

The Legal Regime of Concession Contracts for the Public Utility Service of Natural Gas Distribution. Aspects Derived from Theory and from Administrative Practice

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ABSTRACT

Motto:

“Public service is first a function to carry out, then a mission to ensure, but also the resulting concrete activity and, furthermore, the authority responsible for the public service” (Jacques Chevallier)

The study aims to analyse the legal regime of the public utility gas concession agreements. The subject involves an interdisciplinary analysis, mainly from the perspective of the regulatory framework – implemented at European level in particular by Directive 2014/23/EC on concession and, at a national level, in the specific legislation, including the provisions of the Administrative Code – in the context of grants and public investment, as well as doctrine and administrative practice.

The results of the research highlight both the topicality of the theme – taking into account that ensuring citizens' access to the public service of gas distribution, including through investment projects aimed at increasing the level of intelligent functionality of the natural gas distribution infrastructure, is a priority at both European Commission and national level – and the need to further research in this area from the perspective of the recently adopted regulatory framework and the specific interdisciplinarity of administrative sciences, which can lead to improving the quality and coherence of regulations in this field.

KEYWORDS: *concession contract, public utility service, natural gas distribution.*

1. Introduction

A short introduction to the public utility service of gas distribution

The concept of **public service** is regulated in primary law by art. 93 of the Treaty on the Functioning of the European Union (TFUE)¹⁾, in the field of transportation. However,

¹⁾ See The consolidated version of the Treaty on the European Union and the Treaty on the Functioning of the European Union (JOUE C326, 2012/C 326/01).

outside the field, the term is sometimes used in an ambiguous manner: it can refer to the fact that a service is offered to the public and/or for public interest or it can be used in order to characterise the activity of entities which are public property²⁾. Notable from a doctrinary perspective is Jacques Chevallier's description of public service, in the tenth edition of *Le service public*: "Public service is first a function to carry out, then a mission to ensure, but also the resulting concrete activity and, furthermore, the authority responsible for the public service: from public service, conceived as an axiological principle guiding public management, one can very naturally pass to public service understood at the same time as provisions offered to the public and the authorities charged with providing them; in public service, functional, material and organic aspects are inextricably linked, adhering to one another"³⁾.

Article 106 paragraph (2) of the Treaty on the Functioning of the European Union (TFUE) regulates the concept of **services of general economic interest**, detailed by article 14 of the Treaty and defined in the White Papers on Services of General Economic Interest adopted by the European Commission⁴⁾ as being *those activities which public authorities class as being of general interest and which are subjected to specific public interest obligations and which must respect the universal and continuous nature, the quality and accessibility criteria and must meet the requirements imposed by consumer protection*. In the communication *Quality Framework For Services Of General Interest in Europe*⁵⁾, the European Commission brought terminological clarifications, defining **services of general economic interest** as economic activities which generate results for the general public benefit, which the market would not provide (or would provide under different conditions of quality, safety, accessibility, equal treatment or universal access) without public intervention; the public service obligation is imposed onto the provider but assigning a mission and based on a general interest criterion meant to ensure that the service is provided under conditions which allow it to fulfil its mission.

Directive 2014/23/UE on the award of concession contracts⁶⁾ stipulates under article 4 that this does not prejudice the freedom of national, regional and local authorities to define, in conformity with the Union's legislation, *services of general economic interest, their scope and the characteristics of the service which must be provided, including all conditions regarding service quality, for the purpose of pursuing their public policy objectives*. Article 7 of the directive states the contracting entities which have the authority to assign concession contracts⁷⁾, and annex II, mentions **gas and thermal energy** among the concrete fields in which the directive's provisions apply, as follows:

²⁾ See Commission Communication to the European Parliament, Council, Economic and Social Committee and the Committee of Regions "A quality framework for general interest services in Europe", Brussels, December 20, 2011, COM (2011) 900 final.

³⁾ Chevallier, J., 2015, *Le service public*, 10th edition, updated, Paris: Presses Universitaires de France, p. 53; the text has been translated by the author.

⁴⁾ European Commission, *The White Paper on Services of General Economic Interest*, COM (2004) 374.

⁵⁾ Commission communication to the European Parliament, Council, Economic and Social Committee and the Committee of Regions "a quality framework for general interest services in Europe", cit. *supra*, Bruxelles, 20 December 2011, COM (2011) 900 final.

⁶⁾ Directive 2014/23/UE of the European Parliament and Council of February 26, 2014, regarding the assignment of concession contracts, Text relevant for SEE (*OJ L 94, 28.3.2014, p. 1-64*).

⁷⁾ In Directive 2014/23/UE, "providing" includes generation/production, wholesale and retail sale of gas. However, gas production in the form of extraction falls under the provisions of point 4 of this annex.

a) *making available or exploiting fixed networks meant for providing public services in the field of producing, transporting or distributing gas or thermal energy;*

b) *providing such networks with gas or thermal energy*

In national legislation, one notes the normative consecration of public services in the **Constitution** itself⁸⁾, either in the context of the right to strike (article 43), or by consecrating the principle of the deconcentration of public services as a fundamental principle onto which local public administration is grounded (article 120), of the prefect's role as leader of the deconcentrated public services [article 123, paragraph (2)], as well as the role of the county council in coordinating the activity of village and town councils, for the purpose of providing public services in the interest of the county (article 122).

The **Administrative Code** defines **public services** under **article 5 letter t** as representing the activity or set of activities organised by an authority of the public administration or by a public institution or by an institution authorised or commissioned by the public administration to meet a general or public interest need, in a regular and continuous manner. As can be seen in the doctrine⁹⁾, the definition takes into account administrative public service, which is not the only form of public service in existence in society – justice, for instance, is a public service outside the field of administration. At the same time, **art. 584 paragraph (1) of the Administrative Code** defines **services of general economic interest** as economic activities carried out for the purpose of meeting one or more public interest needs, which the market would not provide or would provide under different conditions with regard to quality, safety, accessibility, equal treatment or universal access, without public intervention, for which the authorities of the public administration establish specific public service obligations. paragraph (2) of article 584 of the Administrative Code stipulates that services of general economic interest are provided *directly by an authority of the public administration*, or, depending on the situation, *by public service providers under the supervision and control of the competent public administration authority*.

Article 592 of the Administrative Code regulates **delegated management** as the management method by which the provision of a public service is carried out based on a delegation document and/or on authorisation from the authority of the competent public authority, while respecting the provisions in the legislation on public procurement, sectorial procurement and service concession, by the public service providers, other than those which carry out direct management. delegated management may imply the public service provider's right to use the infrastructure associated with the delegated service, in one of the ways provided by the legislation applicable to each type of service.¹⁰⁾ Moreover, establishing this public service takes into account the **principle of public service adaptability**, consecrated by **article 580 paragraph (5) of the Administrative Code**, according to which *“for the purpose of reaching its goals, the public administration has the*

⁸⁾ The Constitution of Romania, republished in the Official Gazette no. 767 of October 31, 2003.

⁹⁾ Vedinaş, V., 2018, *Tratat teoretic și practic de drept administrativ*, Bucharest: Ed. Universul Juridic, Vol. II, p. 401.

¹⁰⁾ In the doctrine, delegated management is defined as the process by which an administrative authority entrusts the administration of a public service to a company, generally from the public sector – see Săraru, C.-S., 2016, *Drept administrativ. Probleme fundamentale ale dreptului public*, Bucharest: Ed. C.H. Beck, p. 254.

obligation to meet the needs of the society”, and providing natural gas is a fundamental requirement in a modern society, adapted to 21st century needs.

According to **article 92 paragraph (1) of the Administrative Code**, local and county councils can decide to participate with loans, capital or goods, as appropriate, on behalf and in the interest of the local communities which have elected them, to the establishment, operation and development of local or county **public service and public utility providers**, in accordance with the legislation¹¹⁾.

Article 1 paragraph (2) of the Law of community services of public utility no. 51/2006, republished¹²⁾ defines **community services of public utility** as being the totality of activities regulated by this law and other special laws, which ensure that the local communities' essential social general public interest and utility needs are met; this includes **providing natural gas**. Related to this aspect, it is relevant that point 79 of article 11 of the **Law of electric energy no. 123/2012**¹³⁾ defines “*the natural gas sector*” as „*the set of activities carried out by market operators for the production, transportation, storage, distribution and delivery of natural gas, biogas, biomethane and GNL, as well as the installations and equipment used in order to carry out such activities*”, and according to this law, „*a public service*” is „*a general interest activity in the field of natural gas, which is authorised and monitored by a public authority*” (our emphasis – point 80¹ of article 100).

2. The general framework regarding the legal regime of concession contracts for the public utility service of natural gas distribution

With regard to the management of public utility services in the field of natural gas, the stipulations of **article 103 of Law 123/2012** are relevant: “**Public property goods associated to the objective/systems for the transportation and storage of natural gas, as well as the services of natural gas transportation, storage and distribution, are the object of concession to Romanian or foreign legal entities, in accordance with the law**” (our emphasis). Using the domain meant for a public service is grounded on a legal act (unilateral administrative act or administrative contract – as a rule, a goods concession contract), which establishes precisely this: that a certain public property good is bound to a certain public service¹⁴⁾.

¹¹⁾ According to the Code, the following are included in the category of public or public utility service providers in administrative-territorial units: a) public institutions of local or county interest; b) autonomous administrations and companies established by decision of deliberative authorities, henceforth named autonomous administrations and companies of local or county interest; c) community development associations; d) social service providers, public or private, which provide social services in accordance with the law; e) associations, foundations and federations recognised as being of public utility, in accordance with the law; f) local or county community services operators for public utilities g) regional operators, established in accordance with the law [art.92 par. (2)].

¹²⁾ Law of community services for public utilities no. 51/2006, republished in the O.G. no. 121 of March 05, 2013, with subsequent amendments and completions.

¹³⁾ Law of electric energy and natural gas no. 123/2012, published in the O.G. no 485 of July 16, 2012, with subsequent amendments and completions.

¹⁴⁾ Podaru, O., 2019, *Drept administrativ. Vol. II. Dreptul administrativ al bunurilor*, 2nd edition, Bucharest: Ed. Hamangiu, p. 118; the cited author also specifies that the public does not normally have access to the domenal good, but only to the public service installed onto it, an opinion which we consider correct and applicable also to the provisions of article 103 of Law 123/2012.

At the same time, according to the provisions of **article 104 paragraph (1)-(1²) of Law 123/2012**, “(1) *The public utility service of natural gas distribution is conceded for one or several administrative-territorial units. concession is exclusive (1¹) The position of concessioning authority is held by the authorities of the local public administration in the administrative-territorial units, or by associations of the former, as appropriate, for the general interest public utility service provided by paragraph (1). (1²) The general framework regarding the legal regime of concession contracts for the public utility service of natural gas distribution, the procedures for granting concessions, as well as the framework – content of the tender book are elaborated by the competent ministry, in accordance with the provisions of the present law, and is approved by Government decision.*” (o.e.). Thus, one can note that the management method for public utility services in the field of natural gas is **concession**.

Article 5, paragraph (1) letter b) of Directive 2014/23/EU defines **concession of services** as “*an onerous contract concluded in writing, by which one or several contracting authorities or contracting entities entrust the provision and management of services other than carrying out works mentioned under letter (a) to one or several economic operators, in which the counterperformance for services is represented either exclusively by the right to exploit the services which are the object of the contract, or by this right, accompanied by payment*”. According to the stipulations of the Directive, awarding service concession involves transferring an operation risk to the statutory undertaker, related to the exploitation of these services; this includes demand risk, supply risk, or both. It is thus assumed that the statutory undertaker takes over operation risk when, under normal exploitation conditions, it is not guaranteed recovery of investment made or costs incurred for the exploitation of works and services which form the object of the concession. The part of the risk transferred to the statutory undertaker involves real exposure to unforeseeable situations which may occur on the market, so that any potential estimated loss sustained by the statutory undertaker is not only nominal or negligible.

Taking into consideration the fact that, according to the provisions of article 8 of Directive 2014/23/EU, its provisions apply to concessions the value of which is at least equal to 5,186,000 EUR (thresholds revised every two years), one must also consider internal regulations in the field, represented in our country mainly by **Law 100/2016 on concession of works and concession of services**, which, under article 5 paragraph (1) letter h) defines a **service concession contract** as “*the onerous contract, assimilated in accordance with the law of administrative acts, concluded in writing, by which one or several contracting authorities/entities entrust the provision and management of services, other than carrying out works stipulated under letter g), to one or several economic operators, in which the counterperformance for services is either exclusively the right to exploit the services which are the object of the contract, or this right accompanied by payment*”. In our opinion, also expressed in previous articles¹⁵⁾, this means that, in the current legislative context, assimilating contracts concluded by public authorities to unilateral administrative acts is not only from a processual point of view and only in the spirit of Law 554/2004¹⁶⁾, but

¹⁵⁾ Cătană, E.L., 2019, *Contenciosul actelor administrative asimilate*, 2nd edition, revised, Bucharest: Ed. C.H. Beck, p. 131; Cătană, E.L., 2020, *Actul administrativ. Abordare teoretică și practică. O perspectivă interdisciplinară*, Bucharest: Ed. C.H. Beck, p. 94-95.

¹⁶⁾ Law of administrative contentious no. 554/2004, published in O. G. no. 1154 of December 07, 2004, with subsequent amendments and completions.

rather *exceeds the limits posed by the law of administrative contentious*, being extended into the realm of **material law**, which regulates **the legal regime** of an important category of administrative contracts, i.e. concession contracts for works and services (the situation is similar in the case of public procurement contracts and sectorial procurement contracts).

In this context, one can note that **article 304 of the Administrative Code** also brought clarifications to the **legal regime applicable to service concession contracts**, the execution of which requires the exploitation of a public property good, included by this Code into the category of **mixed contracts**, hypothesis in which the right to exploit that good is transmitted in the framework and according to the procedure applied to the award of that contract¹⁷⁾. In this case, the contracting authority concludes a single service concession contract, as appropriate, *in accordance with the law*. Therefore, in this hypothesis, the special legislation in the field is applicable, namely **Government Decision 209/2019**¹⁸⁾ which approved **The general framework regarding the legal regime of concession contracts for the public utility service of natural gas distribution, the procedures for awarding concessions, the framework-content of the tender book**. article 1 paragraph 1 of this Government Decision stipulates the following: “(1) *A concession contract for the public utility service of natural gas distribution is assigned by the procedure of open public tender organised by the authorities of the local public administration in the administrative-territorial units or associations of the former, deputing a representative. If an association of several authorities of the local public administration is opted for, they will materialise this fact in a document assumed by all the participating representatives within the association, and the document will contain the assignment of a representative from amongst the former, who will organise the tender, will conclude the concession contract, and will later monitor its execution*” (o.e.).

3. The stages of awarding concession contracts for the public utility service of natural gas distribution

Article 2 of Government Decision 209/2019 details the stages of the procedure to award concession contracts for the public utility service of natural gas distribution, as follows:

- a) the concession procedure is initiated;
- b) the concessioning authority draws up a study detailing the grounds for the decision to award concession;
- c) the concession of the public utility service of natural gas distribution is approved for one or several delimited areas – territorial-administrative units: villages, towns/ municipalities and counties;
- d) the awarding documentation is prepared, according to the framework-documents for the awarding of open public tenders, provided in annex A to this Government decision;
- e) the open public tender is organised and carried out;

¹⁷⁾ See Vedinaș, V., 2020, *Codul administrativ adnotat. Noutăți. Examinare comparativă. Note explicative*, Second Edition, Bucharest: Ed. Universul Juridic, p. 264.

¹⁸⁾ Published in O. G. no. 284 of April 15, 2019.

- f) the contract for the concession of the public utility service of natural gas distribution is concluded.

According to the provisions of **article 104 paragraph (2) of Law no. 123/2012**, the concession procedure may be initiated by the authorities of the local public administration in the administrative-territorial units or by associations of the former, via a delegated representative, following a request from an interested person or public authority.

For initiating the concession procedure, one must go through the stages of approving, drawing up and preparing the feasibility study, respectively the stage of preparing the preliminary file. Based on these documents, the concessioning authorities prepare a study detailing the grounds for the decision to award concession, based on which the concession procedure for the public utility service of natural gas distribution is approved for one or several delimited areas – administrative-territorial units, either by way of a decision adopted by the local council of the pertaining administrative-territorial unit, or by way of a decision adopted by the authorised entity, in the case of several administrative-territorial units being in association. The next stage consists of the contracting authority drawing up the concession documentation. After the publication of notices regarding the concession tender, in accordance with the law, the concession documentation is placed at the bidders' disposal by the contracting authority, free of charge, both in print and electronic format, between the date the notice has been published in Romania's official Gazette, Part IV, and the deadline for filing bids specified in the notice. The next stage consists of **organising the open public tender**. For each open public tender procedure, an *Evaluation Committee* is appointed by way of a decision adopted by the contracting authority; the committee must consist of at least three members and two substitutes and is validly constituted if all its members are present. The evaluation committee has the obligation to open bids on the date, time and location indicated in the *participation notice*. Any bidder has the right to take part in the opening of the bids.

According to the provisions of **article 10 paragraph (3) of Government Ordinance no. 209/2019**, no bids can be rejected in the opening meeting, with the exception of those which fall into one of the following situations:

- a) they were filed after the deadline or at a different address than the one indicated in the participation notice;
- b) they are not accompanied by the bank guarantee letter required in order to participate to the concession award procedure; the participation guarantee is an instrument used in order to warrant participation to award procedures and is drawn up by the bidder, which is obligated to present it on the date of the bid, for the purpose of protecting the contracting authority until the conclusion of the contract.

The opening meeting is finalised with a **report** signed by the members of the Evaluation Committee and by the bidder representatives; the report details the way in which the meeting has taken place, formal aspects found upon opening the bids, as well as the existence of the qualification documents required by the concession award documentation. This *must be communicated* by the Evaluation Committee to all bidders participating in the concession award procedure, regardless of whether they were present in the opening meeting or not.

The evaluation committee has the obligation to check the extent to which *the qualification criteria* have been met by each bidder, to analyse and check each offer both from the point of view of the *technical elements proposed* (the technical proposal must meet minimal requirements specified in the tender book), and from the point of view of the *financial aspects* they involve.

At any time during the process of analysing and checking the documents presented by the bidders, the Evaluation Committee had the right to request clarifications or completions to the documents presented, in order to prove that the qualification criteria have been met or that the bid is in conformity with the requirements.

According to the provisions of article 10 paragraph (11) of Government Decision no. 209/2019, the bid can be considered *unacceptable, inconsistent*, in the situations explicitly provided by this normative act.

The evaluation committee declares the bid which has received *the highest score*.

After assessing the bids, the Evaluation Committee has the obligation to draw up a **concession award procedure report**, no later than three working days from the moment the bids have been opened; the report must be signed by all its members and the president, and is handed in to the leadership of the contracting authority, for approval, within seven working days from the date of its writing. If the committee requests clarifications or completions to the documents presented by bidders, the three working day deadline begins on the date the clarifications or completions have been filed with the contracting authority [art. 10 par. (17) of G. D. no. 209/2019].

The activity of the Evaluation Committee ceases after the **concession award procedure report** has been drawn up and filed for approval, within three working days from the end of the procedure.

According to the provisions of **art. 11 of G. D. no. 209/2019**, the contracting authority executes the bank guarantee letter for participating in the open public tender, requested as per this Government decision in the following situations:

- a) the bidder withdraws its bid during its period of validity;
- b) the bidder which is declared the winner **refuses to sign the concession contract** during the bid's period of validity.

After the concession award procedure report is approved, the contracting authority communicates to each bidder the result of applying the procedure; the communication made to the winning bidder must also contain **the invitation to sign the concession contract**.

As one can see in article 15 of G.D. no. 209/2019, the person who considers his/her rights or legitimate interests to be injured by an act of the contracting authority, while breaching the provisions of this Government Decision, has the right, as per the provisions of the Law of administrative contentious no. 554/2004¹⁹⁾, *to address the competent court*. **We consider that** in relation to the regulation object of G. D. 209/2019, which establishes special rules regarding the assignment of concession contracts for the public utility service of natural gas distribution, **the provisions of art. 15 of G. D. no. 209/2019 are in accordance with the amendments brought to Law 554/2004 by Law 212/2018²⁰⁾**

¹⁹⁾ Law of administrative contentious no. 554/2004, published in O. G. no. 1154 of December 07, 2004, with subsequent amendments and completions.

²⁰⁾ Law. 212/2018 for the modification and completion of Law of administrative contentious no. 554/2004 and of other normative acts, published in the O.G. no. 658 of July 30, 2018.

regarding the competence norms of courts in the matter of adjudicating litigation regarding the awarding of administrative contracts; the litigation remains under the jurisdiction of administrative contentious courts, only litigation arising from the execution of administrative contracts being under the jurisdiction of common law civil courts²¹.

According to the provisions of art. 16 of G. D. no. 209/2019, and following the content of the concession framework-agreement for the concession of the public utility service of natural gas distribution provided in annex C to this Government decision, **the concession contract for the public utility service of natural gas distribution ends when a bidder is declared to be the winner, during the bid's validity period, but not earlier than five working days from the date the concession awarding procedure result has been communicated.** The seal and signature are applied to the concession contract at the registered office of the contracting authority; at the same time, the parties present their authorisation documents to be signed, if applicable. The statutory undertaker has the obligation to carry out the regulated supply activity until the date established by the legislation in force.

4. Contracting the public utility service of natural gas distribution in the context of non-reimbursable financing and public investment

European Commission Decision no. 4680/07.07.2020 approved the amendment of the Large Infrastructure Operational Program, as well as the amendment of Priority Axis 8 – *Smart and sustainable systems for energy and natural gas for the purpose of supporting investment projects aimed at increasing the level of smart functionality of the natural gas distribution infrastructure, by improving the flexibility, safety, efficiency in operation, as well as by integrating transport, distribution and final consumption activities*²².

Within the Large infrastructure Operational Program 2014-2020, Priority Axis 8 *Smart and sustainable systems for transporting electric energy and natural gas*, the Ministry for European Funds' website launched for public debate the Applicant's Guide regarding the specific conditions for access to funds for *“The development of smart natural gas distribution networks for the purpose of increasing the level of flexibility, safety, efficiency in operation, as well as of integrating transport, distribution and final consumption activities”*, appeal code POIM/..../8/2/ „Developing smart natural gas distribution networks”.

The abovementioned applicant's guide was created by the Management Authority for the Large Infrastructure Operational Program (LIOP) in order to allow granting un-reimbursable financing for the purpose of **developing smart natural gas distribution networks** within LIOP 2014-2020, approved by CE Decision C(2020) 4680 / 07.07.2020, Priority Axis (PA) 8 *Smart and sustainable systems for transporting electric energy and natural gas*, Specific Objective (SO) 8.2 *Increasing the level of interconnectedness of the National System for the Transpiration of natural gas with other neighbouring states*.

²¹ For details, see also Vedinaş, V., 2018, *Tratat teoretic și practic de drept administrativ*, vol. II, *op. cit.*, p. 26.

²² This decision is mentioned in the preamble to E.G.O. 128/2020 on certain measures for the approval of the National Program for the connection of the population and non-household clients to the smart system of natural gas distribution, published in the O.G. no. 700 of August 04, 2020.

According to the Applicant's Guide launched for public consultation, **the main expected result** of the proposed action is to contribute to *“Increasing the level of smart functionality of the natural gas distribution infrastructure used for providing the public utility community service of delivering natural gas to the population, in accordance with the legislation in force, by improving the flexibility, safety, efficiency in operation, as well as by integrating transport, distribution and final consumption activities”* (o.e.). The opening date for the call for projects is scheduled on August 17, 2020, which is also the commencement date for filing projects. The Guide specifies that the project filing deadline may be extended depending on the requests received, on *the project contracting rate*, fund reassignment decisions or other reasons.

The following applicants are eligible for projects:

- Intercommunity Development Associations whose scope of business is the public utility service of providing the population with natural gas²³⁾;
- Local public authorities in less developed areas of Romania, individually or in partnership with other local public authorities.

The Applicant's guide launched for consultation on the Ministry of European Funds' website specifies that, in the case of partnerships between LPA, the parties will commit, through the partnership agreement and the statement of commitment to establishing *intercommunity development associations having as their scope of business the public utility service of providing the population with natural gas*, before the project implementation period ends.

The **Administrative Code, approved by E.G.O. no. 57/2019**, with subsequent amendments and completions, defines under article 5 letter j) **intercommunity development associations** as *“private law, public utility cooperation structures with legal personality, established in accordance with the law, by administrative-territorial units in order to communally accomplish development projects of zonal or regional interest or in order to communally provide certain public services”*. These legal stipulations are reiterated and detailed by **article 89 of the Administrative Code**, which specifies in **paragraph (1)** that *“Two or more administrative-territorial units have the right, within the limits of the competence of their deliberative and executive authorities, to cooperate and associate, in accordance with the law, forming private law intercommunity development associations with legal personality. Intercommunity development associations are public utility legal entities”*. At the same time, **paragraph (2) of article 89 of the Administrative Code** stipulates that: *“Intercommunity development associations are established in accordance with the law, for the purpose of communally accomplishing development projects of zonal or regional interest or in order to communally provide certain public services. ... The deliberative and executive authorities of each administrative-territorial unit maintain their local autonomy, in accordance with the law”*.

²³⁾ Intercommunity development associations are not a novelty in the field of public administration, having been introduced into the Romanian legislation ever since 2006; see Cătană, E.L., Șoaita, O., 2007, *Asociațiile de dezvoltare intercomunitară în sistemul legislativ român. Studiu de caz: Asociația de Dezvoltare Intercomunitară Tîrnava Mare, județul Mureș*, in the proceedings of the International Conference: Regional Development and Multiculturalism on the European Union, Cluj Napoca: Ed. Risoprint, pp. 83-94.

Distinctly from the general normative framework in the matter of intercommunity development associations, the provisions of **article 10 of Law 51/2006, republished**, are relevant: *“two or more administrative-territorial units, within the limits of the competence of their deliberative and executive authorities, can cooperate and associate, in accordance with the law, in order to form intercommunity development associations with the goal of communally providing/delivering public utility community services and of establishing, modernising, rehabilitating and/or developing, as appropriate, the associated public utility systems”*. This article of the law also specifies that intercommunity development associations created for public utility services are *“private law cooperation structures with legal personality and public utility status recognised by operation of law, meant for communally carrying out and achieving the competencies of the local public administration authorities referring to the provision/delivery of public utility services”* and they *“are established and acquire legal personality according to the provisions of Government Ordinance no. 26/2000 on associations and foundations, approved with amendments and completions by Law no. 246/2005, with subsequent amendments and completions”*.

Taking as an example Mures County, in the Upper Mures Valley, executive public authorities in several administrative-territorial units joined at the end of the first half of the year 2020 in order to decide upon *establishing an intercommunity development association with the business scope of creating the public utility service of natural gas delivery to the population on the territory of the five territorial-administrative units*. Corporate name reservation has been obtained from the Ministry of Justice, but the legal endeavours of obtaining judicial personality for this associative structure are extensive in time, and the association runs the risk of not being able to file the POIM 2014-2020 project within the deadline indicated in the abovementioned Applicant's Guide.

Consequently, in order to meet eligibility requirements for filing a non-reimbursable financing project for the purpose of developing smart networks of natural gas distribution in POIM 2014 – 2020, as per the Applicant's Guide, which indicates August 17, 2020 as the deadline, also taking into account the uncertainty that this deadline might be extended, *the need arose for creating a partnership* between these specific administrative territorial units of Mures County; the partnership agreement project, agreed upon by the financier, is brought to the public's awareness in annex 5 of the Applicant's Guide. Taking into account the provisions of **article 89 paragraph (8) of the Administrative Code**, which establishes the competence of administrative-territorial units to partner and to participate, including by fund allocation, to the initiation and realisation of zonal or regional development programs, *the deliberative authorities of those administrative-territorial units have adopted authority administrative acts by which they approved participation to the conclusion of a partnership agreement* to apply for non-reimbursable funding within the Large Infrastructure National Program 2014-2020, Priority Axis 8, *Smart and sustainable system for the transportation of electric energy and natural gas*. The communal organisation and supervision of the public service of natural gas delivery, including the associated concession contract, will be the responsibility of the intercommunity development association which is to be established by these administrative-territorial units, in accordance with the law.

5. Conclusions

In preparing this study, we aimed to analyse certain aspects of administrative theory and practice regarding the legal regime of concession contracts for the public utility service of natural gas distribution, and we aimed to meet this goal via interdisciplinary research. Thus, we took into consideration the normative framework in the field – materialised at a European level especially by Directive 2014/23/CE and at a national level by the special legislation in relation to the provisions of the Administrative Code, in the context of non-reimbursable funding and public investment, and also of the doctrine and practice of public administration.

A first conclusion is that ensuring citizens' access to the public service of natural gas distribution is a priority of the European Union, eloquent to this end being the non-reimbursable funding programs launched during 2020, in order to generate investment projects aimed at increasing the level of smart functionality in the natural gas distribution infrastructure.

Secondly, the results of our research have identified a recently adopted national normative framework, both with regard to regulating public service via the Administrative Code, and to adopting G.D. 209/2019, which establishes the general framework regarding the legal regime of concession contracts for the public utility service of natural gas distribution, procedures for awarding concession, as well as the framework-content of the tender book.

Thirdly, taking into consideration the fact that concluding a concession contract for the public utility service of natural gas distribution involves the previous establishment of this public service, which involves funds, the research leads to the conclusion that the administrative-territorial units' efforts to associate in order to benefit from non-reimbursable financing for the purpose of establishing this public service are of benefit to the local communities.

A last conclusion is that it is necessary to further research in the field, given the recently adopted normative framework, as well as the numerous managerial and financial challenges in the context of the need for public investment in order to create performant public services, which may lead to an improvement in the quality and coherence of regulations in this field.

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