction of "public services concessions" from other type of public contracts; in particular, from public service contracts and public work concessions (Directive 2004/18/EC³ and Directive 93/37/EC⁴)

¹ Directive 2004/18/EC Of The European Parliament And Of The Council
Of 31 March 2004 On The Coordination Of Procedures For The Award Of Public Works Contracts

² , SI 2006 No. 5, PUBLIC PROCUREMENT, ENGLAND AND WALES, PUBLIC PROCUREMENT NORTHERN IRELAND.

³ Directive 2004/18/EC Of The European Parliament And Of The Council

Of 31 March 2004 On The Coordination Of Procedures For The Award Of Public Works Contracts

⁴ Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts

Directive 2004/18/EC - Article 1.2(d)

"Public service contracts" are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II. A public contract having as its object both products and services within the meaning of Annex II shall be considered to be a "public service contract" if the value of the services in question exceeds that of the products covered by the contract. A public contract having as its object services within the meaning of Annex II and including activities within the meaning of Annex I that are only incidental to the principal object of the contract shall be considered to be a public service contract.

Directive 93/37/EC - Article 1(d)

"Public works concession is a contract of the same type as that indicated in (a)['public works contracts'], except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment".

Period object of study: April 2009 to September 09

Glossary – the following terms used in the report are understood as follows:

- Public procurement - acquisition of goods and/or services by the government at the best possible total cost of ownership. Procurement may involve a bidding process i.e, Tendering.
- Public service concessions - public services contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract, for a given number of years. The concessionaire assumes the risk with or without a payment in addition to the right to exploit.
- Public-private partnership (PPP) - contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. In some types of PPP, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer. In other types (notably the private finance initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government.
- Private finance initiative (PFI) – It is a procurement method based on the PPP structure, which secures private funding for public institutions in return for part-privatisation. Transfers responsibility, but not accountability, for the delivery of public services to private companies. PFI projects aim to deliver infrastructure on behalf of the public sector, together with the provision of associated services such as maintenance.
- Public means of publication- legal means of publication available to public authorities at national, regional and local level in order to publish all their acts, from public contracts or concessions, to include legal acts (e.g. national , regional an local laws and regulations).I
- Private means of publication – industry or private websites (publicly available), industry associations websites, specialist business internet portals, consultancies, etc

Regulatory framework for public service concessions

Public service concessions are in the list of public contracts excluded from the application of the Procurement Directive 2004/18/EC (Article 17⁵), and therefore exempted from the detailed

⁵ Article 17
Service concessions

"Without prejudice to the application of Article 3, this Directive shall not apply to service concessions as defined in Article 1(4)".

procurement procedures. Neither in the Directive nor in the UK implementing law is mentioned the procedure to follow to tender these type of contracts.

However, the award of such contracts is subject to the Treaty rules concerning the freedom to provide services and to the general principles of Community law such as non-discrimination, equality of treatment, transparency and mutual recognition.

Article 3⁶ of the Procurement Directive 2004/18/EC tells us that the service concession must comply with the basic Treaty obligation of non-discrimination on the basis of nationality when it awards contracts to third parties. The contracting authority (public body) granting the special or exclusive right (service concession) must make sure that the principle of non-discrimination is adhered to by providing for it in the granting act.

The principle of non-discrimination is set out in Article 12⁷ of the Treaty⁸ establishing the European Community and given more precise meaning in the rich jurisprudence of the European Court of Justice.

The ECJ in the “*TelAustria*” case (ECJ C-324/98) held that, even where the European Procurement Directives do not require an advertisement to be placed in the Official Journal of the European Union (“OJEU”), there will usually be a need for contract opportunities to be subject to some form of publicity so as to meet basic EC Treaty requirements such as transparency, equal treatment and non-discrimination.

Furthermore, the Commission interpretative communication on concessions under Community Law (2000/C 121/02) says that in deciding which rules apply to concessions (either works or services concessions) in relation to utilities⁹, the legal personality of the grantor as well as his activity are decisive elements. A Public authority granting a concession in one of the sectors governed by the utilities Directive will be subject to the rules and principles of the Treaty.

1. RESEARCH OF SOURCES

Methodology applied to the research

Stage 1 – *General research on the internet, including:*

- Comprehensive internet researches on invitations to tender for public services concessions. Searches were made in both, public and private websites. List of websites and terms searched is included in section 1 (Research of sources of information).
- Online searches for references to paper publications on services concessions. No relevant paper sources have been identified. Some of the electronic journals identified offered a paper version under subscription fee.

Stage 2 – *Contacting the national authorities.*

Authorities relevant to the sectors were contacted over the telephone and sent enquiries by email. In most cases, enquiries were redirected to the information contained in the Authority's website.

⁶ Article 3 - Granting of special or exclusive rights: non-discrimination clause:

“Where a contracting authority grants special or exclusive rights to carry out a public service activity to an entity other than such a contracting authority, the act by which that right is granted shall provide that, in respect of the supply contracts which it awards to third parties as part of its activities, the entity concerned must comply with the principle of non-discrimination on the basis of nationality”.

⁷ Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The Council, acting in accordance with the Procedure Referred To In Article 251, May Adopt Rules Designed To Prohibit Such Discrimination.

⁸ Treaty Establishing The European Community

⁹ Water, energy, transport and telecommunications sectors.

Stage 3 – Contacting relevant operators per sector.

Operators were identified through general internet research, by references made in some of the published contract notices and from general directories online. A sample of operators was selected (based on their higher presence in internet, and their specialisation in the sector. Telephone calls to operators to obtain information proved to be in most cases unsuccessful.

See list of operators contacted for each sector – [Annex V](#)

Stage 4 – Final search on the internet.

A final advanced search on the internet was made based on the results and information obtained from the online and telephone enquiries to contrast and validate the results obtained in stage 1 to 3. Conclusions drawn from the different stages of the study are detailed in part 3 of this Report under Final conclusions.

General sources of information

A- General sources of information (more than one sector)

⇒ Public sources

EU and international level

▪ **OJEU - the Official Journal of the European Union (ex OJEC)**

<http://www.ojec.com> (www.tendersdirect.co.uk)

Completeness of information	Complete and accurate database of public sector notices on contracts valued above a certain financial threshold; and also provides lower value opportunities from a wide range of other sources throughout the UK and Ireland. Around 2500 new notices are advertised every week - these include invitations to tender, prior information notices, qualification systems and contract award notices.
User friendly and accessibility	Easy to use database and suppliers can access free to all information.
Subscription fee	None

Giving the lack of a UK official database of advertised contract notices, and the generalised practice in UK of publishing tenders for high value concessions in the OJEU. This would be an important source in the second phase of the study.

▪ **TED - Tenders Electronic Daily**

http://ted.europa.eu/Exec?Template=TED/editorial_page.htm&DataFlow=ShowPage.dfl&StatLang=EN

The Tenders Electronic Daily is the online version of the 'Supplement to the Official Journal of the European Union' (OJEU), dedicated to European public procurement. Registration and usage of TED is absolutely free.

▪ **European Information Service Centre (EISC) Tender Search Service**

www.winningtenders.eu

Completeness of information	It offers access to tender opportunities below EU thresholds; therefore it could cover the gap between Supply2 and the OJEU.
User friendly and accessibility	It is user friendly
Subscription fee	Requires a subscription fee of £10 per month. It also offers a 4 week free trial.

Related websites:

- **SIMAP - Gateway to European public procurement** - SIMAP portal provides access to most important information about public procurement in Europe.

SIMAP is the information system that facilitates e-notices be website. Most of public procurement notices published in **TED** are sent for publication through an electronic channel, and SIMAP is the information system that facilitates the electronic tendering.

National level

The European Commission recommends in the Consolidated Procurement Directive¹⁰ that authorities provide procurement information via a procurement portal. Although the concessions do not fall under this Directive, and there is no obligation to publish notices on concessions in the OJEU, some UK contracting authorities publish them as if they would do with the rest of public contracts, applying the Directive¹¹ threshold conditions.

The following UK government related websites provide procurement information and links to current tender opportunities:

- **Supply 2** – the only official government lower-value public sector contract opportunities typically below £100,000.

<http://www.supply2.gov.uk/>

Completeness of information	Complete information Useful website to capture low value (below £100,000) contract notices.
User friendly and accessibility	Easy to use and provide links to current tenders opportunities Accessible by any interested party for free
Subscription fee	None

- **The Office of Government Commerce** – independent office of HM Treasury, established to help Government deliver best value from its spending.

<http://www.ogc.gov.uk/>

Completeness of information	Information on this website is comprehensive and reliable
User friendly and accessibility	The site is easy to use and provide links to current tender Opportunities. Accessible by any interested party for free
Subscription fee	None

Government Office Network for the English Regions - this site contains general information on the work of the GO Network, drawing together national policies, news, and events across the regions.

<http://www.gos.gov.uk/national/>

GOs represent the twelve Whitehall departments. Each department's website provides information for tendering and invites to tender in their specific sector,

<p>e.g. Department for Transport - http://www.dft.gov.uk/</p> <p>Department of Health - http://www.dh.gov.uk/</p>							
<i>Regional and Local level</i>							
<p>▪ The Scottish Parliament and Welsh Assembly websites- they are responsible for local government in Scotland and Wales. Concessions of services awarded in Wales or Scotland will be advertised in the Welsh and Scottish Government websites, therefore the searches in this websites are recommended.</p> <p>Welsh Local Government Association - www.wlga.gov.uk</p> <p>The Convention of Scottish Local Authorities: COSLA - www.cosla.gov.uk</p> <table> <tr> <td>Completeness of information</td><td>Government website, relevant information on tendering</td></tr> <tr> <td>User friendly and accessibility</td><td>Easy to use. Information easy to access</td></tr> <tr> <td>Subscription fee</td><td>None</td></tr> </table>		Completeness of information	Government website, relevant information on tendering	User friendly and accessibility	Easy to use. Information easy to access	Subscription fee	None
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User friendly and accessibility	Easy to use. Information easy to access						
Subscription fee	None						
<p>▪ The Northern Ireland government website</p> <p>http://www.northernireland.gov.uk/search.jsp/search.lsim?sr=0&nh=10&cs=iso-8859-1&sc=&sm=0&mt=1&ha=0&qt=+tenders&as_fid=14083488</p> <table> <tr> <td>Completeness of information</td><td>Government website, relevant information on tendering</td></tr> <tr> <td>User friendly and accessibility</td><td>Easy to use. Information easy to access using search facility</td></tr> <tr> <td>Subscription fee</td><td>None</td></tr> </table>		Completeness of information	Government website, relevant information on tendering	User friendly and accessibility	Easy to use. Information easy to access using search facility	Subscription fee	None
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Subscription fee	None						
<p>▪ “Communities and local Government” –</p> <p>https://communities.bravosolution.co.uk/web/login.shtml</p> <table> <tr> <td>Completeness of information</td><td>it contains a Procurement portal allowing the view of some Local Government's c announcements in real time.</td></tr> <tr> <td>User friendly and accessibility</td><td>user friendly and information is easy to access.</td></tr> <tr> <td>Subscription fee</td><td>None</td></tr> </table>		Completeness of information	it contains a Procurement portal allowing the view of some Local Government's c announcements in real time.	User friendly and accessibility	user friendly and information is easy to access.	Subscription fee	None
Completeness of information	it contains a Procurement portal allowing the view of some Local Government's c announcements in real time.						
User friendly and accessibility	user friendly and information is easy to access.						
Subscription fee	None						
<p>▪ London councils – the websites of the different London councils contain the current tender notices publicised by these councils.</p> <p>http://www.londoncouncils.gov.uk/aboutus/corporateinformation/invitationtotender/default.htm</p> <p>[see the London Government Directory - http://www.directory.londoncouncils.gov.uk/directory/]</p> <table> <tr> <td>Completeness of information</td><td>Searches in these websites are recommended since London local authorities externalize a large part of their services and the contract notices on concessions are not always sent to the OJEU, so the only place where they are publicized is here.</td></tr> <tr> <td>User friendly and accessibility</td><td>These websites are in general well structured and information easy to access.</td></tr> <tr> <td>Subscription fee</td><td>None</td></tr> </table>		Completeness of information	Searches in these websites are recommended since London local authorities externalize a large part of their services and the contract notices on concessions are not always sent to the OJEU, so the only place where they are publicized is here.	User friendly and accessibility	These websites are in general well structured and information easy to access.	Subscription fee	None
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User friendly and accessibility	These websites are in general well structured and information easy to access.						
Subscription fee	None						

- Capital Ambition – (formerly the London Centre of Excellence) provides helpful information for operators wanting to obtain public contracts. Its website offers vast information on tendering for public contracts.

<http://www.londoncouncils.gov.uk/capitalambition/default.htm>

It provides:

- Tendering opportunities and criteria to compete
<http://www.londoncouncils.gov.uk/capitalambition/getinvolved.htm>
- A free practical guide to public procurement contracts “You and Your Contractor”
http://www.lcpe.gov.uk/Library/CRMGT_Project/1288%20LCE%20You%20&%20Contractor%204b.pdf.
- Toolkits developed to help operators to make procurement processes more sustainable and accessible. <http://www.lcpe.gov.uk/sustainable/toolkits.asp>

⇒ **Private general sources of information**

There are many commercial websites offering access to a large database of public sector contract notices published at national, regional and local level. They offer a variety of services and most of them charge for those services. Subscription fees vary from (£45 “europeantenders”, to up to about £600 for “dgmarket”).

Private general websites identified:

www.bravosolution.com	Requires subscription to access the service “BravoSolution eTendering for the Public Sector”. It is user friendly. Well structured. Among its clients there are well known companies.
www.Bold-E.com	Offers an information service by delivering by e-mail the OJEU tender notices and Bold-E tender notices of the UK and Ireland. The service allows applying individual filters by document types, regions, keywords and CPV (Common Procurement Vocabulary) codes. It allows 30 day free trial, and access is very straight forward. However the information offered without subscription is limited.
www.contraxonline.com/market_monitor.shtml www.ectenders.com/about/about.htm	Delivers information about UK contracts and tenders. Search facility is structured by date, industry, contract type and keywords. It has a user friendly interface, however the site did not display correctly when trying to navigate through it.
www.europeantenders.com	It provides European tender information, including invitation to contract, business opportunities and government contracts. The example of information provided under a contract notice, follows a structure similar to the one found under OJEU (http://www.europeantenders.com/tendersample.php?key=L341UF52S1Q99M3MZW8DNHJZZ8 .) The subscription offers the possibility to search by keywords, categories, personal, filter by country, filter by industry, automatic daily alerts and access to approximately 94300 tenders.

http://www.government-online.net/home.asp	<p>Provides comprehensive information on public service tenders (through its "Government Online Tender Information Service"). It claims that tenders from the Official Publications Office of the European Union and more than 700 additional sources local and national newspapers, regional purchasing consortia, Central Government Departments and Agencies, government procurement portals, local councils, etc.' providing information on high and low level contracts.</p> <p>It utilise the fact that there is a vast amount of low-medium contracts advertised that are only publicised at local level. 1 Year Subscription including high and low level contracts delivered by email on a daily basis from over 600 information sources. Cost £600. No option for a free trial.</p>
www.public-sector.co.uk/	<p>They market themselves as a large free information resource on Public sector.</p> <p>Services are free. It promotes connections within Government and between the Public and Private Sector by operating an open exchange system of information. The limitation is that only .gov.uk / .gsi.gov.uk / .ac.uk / .nhs.uk / .police.uk / .mod.uk or .sch.uk addresses are accepted in the registration form</p>
www.publictenders.net	<p>Offers a comprehensive list of tenders in the UK and provides link to the original source of the offer, with details of date and time published.</p> <p>Website interface although it seems a bit crowded and not as technologically elaborated as some of the other private websites; however it offers a straightforward service with no hassles (no registration, login in or subscription). Its structure is simple (there is a tab for tenders and a left side menu to categorise searches by sector and geographical area and by date of publication)</p>
www.dgmarket.com	<p>It is very user friendly. Tender section classified by industry and with a clear search option tool. Categories offer further subcategories. Results are ranked by country, date published, and deadline.</p> <p>When clicking on the contract, it provides general information but requires subscription to access full information. Advance search allows filtering the search under the following options: contract type, keywords, reference number, country or region, funding agency, published within, notice status, notice type, buyer type, and category.</p> <p>The free services include:</p> <ul style="list-style-type: none"> Summaries of all tender notices and contract awards Search profiles Email alerts, whenever a new tender matches the registered search criteria
www.mytenders.com	<p>Provides tools for purchasers to publish lower value tender notices, meeting the requirement to give these contracts an adequate level of advertising, and also to publish high value notices directly in the</p>

	<p>Official Journal of the European Union (OJEU).</p> <p>It was established by Millstream Associates Limited, an official eSender of tender notices to the Office of Official Publications in Luxembourg. It has been in operation since 2002, with over 700 public sector organisations actively publishing both low and high value tender notices.</p>
www.qsl-uk.com	<p>Provide tenders in over 9000 different categories.</p> <p>Clear information and well structured interface.</p> <p>Requires subscription fee but allows for a 4 week free trial. Search by keyword or A-Z search.</p>
www.achilles.com/en/uk/UVDBsupplier/	<p>Requires subscription. It has a specialised EC team and searches can be done for all Europe.</p>
http://www.tenderszeal.com	<p>Tenderszeal is a global tender information resource.</p> <p>It has a user friendly interface by offering a clear classification of tenders by country, product and services. Once classified by country, they classified by categories and subcategories.</p> <p>It shows summary of contract notice but require subscription for a full view of the contract notice.</p>
www.wintenders.co.uk/advert.html	<p>Requires subscription but is offers a free service.</p>

B - Sources of information by sector

WATER INDUSTRY:

The **water industry** provides drinking water and wastewater services (including sewage treatment) to households and industry.

The economic regulator of water companies in England and Wales is the Water Services Regulation Authority, OFWAT. The economic water industry regulator in Scotland is the *Water Industry Commission for Scotland* and in Northern Ireland is the Northern Ireland Water.

The UK water industry is regulated by the authorities mentioned above but services are largely operated by private companies with exclusive rights for a limited period and a well-defined geographical space. See list of private operators in the Water industry in Annex I (C).

Under the Water Act 1988, 10 water and sewerage companies were created in England, becoming owners of the entire water system and properties of the RWAs¹². The Act gave them 25-year concessions for sanitation and water supply (except for the 25% covered by the existing small private companies), protected against any possibility of competition. See Annex I (A, B) for list of the 10 water and sewerage companies, and the 20 only water companies.

In Scotland and Northern Ireland water remains controlled and operated by public authorities.

Other related regulators:

- Environment Agency, responsible for environmental regulation in England and Wales
- Drinking Water Inspectorate - regulating drinking water quality in England and Wales.

Scottish Environment Protection Agency

⇒ **Public sources**

National level

No public websites offering information on tenders in this sector for England have been identified.

- Scotland

www.scottishwater.co.uk/

- Northern Ireland Water

www.niwater.com/tenderopps.asp

Regional and local level

- Local councils provide information and publish notices on tender opportunities in their websites

<http://www.directory.londoncouncils.gov.uk/directory/>

⇒ **Private sources**

Due to the water industry is highly privatised, not many commercial websites offering information services on tenders for the water industry have been identified.

- Waterbriefing – <http://www.waterbriefing.org/tenders/index.php> -

<http://www.waterbriefing.org/tenders/index.php>

Completeness of information	It offers A collection of tenders relevant to the water industry. This list is regularly updated nationwide.
User friendly and accessibility	It has a professional outlook, is well structured and easy to navigate. It requires registration to access to full view of tender.
Subscription fee	none

For further information on UK public provision of water service, see:

Annex I (D)(E):

b. Sources of general information on Water services

c. Associations linked to Water UK

WASTE MANAGEMENT

The privatisation in the Waste management sector in the UK started in the 1980s. Tendering was made compulsory from 1989 and encouraged by legislation.

During the 1990's private water companies absorbed many waste management companies due to overlaps in service and infrastructure bases; most waste disposal in the UK are now controlled by the private sector.

However, there are still some waste management and environmental services which are run by local public authorities. Information on tenders for public service concessions on waste management are published on their websites.

⇒ **Public sources**

Local government Websites – It is a general practice to publicise tenders on services required at a local level in the local government websites, such as the council sites. A general directory for the UK local authorities can be found in:

http://www.direct.gov.uk/en/DI1/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG

This site lists county councils, borough and district councils and unitary authorities throughout England, Northern Ireland, Scotland and Wales.

GLA - The official website for the Mayor of London, the London Assembly and the Greater London Authority. Information on waste management tender opportunities.

<http://www.london.gov.uk/gla/tenders/waste-management>

Waste & Resources Action Programme (a not-for-profit company backed by government funding from England, Scotland, Wales and Northern Ireland).

www.wrap.org.uk/tenders

WRAP works with local authorities, business and households to prevent waste, increase recycling and develop markets for recycled and sustainable products.

It tenders its services in its own page but websites.

⇒ **Private sources**

http://www.wrap.org.uk/wrap_corporate/tenders/index.html

Completeness of information

A very professional website, providing a comprehensive information service specialised in waste management. It was set up as a not-for-profit company in 2000; it is backed by government funding from England, Scotland, Wales and Northern Ireland. It seems a very reliable database.

User friendly and accessibility

It is very user friendly, and well structured making access to information very easy and straightforward. No registration required.

Subscription fee

Access to tenders information is free. No subscription required.

Other sources:

<http://www.recyclingwasteworld.co.uk/>

Electronic version of a specialised magazine. Subscription based. Offer information on tender opportunities. It offers visibility to tenders from local authorities and organisations as WRAP

- <http://www.edie.net> - mainly environmental and waste management

It is user friendly, well structured and clear information. There is a link to tenders that allows to see Recent tenders (tenders publicised in the last 7 days in the different EU countries), Search and Submit tenders

It requires subscription but access to website content is free for subscribers

For further information on waste management in the UK, see [Annex II](#)

HEALTH SERVICES

The provision of Public Health services in UK is carried out by the Department of Health and coordinated by the Regional Public Health Groups (located in each of England's nine Government Offices).

Regarding the concession of services, although Public authorities are not bound to publish those concession in the OJEU, the general practice in the Health service is to apply by analogy, the threshold criteria from the Procurement Directives (The Directives require purchasers to follow detailed procedures for all purchases above the financial threshold levels specified by each directive - Services Directive £90,319 or £133,000).

The Department of Health has produced a NHS procurement Guide which makes reference to the procedure to follow for those tenders, such as service concessions, to which the Procurement Directive does not apply. – See Appendix D of the [Guide to procurement - 2008 edition \(PDF, 538K\)](#)

The public Health service in UK can award the concession of services and/or works to a private operator, via a public private partnership, where the public sector 'grantor' transfer the exploitation or works to the private company, but controls or regulates what services the operator must provide and controls a significant residual interest in the infrastructure at the end of the concession. There are two main public private partnerships that the Department of Health (DH) uses, they are: the private finance initiative (PFI¹³) and the NHS Local Improvements Finance Trust (NHS LIFT¹⁴).

⇒ **Public sources**

- [Department of Health](#) - this site contains details of DH tendering exercises, as advertised in the Official Journal of the European Union (and, where appropriate, in other publications), as well as, details of recently awarded contracts.

<http://www.dh.gov.uk/en/Procurementandproposals/Tenders/Informationaboutprocess/index.htm>

- [The National Health Service PASA](#), - executive agency of the Department of Health and is responsible for managing procurement to NHS procurement activities. PASA site offers information and links for NHS tenders.-

www.pasa.nhs.uk

- [NHS Supply2Health](#) - online resource that advertises opportunities to provide Part B clinical services commissioned by the NHS in England and inform on contracts awarded.

<http://www.supply2health.nhs.uk/default.aspx>

- www.nhssourcing.co.uk

This portal, launched on 1st July 2009, is part of bravo solutions and offers specific services for the public health sector.

⇒ **Private sources**

NHS and health tenders - database updated hourly on information about tenders in the public health contracts

<http://www.nhstenders.net/>

Completeness of information	This database is part of public tenders website, and it is also focussed in UK public procurement and updated hourly. Search results offer a comprehensive list of tenders for the Public health sector in the UK and provides link to the original source of the offer, with details of date and time published.
User friendly and accessibility	NHS tenders has a crowded interface but offers a straightforward service with no hassles (no registration, login in or subscription). Its structure is simple (there is a tab for tenders and a left side menu to categorise searches by sector and geographical area and by date of publication)
Subscription fee	none

Other websites

- [Health service journal](http://www.hsj.co.uk/tenders/index.html) – this is an electronic version of the journal, paper version also available on subscription. This site it contains invitations to tender for the concession of public health service contracts.

<http://www.hsj.co.uk/tenders/index.html> -

For general information on the Public Health service in the UK, see [Annex III](#)

PUBLIC TRANSPORT BY WATER

Being an island, transport by water is particularly important for the UK, mainly for trade purposes, but also for transportation of passengers. The English Channel is the busiest seaway in the world, connects Great Britain and mainland Europe.

The UK also has regular water transportation to the surrounding smaller islands part of Crown (Channel Islands, Isles of Scilly, Isle of Man and the Scottish Isles); and counts with large inland waterways, canals and rivers (particular attention deserves public transportation in the Thames river with its forty-three miles).

The main transport services by water, for the transportation of persons and goods in the UK are:

- [International ferry ¹⁵services](#) from UK ports to France, the Republic of Ireland , Spain, Belgium, Scandinavia and the Netherlands

- Local ferry services that run to the Channel Islands, Isles of Scilly, Isle of Man and the Scottish Isles.
- Commuter river services (“waterbuses”)

Some ferries carry mainly tourist traffic, but most also carry freight, and some are exclusively for the use of freight lorries.

There is a resurgence of the of transportation by water, principally for economic and environmental reasons:

- The Department for Transport offers a number of grants to assist the water-freight industry in the UK (<http://www.dft.gov.uk/pgr/freight/waterfreight/grants/>).
- Trade unions have been created in an effort to sustain and increase freight carriage on UK waterways (CBOA – Commercial Boat Operators Association- freight by water)
- UK is part of the European Shortsea Network (<http://www.shortsea.info/>), which promotes the transport of Intra-European cargo on a door-to-door basis, where large part of the transport traject is done by sea.

The authority regulating public transport by water is:

The Department for Transport, whose core objective is to oversee the delivery of a reliable, safe and secure transport system, that responds efficiently to the needs of individuals and business whilst safeguarding the environment (<http://www.dft.gov.uk/pgr/freight/waterfreight/#>).

For London river services, the authorities responsible are:

- London River Services Limited (LRS), a wholly owned subsidiary of TfL (transport for London)
- The Port of London Authority – its responsibilities include ensuring navigational safety along the Tidal Thames, promoting use of the River and safeguarding the environment.
- The Maritime and Coastguard Agency (MCA) - is a UK executive agency working to prevent the loss of lives at sea and is responsible for implementing British and International maritime law and safety policy.

From the searches carried out, it appears that in this sector, services are regulated and supervised by the relevant Public authority, but they are mostly operated by private companies in partnership with the public authorities or under a system of licences granted by the public authority.

For example, **Thames Clipper** is a water-bus service operating in London on the River Thames. The company offers commuter services between eastern and central London, as well as tourist services under licence from London River Services. At present they transport around 2500 passengers daily.

Note that a significant part of the transport by water in the UK is the transportation by inland waterways and canals. However, these and services related to ports, are not considered here as they were not part of the task.

For further information on tendering of these services see Annex IV.

⇒ **Public sources**

No public sources of information on tendering for service concessions in this sector have been identified; and no reference to tendering appears in the Regulator’s website:

<http://www.dft.gov.uk/pgr/freight/waterfreight/>

⇒ **Private sources**

Private operators carry out services under a licence or by getting into a partnership with local authorities. No private sources of information specific to this sector have been identified as providing information on public services concessions.

The commercial sites identified are no websites offering information on Public service concessions on offer; they are the operators' websites, which make no reference to any tendering process. The operators enter into partnership arrangements with the Public authorities. As an illustration, see SERCO - work as partner to public authorities for providing a range of transport options to the travelling public, included ferry services). <http://www.serco.co.uk/markets/transport/index.asp>,

2. IDENTIFICATION OF CONTRACT NOTICES

Estimate of contracts notices on services concessions published during the period (April to September 2009):

Methodology applied to identify those contract notices:

Stages 1 – Searches were conducted at a European level in the OJEU website (through their search engine website: www.tendersdirect.com). Information was classified by date and sector.

Searches produced large amounts of results for some sectors (public health: 584 contract notices; while much lower number for other sectors (Water industry). The reason for the big difference in number can be explained, by how the supply of the public service is structured in the UK; in the case of Water supply, the service is provided directly by 10 companies (see water industry section for further detail), under a 25 years contract.

The number of results produced in the initial search reflected all public contracts on offer in a specific sector without distinguishing the type of contract. Therefore, it followed to analyse which one of those contract notices were actually an invitation to tender for a public service concession.

Stage 2 – Searches were conducted at national and local level.

There seems to be no UK Government official database, gathering all contract notices on tenders for public contracts, so searches were carried out on Government websites, and local council websites, which publish their own invitations to tender (see the list of websites under section 1 (Sources of information - Public websites; also in sources of information “by sector”).

Stage 3 – Searches were conducted in private websites that specialise in facilitating the search for public contracts tenders (see list of websites under section 1- Sources of Information - Private sources; and in particular the recommended sources).

Although a large number of contract notices were identified per sector, however further analysis of those, showed that, with an exception in the health sector, these contract notices were not actually offering a concession of services but a public services contract.

Contract notices for public service concessions identified for the period April to Sept. 2009

<u>Water industry</u>	0	No available information on service concessions was found in the analysed websites (private and public websites listed under sources of information in previous section of the report)
<u>Waste management</u>	0	No available information on service concessions was found in the analysed websites (private and public websites listed under sources of information in previous section of the report)
<u>Health service (include works concession contracts)</u>	1	One tender notice was identified through http://www.nhstenders.net . It is not a straightforward offer for public services concession but it gives the option for the contract to adopt this form. The contract notice was published before the period

		of study but still open during period of study. The contract notice says: "The proposed collaboration may take the form of a Public Contract, Concession, a Joint Venture, or combination of these." See details contract notice below.
<u>Public transport by water</u>	0	No available information on service concessions was found in the analysed websites (private and public websites listed under sources of information in previous section of the report)

Identified contract notice on Health services:

Contract award: Rotherham: diagnostic systems

<http://www.nhstenders.net/modules.php?op=modload&name=News&file=article&sid=37873>

Value of concession advertised	Value: 4 715 525 GBP. Excluding VAT.
Name of publishing authorities/entities	Rotherham Primary Care Trust
Number of concessions advertised	1
Subject of contract	Partnering opportunity in diagnostic healthcare provision.
Sector in which the contracting authority operates	Health
Scope of information published in the contract notice	
Selection criteria	most economically advantageous tender
Weighting of award criteria	1. Cost proposal. Weighting: 50 %. 2. Strategy. Weighting: 5 %. 3. Clinical. Weighting: 30 %. 4. Clinical Governance, Health and Safety, Quality. Weighting: 15 %.
Mode of payment	4 715 525 GBP offered
Exploitation	[will depend on type of contract awarded]
Type of procedure used to award concessions	Competitive dialogue.

3. FEASIBILITY REPORT

The criteria applied in selecting the recommended sources for the second phase of the study is the comprehensiveness and accessibility to the information.

Based on these criteria, the following source is recommended:

Selected source	Paid	Retroactive	Period of study
<p>http://www.publictenders.net/</p> <p>Offers a comprehensive list of tenders in the UK and provides link to the original source of the offer.</p> <p>It is a straightforward service with no registration, login in or subscription required.</p> <p>For public health services has a linked site: http://www.nhstenders.net/</p>	<p>Free</p> <p>No payment, required.</p>	<p>Yes,</p> <p>Searches can be done retroactively as far as 3 years back.</p>	<p>Period of study April to September 09 covered.</p>

CONCLUSIONS

This report is the outcome of extensive online searches, aimed at identifying the publication of contract notices inviting economic operators, to tender for public service concessions in the UK, including the concession contracts awarded under the Public Private Partnership structure.

The conclusions drawn are as follows:

1 – Publicity of Service concessions contracts on offer – complying with the EU Treaty.

Due to the fact that “public service concessions” do not fall under the Procurement Directive 2004/18/EC¹⁶, contracting Public Authorities offering services concessions contracts, are not required to comply with the publication procedures of the Directive. It is at Member States’ discretion how to comply with the EU treaty principles of non-discrimination, equality of treatment, transparency and mutual recognition.

From the information obtained by contacting some Public service authorities acting as contractors, it appears that most regional and local authorities deal with contract notices on service concessions, as if they fell under the Procurement Directive’s threshold criteria, sending the higher value contract notices on concessions to be published in the OJEU. This practice helps with the compliance of the Treaty principles mentioned above, at least in regard to the higher value concessions; however, the lower value service concessions are not usually sent to the OJEU for publication; local authorities may choose to publish them in their websites. This practice means:

- The information provided by the Official Journal of the European Union shows an incomplete picture regarding the amount of contract notices on service concessions published in the UK.
- Searches at regional/municipal level in the Public Authorities’ websites, will be required to identify some lower value service concessions only published in local websites.
- The precise amount of public service concessions actually offered by UK public authorities, in a given period in time, is rather complex to determine if we take into account that there are over 400 local authorities in the UK, that could be advertising service concessions offers on their own websites; let aside regional authorities, Government agencies, etc.

2- Lack of a Government-run database. Dispersed information makes the system less accessible.

UK Public Authorities (at national, regional and local level) comply with their EU treaty obligations, by making use of their own websites to publicise their invitations to tender for public contracts; as well as, to provide extensive information and guidance on tendering for public contracts.

The information provided in these websites, brings transparency to the process of tendering, for the general public and economic operators searching for specific local information. However, the fact that this information is dispersed in many local, regional websites, instead of in a single, comprehensive, Government-run database, could make access to those offers, more difficult to spot for companies searching offers in a specific sector, at national or European level; with the consequent discriminatory implications.

3. Government sites not always make evident the path to find the contract notices available:

In some cases, these were found through links like Jobs or “get involved”; and even when these “invitations to tender” were found, the amount of contract notices contained in the page were just specific to that Authority.

5. Commercial websites: an alternative solution

The alternative to the lack of a Government centralised database, covering all national tenders for public contracts (services concessions; in this case), is, at present, provided by the private sector.

There is a wide range of private commercial websites marketing themselves as the solution for the

suppliers interested in public procurement; offering a comprehensive database of publicised tenders, organised by sectors and geographically.

Most of these commercial websites, require an annual subscription fee, varying between providers of services and the level of service required. However some of them offer a free trial period of a month.

The private operators contacted in each of the sectors seems to resort to the service of these private companies in order to keep abreast of the contract notices published; both, the ones published in the OJEU and the ones published at local level.

6. Government first steps towards centralisation of information on published contract notices: launch in June 2006 of the portal Supply2.gov.uk.

Supply2.gov.uk is an official government lower-value contract portal, created specifically to provide small businesses with visibility of public sector contract opportunities typically below £100,000.

This portal is a useful and effective tool providing a route to help small business sell to the public sector; and attempts to emulate the services of private companies by providing services such as Contract Alert service. However, it targets only small business, its economic criteria for the contract notices visible through the portal (below £ 100,000), means that the contract notices over that value (either published in the OJEU, or the ones that by law were not required to be publicised in the OJEU, are not visible through the portal); therefore , it does not offer a complete picture of the public tenders on offer as it would do an official bulletin or Government database, or in fact, as the private websites do.

In sum, from the experience and information obtained in this study, the official UK system of publication of contract notices in relation to service concessions:

- Seems complex, and it would require good local knowledge to navigate the peculiar structure of the UK Public Administration.
- The fragmented information (regional/local tender notices are published by the over 400 local authorities), makes a search across all sectors, or for more that one geographical area, quite a significant effort (time and resources). This could translate into discriminatory practice towards those operators which have less economic resources at their disposal.
- Economic operators have to resort to use private services to obtain comprehensive information on the public contracts notices published.
- There are some initiatives by the Government to make public contracts more transparent and accessible to small business (launch of the official portal Supply2.gov.uk), but at present offer limited services.
- Competition issues: public service provision for some sectors, mainly water and waste management, is highly privatised. Concessions were directly assigned to private companies for certain amount of years (25 years in the water sector).

In the UK, a significant part of public services is delivered by private and voluntary bodies. Collaboration between public bodies and private companies in the UK has increasingly adopted the form of Public Private Partnership (PPP). The PPP is a sort of merger between public and private sector, with both sharing the risks. The use of PPP was introduced into the UK by the Conservative party, but later promoted by Labour government as a way to improve public services without making use of taxpayers' money. Within this type of partnership, a relevant role has been given to the Private Finance Initiative (PFI) where contractors pay for the construction costs and then rent the finished product back to the public sector. There are many kinds of PPPs: leasing, construction and management contracts, Joint ventures, Design, Build and Operate (DBO), concession contracts, etc.

In this report, the service concessions contracts considered include also those under the PPPs structure.

Annex I – Water industry

A. Water and sewerage companies

Company	Website
<u>Anglian Water</u>	http://www.anglianwater.co.uk/
<u>Dwr Cymru Welsh Water</u>	http://www.dwrcymru.co.uk/
<u>Northumbrian Water</u>	http://www.nwl.co.uk/
<u>Severn Trent Water</u>	http://www.stwater.co.uk/
<u>Southern Water</u>	http://www.southernwater.co.uk/
<u>South West Water</u>	http://www.southwestwater.co.uk/
<u>Thames Water</u>	http://www.thameswater.co.uk/
<u>United Utilities</u>	http://www.unitedutilities.co.uk/
<u>Wessex Water</u>	http://www.wessexwater.co.uk/
<u>Yorkshire Water</u>	http://www.yorkshirewater.co.uk/

B. Only water companies

Company	Main areas covered	Website	Owner
<u>Albion Water</u>		http://www.albionwater.co.uk/	
<u>Bournemouth and West Hampshire Water</u>	<u>Bournemouth, Christchurch, Lymington, Ringwood, Verwood, Wimborne Minster</u>	http://www.bwhwater.co.uk/	<u>Biwater</u>
<u>Bristol Water</u>	<u>Bristol, Burnham-on-Sea, Frome, Tetbury, Wells, Weston-super-Mare</u>	http://www.bristolwater.co.uk/	<u>Grupo Agbar</u>
<u>Cambridge Water Company</u>	<u>Cambridge, St Ives</u>	http://www.cambridge-water.co.uk/	<u>Cheung Kong Holdings</u>
<u>Cholderton and District Water Company</u>		http://www.choldertonwater.co.uk/	<u>Cholderton Estate</u>
<u>Dee Valley Water</u>	<u>Chester, Wrexham</u>	http://www.deevalleywater.co.uk/	<i>independent</i>

<u>Essex and Suffolk Water</u>	(Essex area) <u>Barking</u> , <u>Basildon</u> , <u>Chelmsford</u> , <u>Brentwood</u> , <u>Romford</u> , <u>Southend-on-Sea</u> , <u>Thurrock</u> ; (Suffolk area) <u>Aldeburgh</u> , <u>Eye</u> , <u>Great Yarmouth</u> , <u>Lowestoft</u> , <u>Southwold</u>	http://www.eswater.co.uk/	<u>Northumbrian Water</u>
<u>Hartlepool Water</u>	<u>Hartlepool</u>	http://www.hartlepoolwater.co.uk/	<u>Anglian Water</u>
<u>Portsmouth Water</u>	<u>Bognor Regis</u> , <u>Chichester</u> , <u>Fareham</u> , <u>Gosport</u> , <u>Havant</u> , <u>Hayling Island</u> , <u>Portsmouth</u>	http://www.portsmouthwater.co.uk/	<i>independent</i>
<u>South East Water</u>	(Eastern region) <u>Ashford</u> , <u>Canterbury</u> , <u>Eastbourne</u> , <u>East Grinstead</u> , <u>Haywards Heath</u> , <u>Maidstone</u> , <u>Sevenoaks</u> , <u>Tonbridge</u> , <u>Royal Tunbridge Wells</u> , <u>Whitstable</u> ; (Western region) <u>Aldershot</u> , <u>Basingstoke</u> , <u>Bracknell</u> , <u>Camberley</u> , <u>Maidenhead</u> , <u>Petersfield</u> , <u>Wokingham</u>	http://www.southeastwater.co.uk/	<u>Hastings Diversified Utilities Fund</u> and <u>Utilities Trust of Australia</u>
<u>South Staffordshire Water</u>	<u>Aldridge</u> , <u>Brownhills</u> , <u>Burton upon Trent</u> , <u>Cannock</u> , <u>Kinver</u> , <u>Lichfield</u> , <u>Rugeley</u> , <u>Sutton Coldfield</u> , <u>Tamworth</u> , <u>Uttoxeter</u> , <u>Walsall</u> , <u>West Bromwich</u>	http://www.south-staffs-water.co.uk/	<i>independent</i>
<u>Sutton and East Surrey Water</u>	<u>Cobham</u> , <u>Dorking</u> , <u>Horley</u> , <u>Leatherhead</u> , <u>Oxted</u> , <u>Redhill</u> , <u>Reigate</u> , <u>Sutton</u>	http://www.waterplc.com/	
<u>Veolia Water Central Ltd</u>	<u>Amersham</u> , <u>Barnet</u> , <u>Beaconsfield</u> , <u>Bishop's Stortford</u> , <u>Harlow</u> , <u>Harrow</u> , <u>Hemel Hempstead</u> , <u>Letchworth</u> , <u>Luton</u> , <u>Saffron Walden</u> , <u>St Albans</u> , <u>Staines</u> , <u>Stevenage</u> , <u>Uxbridge</u> , <u>Watford</u> , <u>Welwyn Garden City</u> , <u>Woking</u>	http://www.3valleys.co.uk/	<u>Veolia Environnement</u>
<u>Veolia Water East</u>	<u>Brightlingsea</u> , <u>Clacton-on-Sea</u> , <u>Frinton-on-Sea</u> , <u>Harwich</u> , <u>Manningtree</u> , <u>Wivenhoe</u>	http://www.thws.co.uk/	<u>Veolia Environnement</u>
<u>Veolia Water Southeast</u>		http://www.fdws.co.uk/	<u>Veolia Environnement</u>

C - Sources of general information on water services in the UK

www.water.org.uk

www.defra.gov.uk

www.communities.gov.uk

www.ccwater.org.uk

www.utilityweek.com

D - Associations linked to the UK Water industry

British Water	<u>www.britishwater.co.uk</u>
British Waterways	<u>www.britishwaterways.co.uk</u>
European Point of Use Drinking Water Association	<u>www.epdwa.org</u>
Institution of Water Officers (IWO)	<u>www.iwo.org.uk</u>
Society of British Water Industries (SBWI)	<u>www.sbwi.co.uk</u>
Water in the School	<u>www.waterintheschool.co.uk</u>
Water Regulations Advisory Scheme (WRAS)	<u>www.wras.co.uk</u>
Water Research Centre (WRc)	<u>www.wrcplc.co.uk</u>
Water Supply and Sanitation Collaborative Council	<u>www.wsscc.org</u>
Water Technology	<u>www.water-technology.net</u>
Waterways Trust	<u>www.thewaterwaystrust.com</u>

Annex II- Further information on waste management in the UK

- The Information Portal for the Public service – Information on waste management services in the Local Government and the regions

http://www.publicservice.co.uk/pub_contents.asp?id=388&publication=Local%20Government%20and%20the%20Regions&content=3690&content_name=Waste%20management

- Environment agency - public body for protecting and improving the environment in England and Wales

www.environment-agency.gov.uk/

- Environmental Services Association (ex National Association of Waste Disposal Contractors)

<http://www.esauk.org/>

Annex III - General information on the Public Health service in the UK:

- Department of Health – www.dh.gov.uk
- Direct Gov
- Faculty of Public Health - The Faculty of Public Health (FPH) is the standard setting body for specialists in public health.
- Health Protection Agency
- National Health Service (NHS) Gateway
- National Institute for Health and Clinical Excellence
- NHS Direct

Annex IV – Transport by water: waterways and canals

- British Waterways - public corporation responsible to the UK Government and Scottish Government to maintain and manage the waterways

<http://www.british-waterways.co.uk/home>

It is managed through its headquarters and through nine local waterway units. These Units publicize tender for services in their websites.

<http://www.british-waterways.co.uk/local-waterway-websites>

- British Waterways London - This local unit manages 100 miles of canals and navigable rivers. This network provides a valuable and unique resource for alternatives to road and rail transport. Contract opportunities exist not just for freight but also for public transport in addition to the leisure use.

<http://www.british-waterways.co.uk/london/>

- UK canals – *<http://www.ukcanals.net/>*

- Waterways UK - manages two thousand miles of tranquil waterways.

<http://www.waterways-uk.com/britain.htm>

Annex V – List of operators contacted for each sector (see excel table attached)

FINAL REPORT

1. BACKGROUND

This study is to serve as input in a reflection process, aimed at assessing the impact of a possible legislative initiative at EC level in the field of public service concessions.

The aim of this study will be to identify and characterise **public service concessions** published in Czech Republic within a period of 6 consecutive months.

Concessions are contracts of the same type as public contracts except for the fact that the consideration for the service or works delivered consists of the concessionaire's right to exploit such services or works. Consequently, the concessionaire bears a substantial part of risk of exploitation. This included notably financial risks linked to the recovery of the investment.

Service concessions fall completely outside the scope of the Public Procurement Directives. Though any project involving the award of service concessions is governed by a minimum base of principles deriving from Article 43 to 49 of the EC Treaty, namely transparency, equal treatment and proportionality, the rules governing the award of these concessions diverges largely from one Member State to another. This concerns inter alia the way public authorities make their intention to award concessions public and the rules and procedures applied when concessions are awarded. As there is no EC wide obligation to publish contract notices in the Official Journal of the EU, the European Commission has a limited overview on the places and contents of publications of services concessions, the level of transparency and market-openness in the Member States or on procedures used to award contracts.

The **study will consist of two parts:**

- Part A "**identification of sources**": to identify how contracting authorities in Czech Republic inform economic operators on their intention to award service concessions. The objective would be to identify ALL existing sources of information;
- Part B "**characterisation**": to gather specific information on characteristics of the total of concessions published in Czech Republic within a period of 6 consecutive months.

Scope of the study:

The study shall cover service concession contracts in the following 3 sectors:

- water industry
- waste management
- health services

2. TASK 1 - Research and Identification of sources of information on service concessions

The Czech Concession Act in connection with the Act on Public Contracts stipulates that all concessions with the value above 20 mil CZK (approx. 800,000 EUR) shall be published on internet website of the so called Information System on Public Contracts (ISVZ) (<http://www.isvzus.cz>). This applies also to most of the public contracts (with the value above 2 mil CZK for supplies and services and 6 mil CZK for works). European or similar model notices have to be used. This website is run by Ministry for Regional Development, is accessible on-line and free of charge and provides for search by multiple criteria. Therefore this database was identified as the unique and comprehensive source of information both on concessions and public contracts in the Czech Republic.

Other internet sources were also considered, namely Official Journal of the EU where according to the Czech Concession Act only work concessions above the threshold (i.e. those covered by the Directive 2004/18/EC) shall be published. Alternative sources are also official websites of the ministries and other central offices, local authorities and other public entities. They might be relevant source of information in case of concessions with value below 20 mil CZK; however, no information on concessions has been found there.

There are no relevant paper sources of information about concessions in the Czech Republic.

It may be of interest that the Concession Act requires that concluded concession contracts are enlisted in the Register of Concession Contracts accessible on-line in the Information System on Public Contracts (<http://www.isvz.cz>)¹. Information is available during the whole period of the duration of the contract and contains all relevant details including i.a. methods of remuneration of the concessionaire, rights and obligations of the contracting parties etc.

3. TASK 2 - Characterisation of public service concessions according to the evaluation set up in the intermediate report

The Czech Concessions Act defines concessions in the way corresponding to the EC public procurement directives and rulings of ECJ. No substantial doubts about legal definition of service concessions have been identified.

However, it should be noted that the Czech law distinguishes besides public contracts and concessions the third category defined in the § 156 of the Act on Public Contracts, the so called “public contracts with transferred risks” (often referred to as “quasi-concessions”). These contracts are basically public contracts (as the remuneration comes from the contracting authority) and are awarded in full compliance with the EC public procurement directives; however, the economic operator bears some risks usually borne by the contracting authority (e.g. availability risk etc.). Thus some of the provisions of the Concessions Act apply as well (regarding mainly the duty to draw up the feasibility study (referred to as “concession project”) and its approval by respective body). These contracts are advertised as normal public contracts and it is therefore not possible to search them using the search engine in the ISVZ (however, this fact shall be stated in the order to publish the notice).

During the period of April to September 2009 only two notices concerning service concessions have been published in the ISVZ. However, only one concession regarded the sector covered, i.e. water industry (the other one concerned operation of sports facility). The details of the concession are included in the excel table attached.

The study revealed that concessions are not frequently used in the Czech Republic. Since 1st July 2006 (when present Act on Public Contracts and Concession Act came into force) only 30 concessions notices have been published (2 of them concerned works concession below the EU threshold). One of the reasons for this may be their relatively short existence in

¹ Different sub-database of the Information System on Public Contracts.

the Czech legal system (since 1st May 2004). Before this date such legal relations did not fall into the scope of the public procurement rules and were often treated as hire of the facilities with the right and duty to operate it.

The study did not identify the confusion between service concessions and public service contracts which could be another reason for rare use of concessions. However, concessions are often perceived as too complicated by contracting authorities and therefore they might tend to resort to public service contract (if there is the choice).

The reasons for rare use of service concessions in the sectors covered could be the following. In the water sector the operation contracts with most operator have been concluded for longer periods of time before 1st May 2004 and it is only now when these contracts start to be retendered (often due to EU funding). In the two other sectors covered it has not been usual to provide these services as concessions.

However, it is evident that the use of concessions has progressive tendency (1 notice in 2006, 2 in 2007, 21 in 2008 and 6 in 2009).

4. FINAL CONCLUSIONS

In the Czech Republic the comprehensive source of information on concessions is represented by Information System on Public Contracts (ISVZ) accessible on-line on <http://www.isvzus.cz>. There is a statutory obligation to publish notices on service and works concessions as well as on public contracts in this database. It is accessible free of charge and allows for search by multiple criteria.

In the Czech law the definition of concessions corresponds to that in EC public procurement directives and ruling of ECJ. No substantial problems about its definition have been identified.

The frequency of use of concessions in the Czech Republic is, mainly for historical reasons, quite low; however, its use has increasing tendency. In the period of April to September 2009 only one concession notice in the water sector was published. There were no notices concerning the other two sectors covered.

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22

Task 2 - Characterisation of public service concessions

CZ - Sector: **Water Industry**

Contract reference	TITLE	Publishing Authorities/entities	Subject	Value	Number of concessions advertised	Contracting Authority Sector	Selection Criteria	Award criteria	Weighting	Payment	Award procedure
VZ60031892	Operation of water and sewerage system in town of Písek	Town of Písek	operation of water and sewerage system for 15 years	1,487,556,000 CZK excl. VAT (approx. 60 mil. EUR)	1	municipal authority	1. basic qualification criteria (§ 53 PP); 2. professional qualification criteria (§ 54 PP); 3. economic and financial qualification criteria (§ 55 PP): a. insurance (min. 20 mil. CZK), b. liquidity (min. 1,2), c. total turnover (min. 100 mil. CZK/year); 4. technical qualification criteria (§ 56 PP): a. references (min. 1 with min. turnover of 100 mil. CZK/year), b. technicians or technical bodies involved (cf. qualification documents), c. statement of the tools, plant or technical equipment available to the concessionaire (cf. qualification documents)	1. water and sewerage tariffs (50 %); 2. rent per year (40 %); 3. amount of penalty point (10 %)	Yes	tariffs collected by operator from customers (end-users)	negotiated procedure with notice

FINAL REPORT

1. BACKGROUND

This study is to serve as input in a reflection process, aimed at assessing the impact of a possible legislative initiative at EC level in the field of public service concessions.

The aim of this study will be to identify and characterise **public service concessions** published in Greece within a period of 6 consecutive months.

Concessions are contracts of the same type as public contracts except for the fact that the consideration for the service or works delivered consists of the concessionaire's right to exploit such services or works. Consequently, the concessionaire bears a substantial part of risk of exploitation. This included notably financial risks linked to the recovery of the investment.

Service concessions fall completely outside the scope of the Public Procurement Directives. Though any project involving the award of service concessions is governed by a minimum base of principles deriving from Article 43 to 49 of the EC Treaty, namely transparency, equal treatment and proportionality, the rules governing the award of these concessions diverges largely from one Member State to another. This concerns inter alia the way public authorities make their intention to award concessions public and the rules and procedures applied when concessions are awarded. As there is no EC wide obligation to publish contract notices in the Official Journal of the EU, the European Commission has a limited overview on the places and contents of publications of services concessions, the level of transparency and market-openness in the Member States or on procedures used to award contracts.

The **study will consist of two parts**:

- Part A "**identification of sources**": to identify how contracting authorities in Greece inform economic operators on their intention to award service concessions. The objective would be to identify ALL existing sources of information;
- Part B "**characterisation**": to gather specific information on characteristics of the total of concessions published in Greece within a period of 6 consecutive months.

Scope of the study:

The study shall cover service concession contracts in the following sector:

Public transport by water

2. TASK 1 - Research and Identification of sources of information on service concessions

The main source of information used is the website of The Ministry of Mercantile Marine, The Aegean and Island Policy (<http://www.yen.gr>).

There is a specific department of the ministry dealing with these issues which is called

Directorate of Sea State Transport (Διεύθυνση Θαλασσίων Κρατικών Μεταφορών, ΔΘΚΜ). Additionally we have searched for public service concession contracts in the Official Journal of the EU.

3. TASK 2 - Characterisation of public service concessions according to the evaluation set up in the intermediate report

The main activities involved in the final stage of this report involved extensive search within the website mentioned above (as well as other sources listed in the intermediate report) and contacting the Ministry of Mercantile Marine for the possibility of identifying other sources. Employees of the ministry did not provide any further information, stating that all the relevant information is available in the website of the ministry.

Additionally, advice was taken by lawyers specialising on public procurement procedures about the rules related to public service concessions and the practices followed in Greece. Finally, shipping companies were contacted in order to be asked about the sources of information they are using in order to be notified about tenders of interest to them.

We have found that multiple public service concession contracts are advertised in single notices. As a consequence the identified contracts are categorized (in the attached excel file) according to the notices advertised, as the main terms of the individual contracts are similar within a certain notice.

4. FINAL CONCLUSIONS

The main resource of information is the website of the Ministry of Mercantile Marine. Additionally, information on public service concessions can be found in the website of the complement of the official journal of the EU. It appears also that these websites are identified as the main sources of information by the agents (shipping companies) acting in this sector. Another source is the Journal of the Government of the Hellenic Republic. Access to this website is restricted, so this appears as a less popular source of information in comparison to the other two.

For the contracts we have analysed the only awarding criterion is the price. The company that offers the lowest price (price of the ticket for each specific coastline served) wins the contract. There are other additional requirements that should be met by the competing (for the contracts) companies. These could be considered as the selection criteria, as companies that do not meet these criteria can not be considered for the relevant contracts. These are described in detail in the attached excel file.

For each coastline offered for exclusive service a minimum and maximum price is specified by the ministry of mercantile marine. VAT is not included in these values. As it explained in the contracts these values depend on the category (capacity) of the vessels used for the transportation of passengers and vehicles. It should be mentioned at this point that this band of values refers to the first year of the contract. For some contracts, the period of the agreement could cover the maximum of twelve years.

We believe that the main conclusion drawn from the contracts considered throughout this study is that the procedure for awarding the public service concession contracts is an efficient one. It is efficient in the sense that the main criterion for awarding the contract is the offer of the lowest price by the company. The selection criteria that could possibly exclude some companies from the procedure are reasonable: companies should act in the shipping sector, and they should meet their legal obligations.

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22											
Task 2 - Characterisation of public service concessions											
EL - Sector: Public Transport by Water											
Contract reference	TITLE	Publishing Authorities/entities	Subject	Value	Number of concessions advertised	Contracting Authority Sector	Selection Criteria	Award criteria	Weighting YES/NO	Payment	Award procedure
3332.8.2/05/09	Kalamos-Episkopi-Mitikas, Corfu-Othoni	Ministry of Maritime shipping	Exclusive coastline service for the lines Kalamos-Episkopi-Mitikas, Corfu-Othoni	not specified	2	Public Sector	Conditions 1	Lowest price	No	The ticket is subsidized by the state budget	Open
2009/S 132-192983	Pireas-Samos, Alexandroupoli-Samothraki, Thessaloniki-Mytilene	Ministry of Maritime shipping	Exclusive coastline service for the lines Pireas-Samos, Alexandroupoli-Samothraki, Thessaloniki-Mytilene	€665296-964679*	3	Public Sector	Conditions 1	Lowest price	No	The shipping company is paid by the tickets and the state budget for providing free	Open
2009/S 104-151001	Kimi-Skiros, Lavrio-Limnos, Kimi-Limnos, Lavrio-Sigri-Limnos, Thessaloniki-Iraklio, Patmos-Rhodes, Pireas-Thira, Pireas-Anafi, Pireas-Sikinos-Anafi, Pireas-Milos, Chania-Trizonia, Ag. Kyriaki-Trikeri	Ministry of Maritime shipping	Exclusive coastline service for the lines Kimi-Skiros, Lavrio-Limnos, Kimi-Limnos, Lavrio-Sigri-Limnos, Thessaloniki-Iraklio, Patmos-Rhodes, Pireas-Thira, Pireas-Anafi, Pireas-Sikinos-Anafi, Pireas-Milos, Chania-Trizonia, Ag. Kyriaki-Trikeri	€4540192.66 - 5982979.36**	12	Public Sector	Conditions 1	Lowest price	NO	The shipping company is paid by the tickets and the state budget for providing free transportation of passengers for specific parts of the lines	Open
2009/S 103-148668	Pireas-Katapola, Pireas-Astypalea, Pireas-Rhodes, Pireas-Thira, Pireas-Ios-Thira, Pireas-Kimolos, Pireas-Thira-Anafi, Lavrio-Ag. Efstratios-Limnos, Kimi-Limnos, Thessaloniki-Kyklades-Iraklio, Kimi-Skiros, Chania-Trizonia Fokidas, Neapoli Vion-Kythera-Antikythera, AG.Kyriaki-Trikeri, Chora Sfakion-Gavdos, Paleochora-Gavdos, Ierisos-Ag. Lavra Monastery, Dafni-Ag. Lavra Monastery, Lavrio-Mesta Chiou,	Ministry of Maritime shipping	Exclusive coastline service for the lines Pireas-Katapola, Pireas-Astypalea, Pireas-Rhodes, Pireas-Thira, Pireas-Ios-Thira, Pireas-Kimolos, Pireas-Thira-Anafi, Lavrio-Ag. Efstratios-Limnos, Kimi-Limnos, Thessaloniki-Kyklades-Iraklio, Kimi-Skiros, Chania-Trizonia Fokidas, Neapoli Vion-Kythera-Antikythera, AG.Kyriaki-Trikeri, Chora Sfakion-Gavdos, Paleochora-Gavdos, Ierisos-Ag. Lavra Monastery, Dafni-Ag. Lavra Monastery, Lavrio-Mesta Chiou	€22093952.93-31098201.04*	19	Public Sector	Conditions 1	Lowest price	NO	The shipping company is paid by the tickets and the state budget for providing free transportation of passengers for specific parts of the lines	Open

Conditions 1

- Submission of clean criminal record for the last 3 months
- Judicial certificate stating that the person or company applying are not under a state of bankruptcy
- Certificate from the relevant authority that the person or company have fulfilled their tax and social security obligations
- Signed statement from the person or company that electronic booking system is going to be installed for the purposes of issuing tickets and providing receipts for the passengers and the vehicles carried by the vessel
- Certificate from insurance organisation is required to prove that the company is insured
- Only shipping companies are considered to be eligible for the relevant contracts

*The band value for each contract depends on the category of the vessel and refers to the 1st year. A contract can be signed for the maximum period of 12 years.

**The band value for each contract depends on the category of the vessel and refers to the 1st year.

FINAL REPORT

1. BACKGROUND

This study is to serve as input in a reflection process, aimed at assessing the impact of a possible legislative initiative at EC level in the field of public service concessions.

The aim of this study will be to identify and characterise **public service concessions** published in Spain within a period of 6 consecutive months (April 2009- September 2009).

Concessions are contracts of the same type as public contracts except for the fact that the consideration for the service or works delivered consists of the concessionaire's right to exploit such services or works. Consequently, the concessionaire bears a substantial part of risk of exploitation. This included notably financial risks linked to the recovery of the investment.

Service concessions fall completely outside the scope of the Public Procurement Directives. Though any project involving the award of service concessions is governed by a minimum base of principles deriving from Article 43 to 49 of the EC Treaty, namely transparency, equal treatment and proportionality, the rules governing the award of these concessions diverges largely from one Member State to another. This concerns inter alia the way public authorities make their intention to award concessions public and the rules and procedures applied when concessions are awarded. As there is no EC wide obligation to publish contract notices in the Official Journal of the EU, the European Commission has a limited overview on the places and contents of publications of services concessions, the level of transparency and market-openness in the Member States or on procedures used to award contracts.

The **study will consist of two parts:**

- Part A "**identification of sources**": to identify how contracting authorities in Spain inform economic operators on their intention to award service concessions. The objective would be to identify ALL existing sources of information;
- Part B "**characterisation**": to gather specific information on characteristics of the total of concessions published in Spain within a period of 6 consecutive months (April 2009- September 2009).

Scope of the study:

The study shall cover service concession contracts in the following 4 sectors:

- public transport by water
- health services
- waste management
- water industry

2. TASK 1 - Research and Identification of sources of information on service concessions

According to the analysis of sources carried out in the above mentioned Part A, we identified the following sources as the most appropriate to obtain complete and reliable information in the area of service concessions awarded by Spanish public authorities in the sectors object of study:

1. - Boletín **Oficial del Estado** (www.boe.es). This is one of the most complete and reliable source as it facilitates information on all contract notices published for the whole Spanish territory. It allows searching using specific parameters such as public authority awarding the contract, sectors, specific dates of publication, etc. However, despite the fact that the website has a link to different languages' options, among them English and French, access to the content is only available either in Spanish or in the other official languages existing in the Spanish territory (Catalan, Basque and Galician).

The information provided by the BOE covers the following aspects of the announcement of the contract notices: Title of the contract notice, awarding authority, number of BOE, date of publication, object of the contract, type and form of procedure, budget, how to obtain more information and all documents needed, specific requirements that the contractor has to fulfil, announcement fees (whenever necessary), website where the public can have access to all information related to the present contract notice, for contract notices of services, the duration of the contract is normally specified.

2. - The website created by the Ministry of Economy "**plataforma de contratación**" (www.contrataciondelestado.es/wps/portal/plataforma) is also a very reliable source where one can find all contract notices and a special link to search according to the CPV. The website is available in Spanish and in other official languages existing in the Spanish territory (Catalan, Basque and Galician) but not in English or French. The information provided is similar to the information provided by BOE (see also above point 1): Title of the contract notice, awarding authority, number of BOE, date of publication, object of the contract, type and form of procedure, Budget, how to obtain more information and all documents needed, specific requirements that the contractor has to fulfil, announcement fees (whenever necessary), website where the public can have access to all information related to the present contract notice, for contract notices of services, the duration of the contract is normally specified.

3. - As regards the information provided on the **website of the Autonomous Communities**, it includes information on the contract notices to be performed in that region and not on contract notices covering the entire State. Therefore, the information is not a complete source when we are looking for information on contract notices in the entire Spanish territory but is a very complete source when we have an interest in a specific region. Information is available in Spanish and in the language of the Autonomous Community in the case of those with a second official language. Some also provide information in other EU languages such as English and/or French.

4- As regards the identified **private entities** providing information services in the area of public procurement, after having established contact with some of them and having identified some companies using their services, it seems that the most extended and reliable sources are www.gestboes.com and www.maninvest.com.

In summary, there are several public sources of information where private individuals and companies can obtain the information required. Furthermore, the Spanish authorities have done a remarkable work with the setting of the website "Plataforma de contratación del Estado" which contains all information regarding contract notices in order to improve the use of electronic means in the area of public procurement, and more in particular to improve publicity, notification and the timeframe to present proposals. All these public services are for free.

In addition, private entities provide also information on contract notices published in Spain. It seems that the use of such services is the most common way for economic operators/ private companies/ individuals to obtain update and complete information on contract notices. These services are however not for free.

Finally, we should mention that despite the fact that in principle all contract notices are open to companies located not only in the Spanish territory but also in any other country of the European Union, most of the sources of information are either in Spanish or in any of the co-official languages (whenever appropriate). We regret the fact that both public and private sources do not include relevant information in other EU language such as English and/or French.

3. TASK 2 - Characterisation of public service concessions according to the evaluation set up in the intermediate report

- **General comments**

In order to do the characterisation of public service concessions according to the evaluation set up in the intermediate report, we have created an Excel Table (see Annex I) with information on characteristics of the total service concessions published in Spain within a period of 6 consecutive months (from April 2009 to September 2009) covering the four sectors under study: public transport by water, health services, waste management and water industry.

The excel table contains 5 different sheets: one per sector (public transport by water, health services, waste management and water industry) and an "extra" excel sheet with the total amount of service concessions published during the consecutive 6 months. Regarding the extra sheet, considering the decentralisation of political powers in Spain, we considered relevant to include a breakdown by category of contracting authority: national, regional, local and public entities.

The excel table has been completed using the following criteria:

1. Date of publication
2. Contract reference
3. Title
4. Publishing Authority /Entities
5. Subject of contract;
6. Value of concessions advertised;
7. Number of concessions advertised;
8. Sector in which the contracting authority operates;
9. Scope of information published in the contract notices:
 - Selection criteria;
 - Award criteria;
 - Weighting or order of importance of award criteria;
 - Mode of payment/exploitation;
10. Type of procedure used to award concessions: i.e. open, restricted, competitive dialogue or negotiated.

Specific mention should be made in relation to criterion number 9 "Scope of information published in the contract notices", more in particular:

As regards **selection criteria**, those criteria refer to the existence of the characteristics and capacities which the Contracting Authority deems that the economic operator must possess in order to be able to participate in the tender procedure conducted, being thus considered as potentially capable of performing the contract. With regard to this point, in the majority of

service concessions published, the public tender does not include specific information on selection criteria. There are however some cases in which the publication establishes as selection criteria "*Economic and financial solvency as well as professional and technical qualifications of the economic operator*". In those cases, in order to obtain more specifications on the criteria, the public tender establishes that more information can be found in the tender documents ("pliego de condiciones"). Some tender documents are published on-line, however some others are not. For those which are not published on-line, information can be obtained contacting the relevant contracting authority. It has been impossible to obtain those tender documents (pliegos de condiciones) for all the concessions under the scope of the present study, mainly due to the fact that the tenders published during the period covered have already expired¹.

With regard to the criteria based on which Contracting Authorities **award** concession contracts, we have found that in the majority of cases is used the criterion "*the most economically advantageous tender*". This criterion is used when the Contracting Authority wishes to ensure that the contract shall be awarded to the candidate economic operator whose tender offers the best value for money. In this case:

- Contracting Authorities have the opportunity to determine the specifications for the contract placing greater emphasis on functional performance rather than on strict technical requirements.
- When the contract is awarded to the most economically advantageous tender, the award takes place based on various criteria related to the scope of the specific contract, such as the quality, price, technical value, aesthetic and functional characteristics, environmental characteristics, operating cost, efficiency, after-sales support and technical assistance, delivery date and delivery or execution deadline.

Where the contract award criterion is the most economically advantageous tender, the Contracting Authority must specify in the tender documents the method for the evaluation of tenders, indicating the corresponding weighting factor which it assigns to each one of the criteria selected in each case. Public tenders included in the study do not contain information on weighing and exploitation. That information, when relevant, it is included in the tender documents (pliego de condiciones) which have been impossible to obtain.

- **Comments on the relevant sectors:**

- Public transport by water

There has not been any concession published regarding this sector during the period April 2009-September 2009.

- Health services

This sector is a good example of the decentralisation model of political powers existing in Spain. The majority of concessions published are done by regional and local authorities and many relate to primary health service. In the majority of cases the award procedure is an open procedure with four cases of negotiated procedure.

- Waste Management

This sector is also an example of the decentralisation model of political powers as the majority of concessions published are done by regional or local authorities. In all cases the award procedure is an open procedure.

- Water Industry

Water industry is the sector where we find more public tenders published. In many cases the contracting authority is a public entity operating in the area of water management. The award

¹ It was not possible to obtain retroactive information using public sources. The study is therefore based on information provided by the private entity Gestboes. Gestboes provided us with all public tenders covering the 6 consecutive months (April 2009-September 2009) in the four sectors under study. We have then analysed those public tenders which fall under the scope of service concessions.

procedure is an open procedure, with the exception of one case of a restricted procedure and another case of negotiated procedure.

4. FINAL CONCLUSIONS

We conclude that in Spain, public authorities facilitate access to information on open contract notices in the area of service concessions in the following sectors: water, waste treatment, health services and public transport by water. Furthermore, the Spanish authorities have done a remarkable work with the setting of the website “Plataforma de contratación del Estado” which contains all information regarding contract notices in order to improve the use of electronic means in the area of public procurement, and more in particular to improve publicity, notification and the timeframe to present proposals. All these public services are for free.

We note however that despite the fact that in principle, all contract notices are open to companies located not only in the Spanish territory but also in any other country of the European Union, most of the sources of information are either in Spanish or in any of the co-official languages (whenever appropriate). We regret the fact that both public and private sources do not include relevant information in other EU language such as English and/or French.

In addition, in order to ensure respect of the principle of equal treatment in the procurement process and secure the necessary transparency so that every tenderer is aware of the criteria and methods to be applied for identifying the most economically advantageous tender, the weighting scheme of the award criteria must be included not only in the tender documents but also in the public tender notice, so that the tenderers know it when preparing their tenders. Contracting Authorities may deviate from this rule only in fully justifiable cases which they must be able to substantiate, when this weighting cannot be established in advance, and due mainly to the complexity of the contract.

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22				
Task 2 - Characterisation of public service concessions				
SPAIN- Number of concessions published				
Level	Public Transport by water	Health industry	Waste Management	Water Industry
National	0	11	2	2
Regional	0	38	13	11
Local	0	24	35	45
Public Entities/ Companies	0	10	12	54
TOTAL	0	83	62	112

Total number of concesssions identified 257

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22
Task 2 - Characterisation of public service concessions

Task 2 - Characterisation of public service concessions

SPAIN- Sector: Public transport by water[illegible]

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22
Task 2 - Characterisation of public service concessions
SPAIN- Sector: Health industry

[illegible]

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22

Task 2 - Characterisation of public service concessions
SPAIN- Sector: Water Industry

SPAIN- Sector: Water Industry

[illegible]

Specific Contract n° 12008 MARKTC2 - PRS-2007/ITAC/22									
Task 2 - Characterisation of public service concessions									
SPAIN - Sector: Waste Management									
Contract reference	TRILE	Publishing Authorities	Subject	Value	Contracting Authority	Selection Criteria	Award criteria	Payment	Award procedure
IFC45E-2007-02-03		Generación de Agua de Sotillo de Baza I.F. Formosa	Waste management	34.870,00€	Waste management		most economic advantageous tender		Open
22/0009		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	48.770,00€	Waste management		most economic advantageous tender		Open
20/0003		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	1.824.489,00€	Waste management		most economic advantageous tender		Open
20/0005		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	96.000,00€	Waste management		most economic advantageous tender		Open
13/14-04-05		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	1.385.180,00€	Waste management		most economic advantageous tender		Open
24-03-08-03-02-00-00-00		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	77.000,00€	Waste management		most economic advantageous tender		Open
31/1/2008		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	820.121,00€	Waste management		most economic advantageous tender		Open
31/03/2009		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	214.953,27€	Waste management		most economic advantageous tender		Open
26/09		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	382.829,04€	Waste management		most economic advantageous tender		Open
22/08		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	117.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	112.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	6.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	278.189,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	51.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	60.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	300.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	283.727,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	8.131,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	71.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	6.535,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	17.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	1.207.410,26€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	863.392,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	417.820,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	327.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	425.521,25€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	86.842,021,14€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	214.939,000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	81.052,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	18.171,27€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	42.800,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	214.939,000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	214.939,000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	794.750,17€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	6.292.564,26€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	450.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	26.277,077€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	86.000,00€	Waste management		most economic advantageous tender		Open
15-7-2-13819		Comunidad de Regantes de Alameda de Baza I.F. Formosa	Waste management	1.076.000,00€	Waste management		most economic advantageous tender		Open

FINAL REPORT

1. BACKGROUND

This study is to serve as input in a reflection process, aimed at assessing the impact of a possible legislative initiative at EC level in the field of public service concessions.

The aim of this study will be to identify and characterise **public service concessions** published in France within a period of 6 consecutive months.

Concessions are contracts of the same type as public contracts except for the fact that the consideration for the service or works delivered consists of the concessionaire's right to exploit such services or works. Consequently, the concessionaire bears a substantial part of risk of exploitation. This included notably financial risks linked to the recovery of the investment.

Service concessions fall completely outside the scope of the Public Procurement Directives. Though any project involving the award of service concessions is governed by a minimum base of principles deriving from Article 43 to 49 of the EC Treaty, namely transparency, equal treatment and proportionality, the rules governing the award of these concessions diverges largely from one Member State to another. This concerns inter alia the way public authorities make their intention to award concessions public and the rules and procedures applied when concessions are awarded. As there is no EC wide obligation to publish contract notices in the Official Journal of the EU, the European Commission has a limited overview on the places and contents of publications of services concessions, the level of transparency and market-openness in the Member States or on procedures used to award contracts.

The **study will consist of two parts:**

- Part A "**identification of sources**": to identify how contracting authorities in France inform economic operators on their intention to award service concessions. The objective would be to identify ALL existing sources of information;
- Part B "**characterisation**": to gather specific information on characteristics of the total of concessions published in France within a period of 6 consecutive months.

Scope of the study:

The study shall cover service concession contracts in the following 4 sectors:

- water industry
- waste management
- health services
- public transport by water

2. TASK 1 - Research and Identification of sources of information on service concessions

Après étude, la source sélectionnée la plus fiable et la plus exhaustive est le site du journal officiel, plus précisément le bulletin officiel des annonces des marchés publics (BOAMP).

Sur la période considérée, le nombre de concessions de services publics dans les différents secteurs étudiés, a pour résultat final:

- Industrie de l'eau : 56 appels d'offre étudiés
- Gestion des déchets : 2 appels d'offre étudiés
- Transport public par voie maritime : 0 appel d'offre étudié
- Service de santé : 0 appel d'offre étudié

Cette recherche a été menée en prenant en compte tous les termes permettant de décrire une concession de service public selon la définition française à savoir : délégation de service public (dsp), affermage, concession, régie intéressée, gérance, contrat de partenariat public privé (PPP).

Elle prend également en compte les avis de recherche, les attributions de marché ainsi que les archives. Avant étude, les nombreux rectificatifs d'appel d'offre augmentaient substantiellement le résultat de la recherche du fait d'avoir inclus les archives.

3. TASK 2 - Characterisation of public service concessions according to the evaluation set up in the intermediate report

L'article 40 de la loi Sapin du 29 janvier 1993 qualifie explicitement certaines activités de mission de service public: la distribution d'eau potable, l'assainissement et l'élimination des déchets. Cette première précision permet d'indiquer qu'un contrat qui porterait sur l'un de ces secteurs aurait le caractère d'une délégation de service public et non d'un marché public; ceci est confirmé par l'arrêt de la chambre régionale des comptes d'Auvergne du 7 mars 2002.

Cependant, ces appels d'offre ont été retirés de la présente étude.

Dans ces deux secteurs, certains appels d'offre ont pour objet :

- Des études sur les modalités de gestion des réseaux de distribution et d'alimentation en eau potable (non inclus dans cette étude)
- Des missions d'assistance à la procédure de délégation de service (non inclus dans cette étude).
- Des missions d'assistance à maître d'ouvrage pour le contrôle et le suivi de la délégation du service public (non inclus dans cette étude)
- Des missions d'assistance pour le renouvellement du contrat de délégation de service public (non inclus dans cette étude)

Concernant le transport public des biens ou de personne par voie maritime, aucun appel d'offre ne répond aux critères de recherche « délégation de service public ».

Concernant les services de santé, le moteur de recherche du BOAMP inclus dans cette catégorie les actions sociales. Les seuls appels d'offre relatifs à une dsp, concernent l'exploitation de Crèche, pour la gestion d'un équipement de petite enfance ou pour la gestion d'une aire d'accueil des gens du voyage c'est-à-dire des

actions sociales. En France, il n'y a donc pas de résultat pour ce secteur.

4. FINAL CONCLUSIONS

Il a été très difficile de dissocier les appels d'offre relatifs à la délégation de services publics de ceux relatif à un marché public.

De fait, la définition issue de la loi Sapin du 29 janvier 1993 et modifiée par la loi MURCEF du 11 décembre 2001 précise que la délégation de services publics porte sur la gestion d'un service public alors que les marchés publics concernent la satisfaction des besoins des personnes publiques en matière de travaux, fournitures et prestations de service.

Ainsi, le critère de la mission de service public se révèle souvent peu lisible pour les collectivités territoriales lorsqu'elles envisagent la passation d'une procédure contractuelle.

<p>Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22</p> <p>Task 2 - Characterisation of public service concessions</p> <p>FR - Sector: Waste management</p>
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<p>Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22</p> <p>Task 2 - Characterisation of public service concessions</p> <p>FR - Sector: Waste management</p>
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<p>Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22</p> <p>Task 2 - Characterisation of public service concessions</p> <p>FR - Sector: Waste management</p>
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[illegible]

Nombre de Publishing Authorities/entities				
Publishing Authorities/entities	Total			
Artois Comm	1			
communauté d'agglomération Seine-Eu	1			
Communauté de communes Caux vallée de Seine	1			
Communauté de Communes Val de Somme	1			
Communauté Urbaine de Strasbourg	1			
Commune de Bapaume	1			
commune de Belleville	1			
Commune de carhaix plouguer	1			
commune de Châteaufort.	1			
		service public d'assainissement collectif	OK	
Commune de Conjux	2	service public d'eau potable	OK	
Commune de Jonzac	1			
Commune de La Gaillarde	1			
Commune de Montévrain	1			
Commune de Nogent	1			
Commune de Rocbaron	1			
Commune de Saint Clement de Rivière	1			
Commune d'Envermeu	1			
Cté d'Agglomération du Carcassonne	1			
Cté de Cnes du Castelbriantais	1			
Le Syndicat Intercommunal d'Adduction d'Eau Potable et d'Ass	1			
Le Syndicat Mixte d'Alimentation en Eau Potable URA (qui regr	1			
		service public de distribution d'eau potable	OK	
Mairie de Fouesnant	2	services publics d'assainissement collectif et d'assainissement non collectif	OK	
Mairie de Salazie	1			
S.I.A. du Jarnisy	1			
SAN de Sénart en Essonne	1			
SI Garrigues Campagne	1			
SIA de la Boucle de la Seine	1			
SIA THI-FEU-CHA	1			
syndicat des eaux de la charente maritime	1			
Syndicat des Eaux d'Ile-de-France	1			
Syndicat intercommunal à vocations multiples de Margny sur M	1			
Syndicat Intercommunal d'Alimentation de Criquetot-Esneval	1			
Syndicat Intercommunal d'Alimentation en Eau Potable de la m	1			
Syndicat Intercommunal d'Alimentation en Eau Potable de la V	1			
Syndicat Intercommunal d'Alimentation en Eau Potable de Meill	1			
syndicat mixte vendée sèvre autizes	1			
SYSEG	1			
ville de Bernay-Vilbert	1	services public d'eau potable	OK	
Ville de Bernay-Vilbert.	1	service public d'assainissement	OK	
ville de Chevrainvilliers	1			
Ville de Doingt-Flamicourt	1			
Ville de Fouesnant	1	service public de distribution d'eau potable KO	KO	retiré de la base
Ville de Fouesnant	1	services publics d'assainissement collectif et d'assainissement non collectif KO	KO	retiré de la base
Ville de La Roche-sur-Yon	1			
ville de Libourne	1			
ville de Maureilhan	1			
ville de Mondelange	1			
		service public d'eau potable		
Ville de Montauban	2	service public d'eau potable	KO	retiré de la base
Ville de Montauban	1	service public d'assainissement		
Ville de Pierrelatte	1			
Ville de QUARANTE	1			
ville de Signes	1			
Ville de St Etienne-en-Dévoluy	1			
Ville de St Julien du Sault	1			
ville de Tain-l'Hermitage	1			
Ville de Villeneuve-le-Comte	1			
(vide)				
Total	59			

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Task 2 - Characterisation of public service concessions

FR - Sector: Water Industry

Contract reference	TITLE	Publishing Authorities/entities	Subject	Value	Number of concessions advertised	Contracting Authority Sector	Selection Criteria	Award criteria	Weighting	Payment	Award procedure	
09-68579	service public de distribution et de production de l'eau	Ville de St Julien du Sault	service public de distribution et de production de l'eau				III.2.1) Situation propre des opérateurs économiques, y compris exigences relatives à	économiquement la plus	NO	délégataire se rémunérera	procédure ouverte.	LIEN INTERNE T
09-70125	affermage du service public de l'eau potable à	commune de Belleville	du service public de l'eau potable attribuée conformément aux			production, traitement, distribution et	candidatures : au vu des justifications produites quant aux qualités et capacités du	économiquement la plus	NO		appel d'offres	LIEN INTERNE T
09-73909	service public de l'eau potable de Salazie	Mairie de Salazie	options retenues au terme de la mise en concurrence, les						NO			LIEN
09-77939	service de distribution publique d'eau potable du	SI Garrigues Campagne	Distribution Publique d'eau potable du Syndicat, application des				requis : Les candidats auront à produire un dossier complet comprenant		NO		AUTRE	LIEN
09-79680	services public d'eau potable de la commune de Bernay	ville de Bernay-Vilbert	public en application des articles L. 1411-1 et suivants du Code Général				candidatures : garanties professionnelles et financières de l'entreprise, aptitude à		NO		AUTRE	LIEN
09-84343	service public de l'eau potable du Syndicat des Eaux	Syndicat des Eaux d'Ile-de-France	public de type régie intéressée portant sur l'ensemble des missions				opérateurs économiques, y compris exigences relatives à l'inscription au registre du	condition s financier	YES	rémunération du délégataire	Procédure adaptée	LIEN
09-90939	par affermage du service public de distribution d'eau	Mairie de Fouesnant	affermage du service public de distribution d'eau potable				opérateurs économiques, y compris exigences relatives à l'inscription au registre du	économiquement la plus	NO	Délégataire se rémunérera	Procédure ouverte.	LIEN
09-94328	affermage du service public d'eau potable pour le	Intercommunal d'Alimentation en Eau Potable de la	Délégation par affermage du service public d'eau potable.				candidatures : au vu des justifications à produire quant aux qualités et capacités du		NO		AUTRE	LIEN
09-99054	affermage du service public d'eau potable à Doingt-Flamicourt	Ville de Doingt-Flamicourt	du service public d'eau potable caractérisé par les données suivantes				aux qualités et capacités du candidat : - Copie du ou des jugements	économiquement la plus	NO	essentielles de financeme	appel d'offres restreint	LIEN
09-102890	affermage, du service public d'eau potable à	Intercommunal d'Adduction d'Eau Potable et	délégation, par affermage, du service public d'eau potable				candidatures : - garanties et capacités techniques et financières ;		NO		AUTRE	LIEN
09-123583	par affermage du service public de distribution d'eau	Communauté de communes Caux vallée de Seine	affermage du service public de distribution d'eau potable				opérateurs économiques, y compris exigences relatives à l'inscription au registre du	économiquement la plus	NO	délégataire se rémunérera	Procédure ouverte.	LIEN
09-137259	par affermage des services publics de l'eau potable et de	Commune de Nogent	public en application des articles L. 1411-1 et suivants du code général				aux qualités et capacités du candidat : - Déclaration appropriée de		NO		autres	LIEN
09-146548	l'eau potable à Jonzac	Commune de Jonzac	délégation du service public de l'eau potable				- présentation de l'entreprise - attestations, certificats et justifications prévus aux articles		NO		procédure adaptée	LIEN
09-152794	service public d'eau brute à usage d'irrigation du	syndicat mixte vendée sèvre autizes	délégation de service public aura pour objet, la gestion du service d'eau				nécessaires pour évaluer si ces exigences sont remplies : - pièce 1 : une lettre de	d'attribu on sur la base du	NO			LIEN
09-154760	service public : service d'eau potable à rouffiac	Cté d'Agglomération du Carcassonne	public : service d'eau potable sur la commune de Rouffiac d'aude				candidatures : le candidat remettra un dossier permettant à la communauté	économiquement la plus	NO	essentielles de financeme	AUTRE	LIEN
09-159858	service public d'eau potable à Quarante	Ville de QUARANTE	du service public de distribution d'eau potable en application de la loi 93-				1411-1 du CGCT pris en application de l'article 38 de la loi 93-122 du 29 janvier 1993,		NO		AUTRE	LIEN
09-157867	service de distribution publique d'eau potable à	Commune de Saint Clement de Rivière	Distribution publique d'eau potable de la Commune - applications				un dossier complet comprenant les pièces suivantes : - lettre de candidature dument complétée		NO		AUTRE	LIEN
09-159737	intéressée du service public d'eau potable à	Ville de Montauban	public d'eau potable. Procédure de délégation de service public du type				aux qualités et capacités du candidat permettant à la collectivité d'apprécier ses	économiquement la plus	NO	essentielles de financeme	Procédure ouverte.	LIEN
09-161818	affermage du service public d'eau potable à Margny	intercommunal à vocations multiples de Margny sur Matz	du service public d'eau potable, attribué conformément aux				candidatures : contenu du dossier de candidature oeltre de candidature (imprimé DC 4)		NO		AUTRE	LIEN
09-161311	potable et gestion du service d'eau potable à	ville de Chevrainvilliers	de service public en application des articles L. 411-1 et suivants du code				candidatures : conformément à l'article L.1411-1 du Code Général des Collectivités		NO		AUTRE	LIEN
09-165490	service public de type affermage pour la gestion et	Ville de Tain-l'Hermitage	pour objet la passation d'une délégation de service public de type				aux qualités et capacités du candidat : - DC 4 (Lettre de candidature et	économiquement la plus	NO		appel d'offres ouvert	LIEN
09-172317	service public d'eau potable à Conjux	Commune de Conjux	du service public d'eau potable, attribuée conformément aux				Situation juridique - références requises : lettre de candidature		NO		AUTRE	LIEN
09-169372	affermage du service public de la production et de la	d'Alimentation en Eau Potable URA (qui regroupe des	du service public de la production et de la distribution d'eau potable			Lyonnais des Eaux					procédure restreinte.	LIEN
09-171451	service public portant sur la production, le	Ville de La Roche-sur-Yon	public portant sur la production, le transport, la sécurité, le stockage et la			VEOLIA EAU, région ouest					procédure restreinte.	LIEN
09-167628	affermage du service public de la production et de la	communauté d'agglomération Seine-Eu	service public, de type affermage, conclu en application des articles L.			VEOLIA EAU					procédure restreinte.	LIEN
09-187992	affermage du service public d'eau potable à Meillant	Intercommunal d'Alimentation en Eau Potable de	délégation par affermage du service public d'eau potable				candidatures : au vu des justifications à produire quant aux qualités et capacités du		NO		AUTRE	LIEN
09-187507	affermage, du service public d'eau potable pour le	Intercommunal d'Alimentation en Eau Potable de la	délégation, par affermage, du service public d'eau potable				candidatures : - garanties et capacités techniques et financières ;		NO		AUTRE	LIEN
09-79741	délégation de service public en application des	Ville de Bernay-Vilbert.	permettre desservi : commune de Bernay vilbert.				Critères de sélection des candidatures : garanties professionnelles et financières		NO		autres	lien
09-78291	service public de traitement des eaux usées sur l'unité	Artois Comm	passation du contrat est celle des délégations de service publics, de type				candidatures : Conformément à l'article L. 1411-1 alinéa 3 du CGCT, les candidats seront		NO		autres	lien
09-85360	déléguee par affermage du service public	Commune de Montévrain	de service public en application des articles L. 411-1 et suivants du Code				devront produire un dossier de candidature, rédigée en langue française.	critères d'attributi on du	NO	rémunération du délégataire		lien
09-89746	service public de l'assainissement collectif (opérations	S.I.A. du Jarnisy	redevance : - en 2007 : 609 226 m3 ; - en 2006 : 632 282 m3 ;	final du marché ou du lot		compagnie générale des eaux	garanties professionnelles , financières et moyens techniques du candidat lui	économiquement la plus	NO		autres	lien

[illegible]

FR - Sector: Public Transport by water

[illegible]

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22 Task 2 - Characterisation of public service concessions FR - Sector: Health services											
Contract reference	TITLE	Publishing Authorities/ entities	Subject	Value	Number of consession s advertised	Contracting Authority Sector	Selection Criteria	Award criteria	Weighting	Payment	Award procedure
									Yes/No	description of payment/ exploitation details	

FINAL REPORT

1. BACKGROUND

This study shall serve as input in a reflection process, aimed at assessing the impact of a possible legislative initiative at EC level in the field of public service concessions.

The aim of this study will be to identify and characterise **public service concessions** published in Italy within a period of 6 consecutive months.

Concessions are contracts of the same type as public contracts except for the fact that the consideration for the service or works delivered consists of the concessionaire's right to exploit such services or works. Consequently, the concessionaire bears a substantial part of risk of exploitation. This includes notably financial risks linked to the recovery of the investment.

Service concessions fall completely outside the scope of the EC Public Procurement Directives. Though any project involving the award of service concessions is governed by a minimum base of principles deriving from Article 43 to 49 of the EC Treaty, namely transparency, equal treatment and proportionality, the rules governing the award of these concessions diverge largely from one Member State to another. This concerns *inter alia* the way public authorities make their intention to award concessions public and the rules and procedures applied when concessions are awarded. As there is no EC wide obligation to publish contract notices in the Official Journal of the EU, the European Commission has a limited overview on the places and contents of publications of services concessions, the level of transparency and market-openness in the Member States or on procedures used to award contracts.

The **study will consist of two parts:**

- Part A "**identification of sources**": to identify how contracting authorities in Italy inform economic operators on their intention to award service concessions. The objective would be to identify ALL existing sources of information;
- Part B "**characterisation**": to gather specific information on characteristics of the total of concessions published in Italy within a period of 6 consecutive months.

Scope of the study:

The study shall cover service concession contracts in the following 4 sectors:

- Water industry (including waste water management);
- Waste management;
- Health services (including maintenance of hospitals, buildings and health facilities);
- Public transport by water (persons and goods but excluding inland waterway).

2. TASK 1 - Research and Identification of sources of information on service concessions

Contracting authorities in Italy are not bound by any obligation to employ a specific means of publication for the award of public service concessions. The only mandatory prescription of the Italian Law regulating public contracts (Law 163/2006 - "*Testo Unico Appalti*"), is to respect the general principle of appropriate publicity ("*adeguata pubblicità*"), together with the principles of transparency, non-discrimination, equality of treatment and proportionality.¹

In this respect, contracting authorities awarding public service concessions often do not publish contract notices at all, but invite those economic operators to the informal tender which are included in their "official lists" of trustful service providers for the specific sector concerned ("*elenchi delle imprese di fiducia*" or "*elenchi degli operatori economici qualificati*") or have been identified by the means of calls of interests.²

As a result, the situation in Italy is characterized by a very complex and articulated framework, which may lead to inconsistencies as to the way public authorities express their intention to award public service concessions, and to possible different scenarios at national, regional and local level.

Under this framework, and from the investigations carried out under Task 1 of the study (which are described in details in the Intermediate Report), it appears therefore quite difficult to identify the most convenient sources of information on service concessions, among those identified in the Intermediate Report.

As for public sources of information, even if the Italian Official Journal could appear to be the most complete source of information - as it contains sub-sections organized according to the nature of the different contracting authorities (Ministries, State authorities, regional and local authorities, bodies governed by public law, public authorities for the health sector, etc.) - the analysis carried out and the meagre number of contract notices identified raises serious concerns on the reliability of this source for developing a comprehensive study mirroring the *status quo* in the relevant sectors in Italy.

As mentioned in the Intermediate Report, in fact, not all contract notices concerning public service concessions (awarded or to be awarded) are published in the Official Journal, neither the parameters discerning what has and has not to be published are clear. Moreover, it is often not possible to establish if the contract notices published in the Official Journal refer to public service contracts or to public service concessions.³

Therefore it is not possible to reliably estimate the number of contract notices published in the Official Journal. The investigations carried out highlight the lack of reliability of this source of information with regard to the completeness and the quantity of information available.

As for private sources of information, private/business websites seem to be the most appropriate source of information, offering, through consultation of a single source of information, access to databases covering contract notices published at national, regional and local level.

¹ According to Article 30, paragraph 3 of the Law 163/2006, the award of public service concessions must be governed by the general principles concerning public contracts and by the principles deriving from the EC Treaty, namely the principles of transparency, non-discrimination, equality of treatment, proportionality and appropriate publicity ("*adeguata pubblicità*"). Nevertheless, the Law does not mention or refer to any specific means of publication.

² The Law requires contracting authorities to invite at least five economic operators (if existing for the specific sector concerned) to the informal tender ("*gara informale*"), and to set in advance the criteria for the award of the contract (Art. 30, paragraph 3).

³ This is the case for contract notices published before the 60 days time-period prior to the consultation date, which are not available for free consultation and often only make reference to the award of a "public service" without mentioned the "nature" of the contract to be awarded.

It is important to stress, however, that such private/business websites - which are specialised mainly on public contracts and public procurement procedures - offer database services on public service concessions only if such public contracts have been published by the competent public authority. As a consequence, they would not give any certainty of identifying notices concerning public service concessions.

In this respect, in fact, it is very unusual that contracting authorities - which are not bound by any legal obligation to employ a specific means of publication - decide to publish contract notices on public service concessions, considering that the most (and confirmed) widespread practice within public authorities is to inform only those economic operators included in their "official lists" of trustful service providers or identified by the means of calls of interests.

This means that, in the majority of cases, only economic operators included in such lists or identified as above are informed on the contracting authorities' intention to award service concessions. Such information is not available to third parties.

Preliminary conclusions

In the light of the above, the analysis carried out under Task 1 underlines that there are no all-inclusive or even useful sources of information (public or private; at national, regional or local level) to carry out a detailed research in order to get a comprehensive picture of public service concessions in Italy.

The problem, indeed, seems not to be to identify the most reliable, appropriate or convenient source of information in order to conduct the investigation. Difficulties are caused by the absence of any legal provision imposing specific mandatory publication for the award of public service concessions, the only mandatory prescription of the Italian Law being to respect the general principle of appropriate publicity ("adeguata pubblicità"), as mentioned above.

3. TASK 2 - Characterisation of public service concessions according to the evaluation set up in the Intermediate Report

In order to carry out Task 2, the research was based on the services offered by the private/business website telemat.it, which appears to be the most reliable provider of database services for the purpose of the study.⁴

The investigation was carried throughout all the Italian territory (20 regions) for each relevant sectors, during the period 1st April 2009 - 30 September 2009.

After the evaluation of the different codes available within the database - each of one corresponds to different categories of notices, even under the same sector - the following codes have been selected to undertake the study:

Health services: T-SANITA + F-ASSO + F-ESALAB;

Public transport by water: F-TRPERS + F-MENA;

Waste management: F-ECOOS + F-ECONOC + F-ECOAMB + F-ECORSU + F-IGIS;

Water industry: M-OS3 + M-OS22 + M-OG6 + M-OG11.

On the basis of the above codes, the following number of notices has been identified:

⁴ As already mentioned in my previous comments to the Commission, in fact, the commercial operator contacted by phone - who has a ten years experience in the sector - was the only one (among those contacted) capable to understand the differences between public service contracts and public service concessions and able to provide some useful information concerning the practice of the sector. The information gathered confirms the preliminary conclusions of the Intermediate Report.

Health services: 468
Public transport:⁵ 816
Waste management: 737
Water industry: 1.159

In this respect, it is important to stress that - as the Law 163/2006 does not impose any obligation to publish public service concessions - the system does not offer different services for public service contracts and service concessions, which are collected in the same database. For this reason an in-depth analysis and evaluation of all notices published for each relevant sector, during the period under investigation, was necessary and of crucial importance for the study.

As a result, the following notices concerning public service concessions have been identified:

Health sector: 0 out of 468
Public transport by water: 2 out of 816
Waste management: 9 out of 737
Water industry: 4 out of 1.159

These notices have then been entered into the excel table (annexed to this report) in order to provide the Commission with the information required.⁶ In this respect, the following critical remarks have been formulated:

- Notices not raising special concerns (in black in the table):⁷ the three selected notices⁸ identify with no doubt public service concessions.

In particular, the notice published by the “*Comune di Ayas*”⁹ has been selected, because even if there is some confusion on the use of the appropriate legal terminology (the notice often employs the term “*appalto*”, which legally speaking is a public contract and not a service concession), there are clear indications of the fact that we are dealing with a service concession. First of all, the notice explicitly states that the contract is regulated by [Article 30](#) of the Law 163/2006, which is specifically dedicated to service concessions; secondly the notice refers to the fact that the concessionaire bears the risk involved in operating the service (notably financial risks linked to the recovery of the investment), which is a distinctive feature identifying a service concession.

The same considerations are valid for the notice published by the “*Ministero delle Infrastrutture e dei Trasporti*”,¹⁰ which has been selected under this category because of the reference to [Article 30](#) of the Law 163/2006 regulating public service concessions, even if the term “*concessione*” is not employed.¹¹

- Notices raising some concerns (in red in the table):¹² as for twelve notices,¹³ it was not possible to confirm with certitude their very nature as service concessions, for the following main reasons. First of all they do not make reference to any relevant provision of law (e.g., Law 163/2006 which - except for Article 30 - only regulates

⁵ The database does not have a specific section dedicated to public transport by water. Therefore, all the notices published for public transport have been analysed.

⁶ They are also saved in the user profile created within *telemat* database and annexed to this report.

⁷ These notices are labelled in red in the user profile created within *telemat* database (section “*etichette personali - gestione etichette*”).

⁸ Two notices in the waste management sector and one in the public transport by water sector.

⁹ Prot. C. 9.660/VI/5 (*telemat* ref.11021146).

¹⁰ *Telemat* ref. 11016735.

¹¹ The notice in particular refers to the term “*affidamento del servizio*”.

¹² These notices are labelled in yellow in the user profile created within *telemat* database (section “*etichette personali - gestione etichette*”).

¹³ Seven notices in the waste management sector, four in the water industry sector and one in the public transport by water sector.

public contracts) or specific legal terminologies (e.g., “*appalto*” or “*affidamento in concessione*”), which would be useful to establish the nature of the contracts. Secondly, they often refer to undetermined notions, such as “tender” (“*gara*”) or “informal tender” (“*gara informale*”), which may identify both public service contracts and service concessions.

However, the very low level of formalities required to participate to the tender and the fact that the term “*affidamento del servizio*” is recurrent, can lead to consider (with reservation) that we are dealing with service concessions.

- It is important to stress that five notices identified¹⁴ seem to confirm - as mentioned under point 2. of this document - that contracting authorities normally do not publish contract notices on service concessions but usually invite those economic operators included in their “official lists” of trustful service providers or identified by the means of call of interests (which is the case for the five notices under discussion).¹⁵

4. FINAL CONCLUSIONS

In the light of the above, it is possible to affirm that the outcome of the second part of the study confirms the preliminary conclusions formulated in the Intermediate Report, and discussed in detail in the Intermediate Report.

In particular, the results of the analysis and evaluation of the contract notices identified by means of the telemat.it database under Task 2 and the preliminary investigations carried out under Task 1 permit the following conclusions:

1. The situation in Italy is characterized by a very complex and articulated framework, which may lead to inconsistencies as to the way public authorities express their intention to award public service concessions (due notably to the multitude of means of publication available), and to possible different scenarios at national, regional and local level.

Under this framework it was not possible to identify a reliable or even useful source of information (public or private; at national, regional or local level) for developing a comprehensive study mirroring the *status quo* concerning public service concessions in Italy.

2. The analysis of the legal framework governing service concessions highlights the absence of any legal provision imposing specific mandatory publication for the award of public service concessions. The only mandatory prescription of the Italian Law is, in fact, to respect the general principle of appropriate publicity (“*adeguata pubblicità*”), together with the principles of transparency, non-discrimination, equality of treatment and proportionality.¹⁶
3. As for the public authorities’ practice, contracting authorities - which are not bound by any legal obligation to employ a specific means of publication - normally do not publish at all contract notices on public service concessions, considering that the most widespread practice is to inform only those economic operators included in their “official lists” of trustful service providers or identified by the means of calls of interests, in line with Article 30, paragraph 3 of the Law 163/2006;

¹⁴ Three notices in the waste management sector (*telemat* ref. 10993951, ref. 11003340, and ref. 11032592), one in the water industry sector (*telemat* ref. 11002537), and one in the public transport by water sector (*telemat* ref. 11016735).

¹⁵ Under this procedure, a letter of invitation to the tender (which is supposed to contain all the required information and the relevant details on the awarding procedure) is then sent to the short-listed operators having submitted their expressions of interest.

¹⁶ Article 30, paragraph 3 of the Law 163/2006.

Such a practice is confirmed by the meagre number of contract notices identified under Task 2 and by the investigation undertaken and the information gathered from business operators.¹⁷

4. Finally, from the legal analysis of the identified contract notices, it emerges a quite confused and uncertain framework as for (i) the use of legal terminology, which is often not appropriate and leads to inconsistencies and difficulties in order to distinguish service concessions from public service contracts; and (ii) the absence, in a relevant number of notices analysed, of any reference to the provisions of law regulating the contracts, which does not appear to be an appropriate and good practice.

¹⁷ See footnote 4.

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Task 2 - Characterisation of public service concessions

Italy - Sector: Public transport by water (persons and goods but excluding inland waterway)

[illegible]

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22

Task 2 - Characterisation of public service concessions

Italy - Sector: **Health services (including maintenance of hospitals, buildings and health facilities)**

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22

Task 2 - Characterisation of public service concessions

Italy - Sector: **Health services (including maintenance of hospitals, buildings and health facilities)**

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Task 2 - Characterisation of public service concessions

Italy - Sector: **Health services (including maintenance of hospitals, buildings and health facilities)**

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Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22
Task 2 - Characterisation of public service concessions
Italy - Sector: Waste

Contract reference	TITLE	Publishing Authorities/entities	Subject	Value	Number of concessions advertised	Contracting Authority Sector	Selection Criteria	Award criteria	Weighting	Payment	Award procedure
									Yes/No	description of payment/ exploitation details	
C.I.G. 029733154C (TELEMAT ref. 10997712)	"Affidamento in concessione dei servizi di raccolta e gestione dei rifiuti prodotti dalle navi che fanno scalo nel porto di Civitanova Marche"	Ufficio Circondariale Marittimo di Civitanova Marche Ministero delle Infrastrutture e dei Trasporti	Service concession for the collection and management of wastes generated from ships calling at Civitanova Marche port	Euro 120.000,00	1	Ministry - transport and infrastructures sector	Economic/financial criteria + technical/professional criteria + formal evaluation of the tender and the required documentation	Most economically advantageous tender - "Offerta economicamente più vantaggiosa"	Yes	As for payments and tariffs, the contract notice refers to the applicable "Piano di raccolta e gestione dei rifiuti prodotti dalle navi e dei residui del carico" (Articles 4 and 5). The contract notice also provides for the payment of an annual fee ("canone") equal to 1% of the total turnover, with a minimum amount of euro 900 (Article 9). Moreover, it requires the payment of a surety ("cauzione") and the stipulation of an insurance policy (Articles 12 and 13). The concessionaire is also required to match some specific conditions, e.g., to be the owner or the holder (leasing or lease) of the appropriate means to provide the service of waste collection and transport (Article 10)	Open procedure - "procedura aperta"
Prot. C. 9.660/VII/5 (TELEMAT ref.11021146)	"Affido in concessione di servizi relativi alla discarica comunale per rifiuti inerti in località Corbet"	Comune di Ayas	Service concession for the management of the municipal garbage dump for inert wastes	Euro 5.000,00	1	Local authority ("Comune"). The sector is not mentioned	Technical, economic and financial criteria + legal requirements + formal evaluation of the tender and the required documentation	The lowest price - "prezzo più basso"	No. The contract notice only refers to the fact that if the tenders submitted have the same score, the contracting authority will decide by public drawing lots ("sorteggio pubblico")	The contract notice only refers to the fact that the concessionaire bears the risk involved in operating the service (i.e., the responsibilities and the financial risk of exploitation are transferred to the concessionaire)	The contract notice refers to the award procedure regulated by Article 91 of the Italian Law on public contracts (Law 163/2006): "procedura di affidamento"
Prot. n. 5297 del 26/05/2009 (TELEMAT ref. 11010028)	"Avviso pubblico per l'affidamento del servizio di raccolta e smaltimento di materiali contenenti amianto (M.C.A) sul territorio comunale"	Comune di Neviano	Service for the collection and disposal of special wastes (asbestos)	/	1	Local authority ("Comune") - technical and maintenance sector	The contract notice only refers to the documentation required for submitting the tender and to the criteria for the exclusion of tenderers	Most economically advantageous tender - "miglior offerente"	No. The contract notice only refers to the fact that if the tenders submitted have the same score, the contracting authority will decide by drawing lots ("sorteggio")	/	/
/ (TELEMAT ref. 11015517)	"Servizio di prelievo, trasporto e smaltimento di Eternit (cementoamianto) depositato su aree pubbliche del territorio comunale"	Comune di Marsala	Service for the collection and disposal of special wastes (asbestos)	/	1	Local authority ("Comune") - local public service sector	/	The contract notice only refers to the fact that tenders have to be formulated as a downwards percentage of the price of euro 3,50 per square meter ("espressa come ribasso % da praticare sul prezzo di euro 3,50 al mq.")	/	/	/

P.I. 00139550818 (TELEMAT ref. 11016280)	"Affidamento del servizio di prelievo, trasporto e smaltimento del percolato, circa 200 tonnellate, codice C.e.r. 190703 (speciale non pericoloso) - presente presso la discarica non attiva di C.da Buttigane"	Comune di Marsala	Service for the collection and disposal of special wastes ("percolato")	Euro 80,00 per ton	1		Local authority ("Comune") - local public service sector	/	The contract notice only refers to the fact that the amount to be paid to the successful tenderer is subject to downwards ("ribasso d'asta")	/		/	
Prot. 264 (TELEMAT ref. 11029729)	"Invito a gara per conferimento rifiuti da produzione"	Andria Multiservice S.p.A (Comune di Andria)	Service for the disposal of special wastes ("conferimento in discariche autorizzate di rifiuti da produzione")	Euro 50,000,00 max + VAT	1		State-owned company: the municipality of Andria is the sole shareholder. The sector is not mentioned	/	The contract notice only refers to the documentation required for submitting the tender and to the criteria for the exclusion of tenderers	/		/	
/ (TELEMAT ref. 10993951)	"Affidamento del servizio di ritiro, trasporto e smaltimento di rifiuti radioattivi provenienti dall'Azienda Ospedaliera "Ospedale San Salvatore" di Pesaro"	Azienda ospedaliera San Salvatore - Pesaro	Service for the collection, transport and disposal of special wastes (radioactive wastes - "rifiuti radioattivi")	Euro 39,000,00 VAT included (5 years) + 23,400,00 VAT included (3 years renewal)	1		Public hospital ("Azienda ospedaliera") - health sector	/	The notice refers to the awarded criteria specified in the letter of invitation ("lettera di invito"), which will be addressed to the short-listed operators	/		/	Negotiated procedure "procedura negoziata"
/ (TELEMAT ref. 11003340)	"Indagine di mercato per l'affidamento del servizio, per l'anno 2009 di recupero, trasporto e relativo smaltimento di rifiuti speciali pericolosi e ospedalieri per le esigenze di Reparti appartenenti al Comando Regione Carabinieri Sicilia"	Comando Regione Carabinieri Sicilia	Service for the collection, transport and disposal of special wastes (dangerous and hospital wastes)	/	1		Carabinieri regional headquarter - administrative service / financial management unit	/	The notice only points out that the conditions to participate to the tender ("le modalità fissate per la partecipazione alla gara") are specified in the letter of invitation ("lettera di invito"), which will be addressed to the short-listed operators	/		/	The notice refers to the "procedura in economia", which is regulated by Article 125 of the Italian Law on public contracts (Law 163/2006)
Prot. 3728 (TELEMAT ref. 11032592)	"Affidamento del servizio di raccolta e trasporto RRSJU e dei servizi di igiene urbana e complementari del territorio comunale"	Comune di Roccaforzata (Provincia di Taranto)	Service for the collection and transport of wastes and ancillary services	/	1		Local authority - environmental service	/	The notice only refers to the fact that the operators, whose expressions of interest are considered eligible, will be invited to present their offers	/		/	

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22
Task 2 - Characterisation of public service concessions
Italy - Sector: Water Industry (including waste water treatment)

Contract reference	TITLE	Publishing Authorities/entities	Subject	Value	Number of concessions advertised	Contracting Authority Sector	Selection Criteria	Award criteria	Weighting	Payment	Award procedure
									Yes/No	description of payment/ exploitation details	
C.I.G. 0335128C5C (TELEMAT ref. 11016158)	"Affidamento di lavori, servizi e provviste afferenti interventi di costruzione, manutenzione e riparazione di manufatti idraulici inerenti alla rete di distribuzione"	Sidra Servizi Idrici Ambientali Spa S.p.A.	Services, works and supplies for the construction, maintenance and repair of the water distribution network	Euro 140.000,00 + VAT	1	Private company providing public services related to the cycle of water on the basis of a written agreement ("convenzione") stipulated with the municipality ("Comune di Catania")	/	The lowest price: maximum downwards of the amount ("massimo ribasso sull'importo a base d'asta")	/	/	Restricted procedure ("trattativa privata")
Prot. 265 (TELEMAT ref. 11030269)	"Invito a gara informale per il servizio di espurgo e trasporto acqua)"	Andria Multiservice S.p.A (Comune di Andria)	Services for the treatment of waste waters and the transport of water	Euro 50.000,00 max + VAT	1	State-owned company; the municipality of Andria is the sole shareholder. The sector is not mentioned	The contract notice only refers to the documentation required for submitting the tender and to the criteria for the exclusion of tenderers	/	/	/	/
C.I.G. 0335149DBO (TELEMAT ref. 11016141)	"Affidamento di lavori, servizi e provviste afferenti interventi di costruzione, manutenzione e riparazione di manufatti idraulici inerenti alla rete di distribuzione"	Sidra Servizi Idrici Ambientali Spa S.p.A.	Services, works and supplies for the construction, maintenance and repair of the water distribution network	Euro 140.00,00 + VAT	1	Private company providing public services related to the cycle of water on the basis of a written agreement ("convenzione") stipulated with the municipality ("Comune di Catania")	/	The lowest price: maximum downwards of the amount ("massimo ribasso sull'importo a base d'asta")	/	/	Restricted procedure ("trattativa privata")
/ (TELEMAT ref. 11002537)	"Avviso pubblico per manifestazione di interesse all'invito alla procedura di affidamento del servizio di gestione rete irrigua di proprietà comunale e relativo controllo e distribuzione acque reflue affinate provenienti dal Depuratore Cittadino"	Comune di Maruggio - Provincia di Taranto	Services for the management, quality control and distribution of waste waters, coming from the local purifier	/	1	Local authority ("Comune"). The sector is not mentioned	The notice only refers to the fact that the operators, whose expressions of interest are considered eligible and compatible with the objectives to be reached, will be invited to present their offers	/	/	/	/

FINAL REPORT

1. BACKGROUND

This study is to serve as input in a reflection process, aimed at assessing the impact of a possible legislative initiative at EC level in the field of public service concessions.

The aim of this study will be to identify and characterise **public service concessions** published in Portugal within a period of 6 consecutive months.

Concessions are contracts of the same type as public contracts except for the fact that the consideration for the service or works delivered consists of the concessionaire's right to exploit such services or works. Consequently, the concessionaire bears a substantial part of risk of exploitation. This included notably financial risks linked to the recovery of the investment.

Service concessions fall completely outside the scope of the Public Procurement Directives. Though any project involving the award of service concessions is governed by a minimum base of principles deriving from Article 43 to 49 of the EC Treaty, namely transparency, equal treatment and proportionality, the rules governing the award of these concessions diverges largely from one Member State to another. This concerns inter alia the way public authorities make their intention to award concessions public and the rules and procedures applied when concessions are awarded. As there is no EC wide obligation to publish contract notices in the Official Journal of the EU, the European Commission has a limited overview on the places and contents of publications of services concessions, the level of transparency and market-openness in the Member States or on procedures used to award contracts.

The **study will consist of two parts:**

- Part A "**identification of sources**": to identify how contracting authorities in Portugal inform economic operators on their intention to award service concessions. The objective would be to identify ALL existing sources of information;
- Part B "**characterisation**": to gather specific information on characteristics of the total of concessions published in Portugal within a period of 6 consecutive months.

Scope of the study:

The study shall cover service concession contracts in the following sector:

- health services

2. TASK 1 - Research and Identification of sources of information on service concessions

L'étude se fonde sur l'analyse de la législation en vigueur (Code des marchés publics, règlements d'application concernant la publication et diffusion des concours) et l'identification des sources où les annonces doivent obligatoirement être publiées : *Diário da República*

(journal officiel portugais), et sites sur les marchés publics.

La publication au *Diário da República* est obligatoire et reste la source la plus fiable et la plus complète (art. 2 et 130 du CCP). Le règlement n° 701-A/2008 du 29 juillet fixe les modèles des Avis de procédures pré-contractuelles prévus dans le code des marchés publics, avec les informations qu'ils doivent obligatoirement contenir. Cette publication est disponible en format papier et en version électronique sur le site www.dre.pt, où l'annonce est en tout similaire à la version papier. Il est possible de consulter le *Diário da República* on-line librement jusqu'à 45 jours avant la date de consultation. Pour les journaux plus anciens, il est nécessaire de souscrire le service. De même, il n'est possible d'utiliser le moteur de recherche du site que si on est abonné à ce service.

Le règlement n° 701-F/2008 du 29 juillet établit les règles applicables à la constitution, au fonctionnement et à la gestion du principal site Internet relatif aux marchés publics (*Portal dos Contratos Públicos*), tandis que le règlement n° 701-G/2008 du 29 juillet définit les critères et les conditions auxquels l'utilisation de plateformes électroniques par les entités adjudicatrices doit obéir, pendant la phase de formation des contrats, et établit les règles de fonctionnement de ces plateformes. La principale plateforme électronique pour les marchés publics est www.vortalgov.pt, laquelle se divise en plateforme spécifiques pour certains secteurs. La page correspondant au secteur de la santé est : www.vortalhealth.pt. La création et le fonctionnement des plateformes électroniques pour les marchés publics se trouvent réglementés par la *portaria* n° 701-G/2008 du 29 juillet. Compte tenu du nouveau modèle de gestion des hôpitaux, il est possible pour les entités publiques du secteur de souscrire directement à d'autres plateformes électroniques.

La publication au JOCE n'est pas obligatoire, mais elle est prévue dans diverses dispositions du Code des Contrats Publics, notamment aux arts. 34, 35 et 131.

3. TASK 2 - Characterisation of public service concessions according to the evaluation set up in the intermediate report

Entre avril et septembre 2009, seul avis de concours dans lequel le contrat est qualifié de « concession de service public » a été publié. Quelques avis pouvant configurer une concession ont également été publiés pendant cette période, mais ils sont toujours qualifiés « d'acquisition de services ». Les résultats des procédures d'adjudication ne sont que notifiés aux candidats et affichés dans les locaux de l'opérateur qui a ouvert le concours.

Les montants en cause ne sont que très rarement spécifiés, ce qui peut s'expliquer par le fait que le prix le plus bas ou la proposition la plus avantageuse du point de vue économique sont les critères principaux d'adjudication de ces concours.

Les avis incluent les informations suivantes :

- Numéro du contrat et numéro de la publication au *Diário da República* (ils ne coïncident pas) ;
- Les codes CPV ;
- Les critères d'adjudication du marché ;
- Les délais de consultation des documents du concours, les délais de dépôt de candidatures, la date d'ouverture des dossiers de candidatures et la date d'affichage des résultats ;
- Les délais d'exécution du contrat ;
- Le nom et les contacts de l'entité publique, qui promeut le concours et où il est possible d'obtenir des éclaircissements et des informations complémentaires ;
- L'obligation ou non de dépôt d'une caution ;

- La date d'envoi de l'avis au *Diário da República* et s'il a été publié au JOCE ;
- Ils contiennent également une référence à la publication ou non de l'avis sur une plateforme électronique (nous sommes encore en période transitoire, art. 9 du Code des Contrats Publics, par conséquent la divulgation sur un site n'est pas obligatoire).

Les altérations et prorogations au concours font l'objet d'une nouvelle publication, où il est fait référence à la première. Les critères de sélection des candidatures et le détail des critères d'adjudication figurent sur le cahier des charges et autres documents du concours, lesquels ne sont que très rarement publiés avec l'annonce du concours, mais doivent être demandés à l'entité publique et sont très souvent payants (entre 20 et 100 euros environ).

En ce qui concerne les services publics médicaux, les avis de concours publiés pendant la durée de l'étude sont essentiellement qualifiés, dans l'annonce, « d'acquisition de services ». Le texte des avis étant très succinct et ne faisant que très rarement référence aux conditions d'exploitation ou de réalisation du service, il n'est pas possible de vérifier s'il s'agit en réalité d'une concession de service public ou non. Il faudrait pour cela demander le cahier de charges et le programme du concours à l'entité qui a ouvert le concours. Il est également difficile d'avoir accès à toute l'information sur les plateformes électroniques. Les concours fonctionnent encore beaucoup sur la base du contact direct, après lecture du *Diário da República*, auprès de l'opérateur. Par ailleurs, l'administration publique a recours très souvent à l'acquisition de services pour combler les manques de personnel dans les hôpitaux et centres de santé, mais il n'y a pas transfert de l'exploration du service, ni transfert des risques. Ces prestataires sont, en outre, rémunérés directement par l'opérateur public. Ce qui peut difficilement être qualifié de concession de service public.

Concernant l'avis de concours publié identifié comme une concession de service public (concours n° 2409/2009) :

Objet du contrat : concession d'exploitation et prestation de services d'imagerie médicale.

Auteur : Unidade Local de Saúde do Alto Minho, EPE (centre de santé local, entreprise publique).

Prix base du concours é de €7.235.444,59 (TVA non incluse).

Critère d'adjudication : le prix le plus bas.

Pondération : non spécifié.

Paiement (description du paiement/ conditions d'exploitation) : le paiement est effectué dans le délai contractuel de 36 mois à compter de la célébration du contrat. Pas d'autres spécifications concernant les conditions d'exploitation.

Publié sur www.vortalgov.pt et dans le Journal Officiel de l'Union Européenne n° 1/2009, sans programme et cahier de charges.

Procédure d'adjudication : pas d'indications spécifiques, par conséquent la procédure suivra les règles générales applicables aux concours publics (art. 16 du code des marchés publics portugais, modifié par le Décret-Loi n° 18/2008 du 29 janvier).

4. FINAL CONCLUSIONS

Au Portugal, dans le domaine de la santé, comme dans d'autres, le secteur public a connu des réformes ces dernières années, notamment avec l'introduction des techniques de gestion privée. Depuis fin 2002, les hôpitaux ont été transformés en entreprises publiques (EPE).

Le Portugal n'a pas de régions en tant que division administrative, excepté dans le secteur de la santé. Les prestations dans le secteur de la santé sont assurées par le système public, le Service National de Santé (SNS) sur le Continent et par les Services Régionaux de Santé dans les Açores et Madère. Il existe en parallèle un certain nombre de mécanismes de protection supplémentaire pour certaines catégories de la population par l'intermédiaire de sous-systèmes publics (ADSE pour les fonctionnaires publics, par exemple, encore que

certaines de ces sous-systèmes ont été éliminés récemment) ou des mécanismes privés (le SAMS, par exemple, est un système mis en place par les entreprises du secteur bancaire pour leurs fonctionnaires). En complément du SNS, les portugais souscrivent souvent des assurances santé privées.

A l'origine, le SNS fonctionnait sur la base du financement public et la prestation de services de santé par les entités publiques. Compte tenu des grands problèmes d'inefficacité et d'insuffisance de la capacité de réponse face aux besoins de la population, depuis la deuxième moitié des années 90, les services de santé ont été décentralisés. Actuellement, coexistent des services intégrés (centres de santé et hôpitaux publics) et des services souscrits (hôpitaux privés, pharmacies, moyens complémentaires de diagnostic et de traitement, entre autres). Les services souscrits ne constituent pas des concessions de services publics, mais s'effectuent sur la base de protocoles de coopération entre le secteur public et privé.

C'est dans ce contexte que surgit l'implantation des règles de gestion privée dans les hôpitaux et le lancement de partenariats public-privé. Les unités ont été au préalable transformées en sociétés anonymes de capitaux exclusivement publics, pour être ensuite transformées en Entités Publiques d'Entreprise (Entidades Públicas Empresariais, ou EPE). Ces EPE, outre le mode de gestion privée et une séparation fonctionnelle entre le financement et la prestation de service, sont rémunérées en contrepartie de la prestation de services aux bénéficiaires du SNS. Leur activité est encadrée par des contrats pluriannuels de production et de convergence célébrés entre les hôpitaux et le Ministère de la Santé.

En 2005, ont également été célébrés des contrats-programme avec les hôpitaux qui se sont maintenus dans les administrations publiques. La seule différence dans ce cas est l'origine des ressources : le financement est défini en prenant pour base le budget de l'Etat.

Aujourd'hui, nous avons trois types d'hôpitaux : les EPE, les SPA (Sociedade Anónima de capitais Públicos) et les PPP (partenariat public-privé). Les PPP n'ont pour l'instant pas de poids significatif : la gestion du premier hôpital construit avec un partenariat public-privé a été transférée le 1^{er} janvier 2009 (Centro Hospitalar de Cascais, dont la gestion a été confiée à une entreprise du groupe Caixa Geral de Depósitos suite au concours ouvert en 2008). Le projet PPP dans le secteur de la santé prévoyait la construction de 10 nouveaux hôpitaux, mais la première vague des concours ne concernait que 4 d'entre eux.

Sur la base du plan financier des projets PPP dans le secteur de la santé, la valeur nominale estimée des projets est de 5.631,1 millions d'euros, dont 5.534,8 millions pour les partenariats des nouveaux hôpitaux, insérés dans la première vague de PPP et 96,3 millions d'euros pour le Centre de réception du SNS et le Centre de médecine physique et réhabilitation du Sud (CMFR)¹. Toutefois, ces valeurs ne tiennent pas en compte les coûts à supporter par la gestion pendant les 20 ans qui suivent les dix ans du contrat de gestion.

Le nombre de concessions dans le secteur de la santé, compte tenu de sa structure, reste très limité. Les projets de partenariats public-privé n'ont pas connu d'évolution significative en 2008 et 2009. Le manque de résultats de ce projet PPP dans le secteur de la santé a été fortement critiqué dans le rapport de la Cour des Comptes Portugaise n° 15/2009, disponible sur le site www.tcontas.pt, notamment pour les retards pris par l'administration publique dans l'évaluation des candidatures, le manque de clarté des programmes et cahiers de charges et la mauvaise gestion du projet en général. En outre, alors que le projet initial de PPP prévoyait que les concours couvriraient la construction et l'exploitation de l'hôpital, le gouvernement portugais a choisi de distinguer les deux phases et, par conséquent d'ouvrir les concours pour la construction, d'une part, et pour l'exploitation, par la suite. De ces difficultés ont découlé une perte de l'intérêt des potentiels investisseurs privés.

En conclusion, il continue d'exister au Portugal une claire distinction entre les services de santé publics, qui continuent d'être exploités par l'Etat, et les services de santé privés. Outre

¹ Données de la Cour des Comptes portugaise publiée in *Relatório de acompanhamento das PPP – Saúde*, 2006, n° 1/07.

l'introduction des méthodes de gestion privée dans les services, l'Etat a tenté d'ouvrir le marché aux entreprises privées, principalement afin de palier aux lacunes des services. Les résultats sont pour l'instant très limités.

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22

Task 2 - Characterisation of public service concessions

PT - Sector: **Health Services**

Contract reference	TITLE	Publishing Authorities/entities	Subject	Value	Number of concessions advertised	Contracting Authority Sector	Selection Criteria	Award criteria	Weighting	Payment	Award procedure
2409/2009	Concession d'exploitation et prestation de services d'imagerie médicale.	Unidade Local de Saúde do Alto Minho, EPE (centre de santé local, entreprise publique).	Exploitation et prestation de services d'imagerie médicale.	€7.235.444,59 (TVA non incluse).	1	Health	Documents selon art. 84 (1,4 et 5) du CCP Declaração de Registo na Entidade Reguladora da Saúde (ERS)	Le prix le plus bas	No	Le paiement est effectué dans le délai contractuel de 36 mois à compter de la célébration du contrat. Pas d'autres spécifications concernant les conditions d'exploitation.	Pas d'indications spécifiques, par conséquent la procédure suivra les règles générales applicables aux concours publics (art. 16 du code des marchés publics portugais, modifié par le Décret-Loi n° 18/2008 du 29 janvier).

FINAL REPORT

1. BACKGROUND

This study is to serve as input in a reflection process, aimed at assessing the impact of a possible legislative initiative at EC level in the field of public service concessions.

The aim of this study is to identify and characterise **public service concessions** published in United Kingdom within a period of 6 consecutive months (from April 09 to Sept 09).

Concessions are contracts of the same type as public contracts except for the fact that the consideration for the service or works delivered consists of the concessionaire's right to exploit such services or works. Consequently, the concessionaire bears a substantial part of risk of exploitation. This included notably financial risks linked to the recovery of the investment.

Service concessions fall completely outside the scope of the Public Procurement Directives. Though any project involving the award of service concessions is governed by a minimum base of principles deriving from Article 43 to 49 of the EC Treaty, namely transparency, equal treatment and proportionality, the rules governing the award of these concessions diverges largely from one Member State to another. This concerns inter alia the way public authorities make their intention to award concessions public and the rules and procedures applied when concessions are awarded. As there is no EC wide obligation to publish contract notices in the Official Journal of the EU, the European Commission has a limited overview on the places and contents of publications of services concessions, the level of transparency and market-openness in the Member States or on procedures used to award contracts.

The **study consists of two parts**:

- Part A "**identification of sources**"- searches have been carried out to identify existing sources of information and to understand how contracting authorities in United Kingdom inform economic operators on their intention to award service concessions.
- Part B "**characterisation**". This involved the gathering of specific information on the characteristics and number of concessions published in United Kingdom within a period of 6 consecutive months (April 09 to Sept 09).

Scope of the study:

The study covers service concession contracts in the following 4 sectors:

- water industry
- waste management
- health services
- public transport by water

2. PART A - Research and Identification of sources of information on service concessions

Part A of this report involved the research and identification of existing sources of information on service concessions in the UK. In particular, the identification of internet websites used by the UK Public Authorities to advertise contract notices on service concessions, and publicise the actual concessions awarded.

Premises of the research:

- “Public service concessions” do not fall under the Procurement Directive 2004/18/EC¹. Contracting Public Authorities offering services concessions contracts, are not required to comply with the publication procedures of the Directive.
- It is at Member States’ discretion how to comply with the EU treaty principles of non-discrimination, equality of treatment, transparency and mutual recognition.

Methodology applied to the research:

Stage 1 – General research on the internet, including:

- Comprehensive internet researches on invitations to tender for public services concessions were run, in both, public and private websites. List of sources identified and comment on their features is included in section 1 (Research of sources of information).
- Online searches for references to paper publications on services concessions were done. No relevant paper sources were identified. Some of the electronic journals identified offered a paper version under subscription fee.

Stage 2 – Contacting the national authorities.

- Authorities relevant to the sectors under study were contacted over the telephone and sent enquiries by email. In most cases, enquiries were redirected to the information contained in the Authority’s website.

Stage 3 – Contacting relevant operators per sector.

- Operators were identified through general internet research, by references made in some of the published contract notices and from general directories online. A sample of operators was selected, based on their higher presence in internet, and their specialisation in the sector. Telephone calls to operators to obtain information proved to be in most cases unsuccessful. List of operators contacted for each sector is included in [Annex V](#)

Stage 4 – Final search on the internet.

- A final advanced search on the internet was made based on the results and information obtained from the online and telephone enquiries to contrast and validate the results obtained in stage 1 to 3.

Criteria used in the identification of sources of information

In the process of identification of relevant sources of information on service concessions, both, general sources as well as sector specific sources have been tested.

A label approach has been applied by running searches on key terms such as concessions, services, service concessions, tenders, public procurement, etc.

Searches were run on:

1. Search engines such as Google.
2. Government websites – searches were run on national, regional and local authorities’ websites for public procurement, publication of tender notices. and in particular for publication of service concession websites.

¹ Directive 2004/18/EC Of The European Parliament And Of The Council
Of 31 March 2004 On The Coordination Of Procedures For The Award Of Public Works Contracts

3. Sector specific websites- searches aimed to identify how these sectors were organised and who was the authority in charge. Further searches were then carried out to determine the tendering process for these sectors and the means to publicise their tendering notices. Key terms searches in the health sector included searches for concession of works.

Search results

At national, regional and local level, government websites have been identified as the official sources of information for any sort of tendering for public services.

The lack of a single official registry or official website where all sectors notices are published, characterise the UK public tendering system, leading and leads to a fragmented landscape of sources overlapping, but not giving a full picture of the volume or most used type of public contracts publicised at UK level.

In contrast with the lack of a structured and comprehensive information in the public sector, the private sector offers a wide range of services on public tendering including not only a comprehensive up to data database on all invitations to tender for public contracts but also additional services, such as alert services when a new notice is published, news and information on the sector or advice on how to tender for public services.

Selection and recommendation of sources

The selection of sources recommended to be used on the second part of this study was made taking into account the comprehensiveness of the information provided by the website, the number of search results obtained, the possibility to do retroactive searches, the accessibility to the target information; if it is a "user friendly" website, if the service is free of charge or under subscription, and if it offers free trial.

3. Part B - Characterisation of public service concessions according to the evaluation set up in the intermediate report.

Part B of this study has aimed to identify service concessions notices published by the UK Government in the period from April to September 2009, by using the sources recommended in Part A.

Criteria applied to the characterisation of public services concessions

Public service concessions in this study have been identified on the basis of:

- The definition of public service concessions provided by the Directive 2004/18/EC² on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Article 1.4: *"Service concession" is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.*

- The definition of public service concessions provided by the UK Law implementing the Procurement Directive 2004/18/EC: The Public Contracts Regulations 2006³

Article 2: *"Services concession contract" means a public services contract under which the consideration given by the contracting authority consists of or includes the right to exploit the*

² Directive 2004/18/EC Of The European Parliament And Of The Council
Of 31 March 2004 On The Coordination Of Procedures For The Award Of Public Works Contracts

³ , SI 2006 No. 5, PUBLIC PROCUREMENT, ENGLAND AND WALES, PUBLIC PROCUREMENT NORTHERN IRELAND.

service or services to be provided under the contract”.

- The distinction of “public services concessions” from other type of public contracts; in particular, from public service contracts and public work concessions (Directive 2004/18/EC⁴ and Directive 93/37/EC⁵)

Directive 2004/18/EC - Article 1.2(d)

"Public service contracts" are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II. A public contract having as its object both products and services within the meaning of Annex II shall be considered to be a "public service contract" if the value of the services in question exceeds that of the products covered by the contract. A public contract having as its object services within the meaning of Annex II and including activities within the meaning of Annex I that are only incidental to the principal object of the contract shall be considered to be a public service contract.

Directive 93/37/EC - Article 1(d)

"Public works concession is a contract of the same type as that indicated in (a)['public works contracts'], except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment”.

Process of characterisation of public service concessions

Stages:

- 1- Establishing what is a public service concession and the defining elements that distinguish a service concession from other types of public contracts, in particular with a public service contract.
2. Determine, based on point 1(above), what search terms will be used in the searches. The selection of search terms is intended to reflect the key elements/features of a service concession. Main search terms used: concession/s, services, exploitation.
3. Run searches on the selected sources of information by using key search terms (point 2), and with the purpose of identifying invitations to tender for public services concessions published by the UK Government during the period of study (April to September 09).

A larger number of contract notices were identified in the public health sector (over 700 contract notices); while a much lower number were identified for the other three sectors. Further analysis of those notices showed that, with one exception in the public health sector, those contract notices were not actually offering a concession of services but a public services contract.

⁴ Directive 2004/18/EC Of The European Parliament And Of The Council
Of 31 March 2004 On The Coordination Of Procedures For The Award Of Public Works Contracts

⁵ Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts

4. FINAL CONCLUSIONS

The lack of a Government-run database in the UK, gathering all publicised notices for public contracts (services concessions, in this case), leads to the UK Public Authorities (at national, regional and local level), complying with their EU treaty obligations, by advertising their invitations to tender for public contracts in their own websites.

The UK Public Administration spreads into many public Authorities and organisations, at different levels (national, regional, local) and for the different public sectors (included the ones relevant for this study). Just as an illustration, there are over 400 local authorities and each one use its own website to publicise its contract notices.

This fragmentation of information, makes a search across all sectors, or for more that one geographical area, quite a significant effort (time and resources); and it could be argued that in this respect, it is a discriminatory practice towards those operators which have less economic resources at their disposal.

The alternative to the UK Public Administration information sources on public service concessions (and on public tendering in general), is provided by the private sector; there is a wide range of private commercial websites marketing themselves as the solution for the suppliers interested in public procurement, and offering a comprehensive database of publicised tenders, organised by sectors and geographically.

The research carried out in this study has learned that most economic operators resort to the service of these private companies in order to keep abreast of the contract notices published.

UK Government has taken its first steps towards centralisation of information on published contract notices with the launch in June 2006 of the portal Supply2.gov.uk; but at present, this portal offers limited services, targeting only small business (below £100,000).

It is important to bear in mind that Public Service provision for some sectors in the UK, mainly water and waste management, is highly privatised. Concessions were directly assigned to private companies for certain amount of years (25 years in the water sector); this practice raises concerns about the lack of competition in the supply of those public services and the potential prejudice for the recipients of those services.

Specific Contract n° 1/2008 MARKT/C2 - PRS/2007/TA/C/22
Task 2 - Characterisation of public service concessions
UK - Sector: Water Industry

Task 2 - Characterisation of public service concessions

UK - Sector: **Water Industry**[illegible]