

Public Private Partnerships in Transport: Trends & Theory P3T3

2013 Discussion Papers Part I Country Profiles

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**COST Action TU1001
Public Private Partnerships in Transport:
Trends & Theory
P3T3**

**2013 Discussion Papers
Part I Country Profiles**

Edited by K. Verhoest, N. Carbonara, V. Lember, O.H. Petersen, W. Scherrer and M. van den Hurk

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Foreword

COST Action TU1001 on Public Private Partnerships in Transport: Trends and Theory (P3T3) is a research network, including over 100 researchers from 29 countries, funded by the EU COST Programme with the aim of developing the theoretical basis for Public Private Partnerships (PPPs) in the transport sector and making the shift from a descriptive approach to a normative one. More specifically, the objective is to develop theoretical models and tools needed to support the implementation of PPPs in the transport sector that take into account the different contexts in which projects are implemented. Research work within the network is conducted through the establishment of working groups, where research is accelerated by combining existing findings and setting common research agendas. Deductive and inductive research is applied within the network for theory building through in-depth analysis and model building to predict and forecast behaviour. Notably, case analysis is a powerful tool for both research approaches, particularly in environments characterized by the growing frequency and magnitude of changes. This is the case of PPPs in transport. The 2013 P3T3 Discussion Papers presented in Part I and Part II comprises a collection of cases following a specifically structured protocol. They are organised in country profiles with respect to PPP development (Part I) and transport projects at various levels of implementation (Part II). P3T3 Action researchers are well aware of the limitations of case research. “Validity” is a major concern, especially in terms of objectiveness and robustness but, also with respect to the timeliness of the information. This publication opens our initial collection to discussion and invites contributions.

On behalf of the COST Action TU1001 members

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The COST Programme

COST- the acronym for European **CO**operation in the field of **Scientific and Technical Research**- is the oldest and widest European intergovernmental network for cooperation in research. Established by the Ministerial Conference in November 1971, COST is presently used by the scientific communities of 35 European countries to cooperate in common research projects supported by national funds.

The funds provided by COST - less than 1% of the total value of the projects -support the COST cooperation networks (COST Actions) through which, with EUR 30 million per year, more than 30.000 European scientists are involved in research having a total value which exceeds EUR 2 billion per year. This is the financial worth of the European added value, which COST achieves.

A “bottom up approach” (the initiative of launching a COST Action comes from the European scientists themselves), “à la carte participation” (only countries interested in the Action participate), “equality of access” (participation is open also to the scientific communities of countries not belonging to the European Union) and “flexible structure” (easy implementation and light management of the research initiatives) are the main characteristics of COST.

As precursor of advanced multidisciplinary research COST has a very important role for the realisation of the European Research Area (ERA) anticipating and complementing the activities of the Framework Programmes, constituting a “bridge” towards the scientific communities of emerging countries, increasing the mobility of researchers across Europe and fostering the establishment of “Networks of Excellence” in many key scientific domains such as: Biomedicine and Molecular Biosciences; Food and Agriculture; Forests, their Products and Services; Materials, Physical and Nanosciences; Chemistry and Molecular Sciences and Technologies; Earth System Science and Environmental

Information and Communication Technologies;
Urban Development; Individuals, Societies, Cultures
and Health. It covers basic and more applied research and also
addresses issues of pre-normative nature or of societal importance.

Web: www.cost.esf.org

National context for PPPs – policy, regulation and supporting institutions

Koen Verhoest, Martijn van den Hurk, Nunzia Carbonara, Veiko Lember, Ole Helby Petersen and
Walter Scherrer

1 Introduction

Over the past few decades, policies and institutions to promote the uptake of public-private partnerships [PPPs] have diffused across the globe (Hodge et al., 2010; Klijn & Teisman, 2003). Many countries have shown an extensive development of PPP programs, whereas many others tend to remain rather skeptical (McQuaid & Scherrer, 2010). A wide divergence in national PPP approaches can be noticed, and this provides food for thought on the relationship between the national context for PPP policy-making on the one hand, and the implementation of PPP policy on the other: which nationally driven elements are vital to the (non-)development of PPP in practice? Which contextual factors provide a conducive or stimulating climate for PPPs, and which tend to be rather inhibiting? Before we continue the discussion on this issue, our definition of PPP requires attention.

Definitions of what might be understood as PPP differ from country to country. In these Discussion Paper Series, we stick with the definition provided by the OECD:

between the government and one or more private partners (which may include the operators and the financiers) according to which the private partners deliver the service in such a manner that the service delivery objectives of the government are aligned with the profit objectives of the private partners and where the effectiveness of the alignment depends on a sufficient transfer of risk to the private partners. (OECD, 2008)

Within the aforementioned relationship, the government specifies the quality and quantity of the service it requires from the private partner. The private partner may be tasked with the *design, construction, financing, operation and management* of a capital asset and *service delivery* to the government or the public using that asset. The private partner will receive either *payment fees* from the government, or *user charges* levied directly on the end users, or both. If the government is responsible for paying the private partner for service delivery, the fees may depend on the private partner's compliance with the *government's quality and quantity specifications*. Principal to the definition we use is the *transfer of risks* from the government to the private partner (Grimsey & Lewis, 2002; Lienhard, 2006). Various types of risks are identified, priced, and either retained by the public sector or transferred to the private partner through an appropriate payment mechanism and specific contract terms. The transfer of risks is based on the principle that each risk should be allocated to the partner where it can be best managed. In addition to the OECD definition, the European PPP Expertise Centre [EPEC] states that PPP usually includes a *long-term contract* which takes account of *life cycle* implications for the project (EPEC, 2011).

In this Discussion Paper Series, we discuss some of the alleged crucial elements of the national context for PPP development, being the extent to which PPP-related policies, political commitment, regulations and supporting institutions are present in specific countries. A descriptive overview of contextual factors in 17 European countries is provided through country-specific profiles in which PPP policies, PPP regulations, and PPP-supporting institutions are addressed. This overview sets the stage for an internationally-

oriented explanatory analysis in the near future. The aim is to contribute with new and comparative insights concerning the PPP policy contexts across various national institutional settings. These analyses will thus provide systematic comparative insights that will expand previous PPP research that has mainly been single country oriented (Petersen, 2011). Comparative data about the PPP policy contexts in different countries can be used in different ways to increase our knowledge.

First, we might aim to understand the emergence of PPP policies, regulation and supporting institutions, as well as their similarities and differences across countries and politico-administrative systems, by referring to international isomorphic pressures as well as country specific macro-institutional variables, like culture, legal tradition, polity, economic-financial evolutions and actor constellations. We might study policy diffusion and transfer processes to understand the spread of PPP-propagating policies, regulations and supporting institutions.

Second, we may study the relation between the PPP policy, regulation and supporting institutions on the one hand and the extent to which PPP projects have been initiated, have progressed or have failed in countries. Contrary to intuitive insights, this relationship is not so straightforward, with some countries with 'incomplete' institutional frameworks having a relatively large take-up of PPPs or countries with highly elaborated policies, regulations and supporting institutions experiencing a high failing rate of PPP projects.

Moreover, in spite of the current controversial and highly inconclusive empirical evidence of PPP performance (see e.g. Hodge et al 2010) and increasing difficulties arising from the global financial crisis, PPP is still high on the political agenda in most countries. By looking at the contextual factors, we will be better positioned to understand why PPP continues to be popular in these countries in spite of such mixed results. The country profiles also give some early insights about the effects of the global financial crisis on PPP policies and practices in countries.

In sum, the final objective is to draw insights on how and why governments working under different contextual settings develop institutional frameworks, policies and regulations, which are meant

eer the development and implementation of PPPs, and, these institutional frameworks to project-specific information on PPP practices, to study how they actually work.

2 Different levels of analysis

Although national context is highly important to PPP development, the role of institutions at higher (supranational) or lower (subnational) levels needs to be taken into account as well. For countries in the European Union (EU), PPP research has illustrated that institutions like the Commission, Eurostat and EIB are important policy-makers and/or regulatory players (Petersen, 2010). Moreover, and also relevant for countries outside the EU, international bodies such as the OECD, IMF and the World Bank have important roles as agenda setters and promoters of new governance modes in general and PPPs in particular (see for example OECD, 2008). Consequently, the institutional context of PPP development in a country can only be analyzed fully if one applies a multi-level approach. In accordance with Pollitt and Bouckaert (2004) and Verhoest et al. (2010) we distinguish between four levels of governance (see also figure 1).

International-supranational pressures include regulatory, normative, and economic pressures for isomorphism. Examples of this type of pressures are: meta-regulation by the EU, e.g. on procurement, public debt, and national budget; the propagation of PPP by international organizations, based on the New Public Management [NPM] discourse or related neoliberal doctrines; globalization of the economy.

Macro-institutional variables encompass five national dimensions. The first dimension is the administrative history and reform trajectory of a country, which includes the realization of NPM-based reforms and measures of liberalization and privatization (Osborne & Gaebler, 1992; Painter & Pierre, 2005). Second, a country's socio-

economic model or structure is, *inter alia*, formed by its welfare regime (Esping-Andersen, 1999) and varieties of capitalism (Nölke & Vliegenthart, 2009). The third dimension, polity and politics, includes state structure and political system (Hague & Harrop, 2007; Lijphart, 1999). Culture, then, refers to both legal and societal aspects of culture (Hofstede & Hofstede, 2005; House et al., 2004). Finally, the financial-economic dimension addresses a country's macro-economic conditions, level of public debt and budgetary equilibrium, access to capital and credit markets, and the level of investment needs in infrastructure (European Commission, 2012; WEF, 2012; World Bank, 2012).

The third level of analysis, *policy, regulation, and supporting institutions*—which is the focus of this Discussion Paper Series—is discussed further in the next section. Finally, the fourth level of analysis concerns *PPP projects*, and this level emphasizes issues such as the diffusion of PPP practice, features of specific PPPs, processes of PPP implementation, and evaluations of their performance. This level is addressed in-depth in a separate Discussion Paper Series (Rouboutsos et al., 2013).

This Discussion Paper Series is, thus, part of a wider research program aiming at analyzing the relationship between PPP and institutional contexts. By concentrating on policy, regulation and supporting institutions, this Discussion Paper Series fills a current gap in the current PPP literature. While international-supranational pressures and macro-institutional variables have been previously addressed in a number of international studies (see above), and the PPP project level is dealt with separately in a dedicated Discussion Paper Series, the current volume focuses on collecting empirical data regarding policy, regulation and supporting institutions.

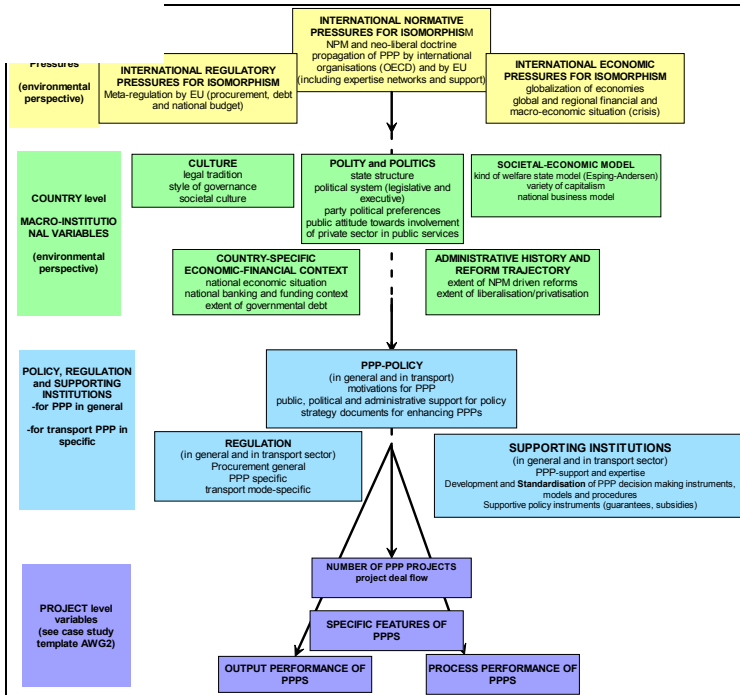


Figure 1: four different institutional levels influencing the development of PPP policies and projects (based on Pollitt & Bouckaert, 2004; Verhoest, et al., 2010).

3 Policy, regulation, and supporting institutions

As to enable the descriptive analysis of the third level (see figure 1), a guiding framework was developed. A significant part of this framework derives from practitioner-oriented literature. Table 1 below gives an indication of the guidance that was provided for the policy part of the analysis (or: the *political commitment to PPP and*

PPP policies). Emphasis is put on a country's policy framework for PPP, its experience with PPP, its political stability, the direct effects of the financial crisis on PPPs in general and in transport, and the respective policy changes.

Table 1: Variables and indicators for the dimension political commitment to PPP and PPP policies.

Variables	Indicators
PPP policy framework	Separate strategic policy document which outline and explicit policy strategy on PPP
	PPP as element in sectorial policy framework documents
	Clear PPP program with significant pipeline and timetable of viable projects to which government is committed to procure
	Main political motivations for PPP
Previous and current PPP experience	Number of PPP projects, in general and in transport
	Lending volume via PPP projects, in general and in transport
	Percentage of infrastructure investment through PPP over time, in general and in transport
Political stability	Major changes in political landscape which have affected political will and/or support regarding PPP
Effects of financial crisis on PPPs	Obtaining and securing financing for PPP projects
	Number of planned and closed PPP projects
	Duration time of PPP contracts
	Difficulties in project operation phase
	Financial issues
	International financing of PPP projects
	Transfer of risks to private sector
	Contract renegotiations
PPP policy changes due to financial crisis	Scale/size of PPP projects
	Government funding of PPP projects
	Emphasis on traditional procurement
	Emphasis on smaller/larger scale contracts
	Government guarantees for funding/financing
	Government involvement in SPVs
Project bonds	

ables and indicators for the dimension legal and regulatory framework for PPP (European Bank for Reconstruction and Development, 2012; EIB 2011).

Variables	Indicators
Legal PPP framework	Explicit general PPP or concession law
	Transport-specific law on PPPs or concessions
	Public procurement law
	Accordance with EU guidelines
Scope and boundaries of specific PPP law	PPP definition
	Sectors and types of infrastructure/services concerned
	Competent contracting authorities
	Eligible private party
Elements provided in legal framework	Procedures regarding
	(1) Selection of private partner through competitive procedures
	(2) Non-competitive procedure in exceptional circumstances
	(3) Procedures for unsolicited proposals
	(4) Review procedures
	Accounts on
	(1) Contract termination events
	(2) Compensation provisions
	(3) Provisions for collection of fees or payments by government
	Provisions regarding
(1) Public authorities to support and provide guarantees	
(2) Step-in rights for lenders or substitution by a new private partner	

PPP policy is often used as a means to stimulate the growth and development of a pipeline of PPP projects. For example, whilst not having strictly legal status, government bodies may issue a specific policy in relation to the rules of tendering and the terms of contract. Moreover, PPP policies serve to define PPPs in comparison to other infrastructure service procurement options, and they serve to describe the reasons and goals for adopting PPP schemes. Finally,

PPP policies can encourage good relationships by directing and coordinating cooperation between interested sectors and institutions of government (cf. OECD, 2006). All in all, a country’s political commitment to PPP and the form and strength of its PPP policy are vital to the *PPP-readiness* of a country.

On the legal part of the analysis (or: *the legal and regulatory framework for PPP*), narratives will discuss the legal frameworks for PPP as they do or do not exist in the countries under scrutiny. The descriptions are guided by the variables and indicators as presented in table 2 below. More specifically, they will discuss the presence (and content) or absence of a legal framework for PPP and relevant elements in PPP-related and public procurement legislation (European Bank for Reconstruction and Development, 2012).

Table 3: Variables and indicators for the dimension PPP-supporting institutions.

Variables	Indicators
Acting public institutions	PPP unit
	Statute of PPP unit
	Tasks/responsibilities of PPP unit
	Size of PPP unit
Procedures for project appraisal, role allocation	Use of standardized ex ante evaluation instruments
	Third party approval of PPP projects
	(1) Prior to tendering procedure (2) Before final contract is signed
Standardized processes and documents	Roles and responsibilities of public agents in project cycle
	Use of standardized contracts
	Use of standardized project models
	Use of standardized tendering procedures

The third and final dimension of the guidance for the descriptive analysis is that of *PPP-supporting institutions*. The implementation of PPP policies and the development of PPP projects are likely to be

her the presence or absence of these institutions, such as regulatory agencies, fixed procedures for PPP project appraisal and prioritization, and standardized PPP contracts (EIB, 2004; Farrugia et al., 2008; OECD, 2010; World Bank & PPIAF, 2006). Table 3 lists the variables and indicators that will be touched upon in the upcoming country-specific narratives.

4 Outline

The remainder of this series will contain the descriptive analysis of 17 European countries. It presents the narrative part of the country profiles. Besides the narratives, standardized data have been assembled by the involved researchers. These standardised datasets per country are not presented in this volume.

The work load for this analysis was allocated over 17 country teams; each country team was responsible for delivering a contribution about its own country, based on the analysis of legislation, policy documents, other documents and selected interviews. The country profiles presented in this volume are clustered geographically, based on the United Nations Geographical region definitions¹:

- West Europe: Austria; Belgium-Flanders; France; Netherlands; Switzerland
- South Europe: Cyprus; Greece; Italy; Portugal; Serbia
- North Europe: Denmark; Estonia; Finland; Sweden; United Kingdom
- East Europe: Czech Republic; Slovakia

The country profiles describe the political commitment to PPP and PPP policies, the legal and regulatory framework for PPP, and PPP-supporting institutions referring to information available by April 2013. Country reports generally reflect the situation at the central government level; in some countries with a distinct decentralized decision structure the regional or local levels of governments are explicitly considered as well.

¹ <http://unstats.un.org/unsd/methods/m49/m49regin.htm#europe>

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SECTION I

WESTERN EUROPEAN COUNTRIES

Austria

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Abstract

Austria has not been a forerunner of PPP use; funding of transport has been dominated by government financing. There exists no dedicated PPP unit, no specific regulatory framework and no legal definition of PPP. Public procurement law applies to concessions and allows for a high degree of flexibility of contracts. There is a huge number of independent players on the public side; federal government realized only few projects in transport sector as PPPs; the major motivation was relieving public budgets. In the aftermath of the financial crisis a more skeptical view of PPP has emerged.

1 Introduction

Austria has 8.4 million inhabitants. Annual average growth of real GDP was 2.4% in the period 1990 to 2000 and dropped to a modest 1.6% between 2001 and 2012; GDP per capita is among the highest in the European Union. Central government finances and general government accounts have been in a notorious deficit in the past decades, although the level of taxation among the highest of European Union member states.

The economic policy framework has been characterized by a corporatist culture (“Sozialpartnerschaft” – social partnership) which has a significant impact not only on economic policy but on many other areas like employment and social policy. The social partnership organisations actively participated in the discussion on PPP (Beirat 1998).

Austria’s territorial organization of government and administration is based on a federalist structure with most of the power concentrated at the central level. The central state and social insurance institutions account for approximately 80% of public revenues, Austrian states receive less than 8%, and the share of local governments is approximately 11%. Municipalities and states account for approximately three quarters of total public investment spending and can exert a high degree of autonomy within their constitutional competences.

A distinct feature of Austrian economic history which is of interest regarding the economic policy stance towards PPP is its once huge sector of nationalized firms which has been largely privatized in the meantime. This sector had emerged under specific historical circumstances immediately after World War II and acted as a key driver of Austria’s economic catch-up process until the 1970s. Nationalized firms resembled institutional PPPs: On the one hand they were expected to operate under a market and competition logic while on the other hand they were also required to act in pursuit of some kind of public interest.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

In Austria the types of transport modes are coordinated largely at the respective levels of government. Table 1 extends the issue of decision making in the Austrian transport sector to types of financing (Widen et al. 2012, p.114).

Table 1: Coordination and funding of transport related facilities in Austria.

<i>Transport mode</i>	<i>Type</i>	<i>Level of coordination</i>	<i>Type of financing</i>
Road	National	National	Public funding, some market finance, only few PPP projects
	State	State	Public funding, few PPP projects
	Local	Local	Public funding
Railway	National	National, State	Public funding, few PPP projects
	Local, tram	Local	Public funding, some market
Airports		State	Public and market funding

Government funding dominates financing of transport related facilities. Roads are financed apart from national taxes by user charges; in the road sector PPPs play a minor role at the national and at the state levels but not at the municipal level. Railway infrastructure is also largely financed by the public sector, though there are some PPP projects at the national level and some private train operators, mostly operating regional or local lines.

In the airport sector Vienna International Airport is by far the biggest one; half of its shares are owned by the State of Vienna, State of Lower Austria and an airport employees' trust, the other half is traded at the Vienna Stock Exchange. Most other airports are owned

by states and municipalities. The ports along the river Danube are – except one – publicly owned.

2.2 PPP policy framework

There are no policy documents with an explicit policy strategy on PPP, neither in general nor in the transport sector. PPP as a mode of providing transport infrastructure and delivering related services is not mentioned in the main document of the ministry for infrastructure, innovation and technology on long-term investment plans in the transport sector (“Generalverkehrsplan”). It is also not mentioned in the framework-plan 2013-2018 of the Austrian Railway Company (ÖBB) and in the investment plan of the Austrian motorway operator (ASFINAG); both ÖBB and ASFINAG are fully owned by federal government. In the early 2000s ASFINAG propagated the use of PPP for extending the motorway infrastructure connecting the Eastern part of Austria around Vienna with new member states of the European Union.

The main political motivations for PPP are summarized in a study commissioned by the Austrian Social Partners (Beirat 1998). In this document PPPs are considered a promising way (1) to tap new sources for financing public infrastructure and thus relieve budget restrictions, (2) to accelerate investment projects, and (3) to provide public infrastructure more efficiently through synergetic combinations of the strengths of the public and the private sectors.

2.3 Previous and current PPP experience

A survey of PPP-related projects in which federal government or federal agencies had been involved was conducted by an inter-ministerial expert group of central government (see table 2; source: BMF and BMVIT 2008).

Table 2: PPP projects in which federal government or federal agencies had been involved (Source: BMF and BMVIT 2008).

Project	Form of PPP	Public Partner	Policy domain	Con-cession	Costs
A5 Nordautobahn, Package 1: Motorway, Vienna metropolitan area	DBFO	ASFINAG - State enterprise of high level roads	Road Transport	30 years	933 M€
Electronic road tolling system for heavy trucks on motorways	DBFO	ASFINAG - State enterprise of high level roads	Road Transport	10 years	100 M€ per annum
Güterterminal Graz-Werndorf: Cargo Terminal	DBFO	SCHIG - State agency for rail infrastructure	Rail Transport	34 years	36 M€
Test facility wind tunnel, Vienna Arsenal	DBFO	SCHIG	Rail Transport	37 years	59 M€
Port of Regensburg: Cargo terminal	DBFO	SCHIG	Rail Transport	21 years	
BOS: Digital radio system for police and public safety organisations	DBFO	Federal Ministry of Internal Security	Techn.	25 years	Approx. 35 M€
Bundescontracting	Contract	Ministry for Economy and Labour	Building mainten., energy efficiency	10 years	15.3 M€
IMC Fachhochschule Krems	No PPP, risk transfer	Ministry or Science and Research	Education		2.4 M€
Akademiebad Wiener Neustadt	no PPP, coop.	Ministry of Defence	Building mainten.		0.07 M€
Justizanstalt Wien Landstraße (prison)	Trad. procure ment	Ministry of Justice	Building constr.		

Only seven out of ten federal government projects can actually be considered a PPP, of which five are in the transport sector. By far the biggest one with a value of approximately 1 billion EUR is the first package of the motorway system in the Vienna metropolitan area (A5 Nordautobahn; 52 km). The electronic road tolling system for

heavy trucks on Austrian motorways was another project in the road sector which achieved much public attention when only a few years after its completion the private partner was sold out by the public partner ASFINAG which has been operating the system since then; therefore it cannot be considered a PPP any more. The three PPP projects in the rail sector were designed in a way that the ultimate risk taker is SCHIG, the government agency in charge of providing rail infrastructure.

The digital radio project (which is in heavy delay), and the contracting project (which is aimed at improving energy efficiency in 500 buildings owned by central government) are PPP projects in which the private partners actually have to bear significant risk. Among the remaining projects there are two specific cases of close public and private sector cooperation – but no PPPs – and one project which initially was considered to be procured as a PPP but eventually was finalized as a traditional public sector procurement project (BMF and BMVIT 2008). The list does not include institutional PPPs (like the industrial competence centers and other vehicles aimed at technology transfer) in which central government is involved.

At the state and municipal levels a comprehensive overview of PPP projects is not possible because of lack of data. A survey by the Austrian Institute for Economic Research (Puwein and Weingärtler 2008, 2010) which asked state and municipal governments about non-institutional PPP projects suffered from poor response: Only one out of nine states and 41 out of 257 municipalities which were contacted responded, yielding a total of 8 projects at the state level and 25 projects at the municipal level. Most of the projects of municipalities are in the tourism and leisure, education, waste management, and health care sectors; only very few are in the transport sector.

A major finding is that municipalities which are involved in PPP projects on average have a debt per capita which is 20 per cent higher than municipalities without PPPs. This suggests that budget restrictions are an important argument for choosing PPP as a mode of public infrastructure delivery, at least at the municipal level. This

is supported by the importance of taxation aspects: state and local governments need not cover value added tax on the building expenditure of infrastructure projects if they source it out to a PPP or some other private enterprise. Of course, from a macro-economic perspective these tax savings based on outsourcing by municipalities and states mean reduced tax income of the public sector as a whole.

2.4 Political stability

Political priorities at the federal government level have shifted at least twice during the past two decades. While organizational PPPs in the field of research and innovation aiming at the improvement of linkages between public research organizations and the private business sector proved to be successful, the experience with contractual PPPs in the transport sector was not encouraging until the late 1990s. Two major tunnel projects – one railway and one road tunnel through a mountain range separating the southern parts of Austria from the Vienna metropolitan area – failed as PPP projects in the early 1990s. The road tunnel failed as a PPP project because federal government declined to co-finance the project while the rail tunnel project failed because of legal uncertainties.

The first shift which resulted in attributing PPP a by and large positive role can be dated to 1998 when the joint study of the social partnership organizations analysed international trends and experience with PPP models in a booklet on “Innovative co-operations for providing effective infrastructure” (Beirat 1998). Given the disappointing experience with the tunnel projects it was remarkable that the social partners at that time claimed that “there exists a far reaching consensus among the important political and economic decision makers that PPP could contribute to improving the supply with public infrastructure in Austria” (Beirat 1998, p. 10, own translation).

While the conclusions of the social partners’ study (i.e. PPP is a new source of financing public infrastructure and providing it faster and more efficiently than via traditional public procurement methods)

reflect the common arguments of the supporters of PPPs, the Austrian social partners' top priority argument for PPP was, interestingly, the budget relieve argument. This was no surprise because both the demand for public infrastructure investment and the pressure on public finances had increased during the 1990s (McQuaid and Scherrer 2008, 2010).

On the one hand specific public investment needs emerged as the enlargement of the European Union had shifted Austria from the periphery into the geographic centre of the European Union thus creating a need to improve transport infrastructure connecting Austria and the new member states on its eastern, northern and southern borders. Further, in some traditional utility sectors urbanization trends and re-investment requirements had increased the current investment need. On the other hand government budgets were hit by the impacts of the increases in public consumption and transfer spending in the early 1990s. Since the mid-1990s budget discipline was required to meet the debt criteria for membership in the European Monetary Union and, later, the requirements of the Stability and Growth Pact. Budget discipline was required at all levels of government which was felt particularly strong at the federal level and by some states due to high debt loads, while municipalities faced budget pressure because of their limited capacity to incur debt. As the investment share in municipalities' budgets is bigger than in those of other levels of government PPPs have become attractive particularly for municipalities as a means to deliver public infrastructure and services without burdening current budgets.

The second shift in attitude toward the potential of PPP – now to a more sceptical view – was particularly marked at the central government level and can be dated to the year 2008 when the inter-ministerial PPP competence centre (see section 4.1.) was suspended. In the aftermath of the financial crisis it had become difficult and more expensive for private firms to achieve long term financing of infrastructure projects so that PPP as a mode of public infrastructure delivery at least by central government has not been prioritized any more. This second shift in attitudes towards a deliberately sceptical

view of PPP has not been shared by all states and municipalities as some continue to establish PPP projects.

2.5 Effects of financial crisis on PPPs

The first package of the extension of the motorway net in the Vienna metropolitan area was completed as a PPP project on time and within budget. Nevertheless, the plan to procure the remaining packages of the motorway project also as a PPP has been abandoned. The drawback from delivering this project as a PPP occurred after a shift in political composition of national parliament which entailed that the head of the federal ministry in charge of transport was not to be nominated by the nationalist party any more but by the social-democratic party which seems to be less geared towards the use of PPP. In the aftermath of the financial crisis a more sceptical view of PPP emerged also (particularly at the federal government) because it had become difficult and more expensive for private firms to achieve long term financing of infrastructure projects. At the federal level there are no projects known which are under negotiation; there is no information available at state and local levels.

In the health sector PPP still has been used as a mode of public good delivery after the financial crises; public partners here are mostly state and local governments. Obtaining private finance for PPP projects does not seem to be the major bottleneck in this sector but the inability and/or unwillingness of smaller public entities to incur debt. This is supported by Puwein and Weingärtler (2008, 2010) who find that those municipalities which suffer from most severe budget problems tend to favour PPP compared to municipalities with lesser problems.

Some states and municipalities have continued to establish PPP projects after the financial crisis; tax savings and thus implicitly shifting part of the investment cost to the central government level might have played a major role here. After a change in value added tax regulation having become effective by January 2013 this

financial incentive for using PPP instead of traditional public procurement has been abolished.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

In Austria there exists neither a specific regulatory framework for nor a legal definition of PPP. A working definition provided by the Federal Chancellery (Bundeskanzleramt 2004) describes PPP as an enduring cooperation between actors from the public sector and the private business sector for planning, providing, financing, and operating a (formerly) public service in which risks and responsibilities are distributed appropriately among agents.

Austrian government holds that the existing body of legal norms is sufficient as a legal framework for regulating the use of PPP and thus there would be no need for a regulation of PPP by the European Union. In fact, regulating PPPs is considered an obstacle to implementing innovative forms of arrangements because in practice each PPP project is different. Non-regulation allows using PPP flexibly and to custom-tailor arrangements to the specific needs of the partners in each individual case of partnership (Bundeskanzleramt 2004).

3.2 Elements provided in the legal framework

Austrian public procurement laws are dating from 1993, 1997, 2002, and 2006, and have been amended frequently since then (in 2007 alone 113 issues were amended). Austrian procurement law is highly complex and its application to practical cases needs extensive legal expertise; the legal complexity tends to raise project cost. By implication public procuring organizations – small ones and those which do not frequently perform significant procurement activities in

particular – try to avoid formal tendering procedures whenever possible.

Public procurement law applies to concessions which are impacted by only few of the law's regulations. To service concessions, in particular, apply only the definition of the public procurement organization, the definition of the service concession contract, and the provisions for publishing concessions. This relatively loose regulation compared to other forms of public procurement allows for a high degree of flexibility of concession contracts.

4 Institutional setting for PPP

4.1 Acting public institutions / PPP support units

There is no dedicated PPP unit in the Austrian public sector. All levels of government (federal, state, local) can exert a high degree of autonomy upon deciding on the form of providing public services and are used to exert this power in a rather self-confident understanding of their autonomy. Therefore a multitude of independent agents is found on the public side with obviously little concern about establishing a joint dedicated PPP unit or at least coordinating PPP activities and sharing experiences.

Central government established a “PPP competence centre” as an inter-ministerial group under the joint leadership of the Ministry of Finance and the Ministry of Transport, Infrastructure and Technology in 2007. A first task of the centre was to conduct a survey in order to take stock of the number and scope of PPP projects in which Austrian federal government and federal agencies were involved. The survey results suggest that each ministry or agency considered its own project(s) “unique” (BMF and BMVIT 2008) and that even within federal government the degree of coordination and knowledge sharing across departments is weak. The unit was small; it was staffed through multiple assignments of employees of the two ministries involved in it. As a consequence of

the political shift in federal government and of the financial market crisis the inter-ministerial group has been “suspended” since 2008 (BMF 2011); in effect, it was abandoned.

Municipalities are provided with some PPP-related know-how by an interest organization of municipalities (“Gemeindebund”). Given the relatively small size of this organization and their need to cover a broad spectrum of services (PPP is only one among a lot of topics to be tackled) this organization cannot be considered a competence centre or a substitute for it. At the state level neither individual states nor states as a group do have a dedicated PPP unit.

4.2 Procedures for project appraisal and prioritization

No standard ex ante evaluation instrument which is specific for PPP projects exists in Austria. In the legislative procedure in federal parliament laws have to be checked for budget implications before being enacted; this procedure is without much serious meaning as it is rather formal and superficial. The ministry for transport has developed a standardized evaluation method for investment projects in the railroad sector (an extended cost-benefit analysis) which includes economic, ecological, and social impact analysis. A similar method of ex-ante evaluation of investment projects in the motorway sector has been developed by the federal agency ASFINAG.

The procuring organization (ministry, agency) has a high level of discretion in the whole procurement process at the federal level. In the pre-tender phase most tasks (project initiation, assessing feasibility and value for money, project approval) are executed by the procuring organization, only in budgeting the ministry of finance has a formal say. In the tendering phase (invitation to tender, bid evaluation, negotiation, bid approval) and in the post-award phase (contract management and payment oversight) the procuring organization is in charge.

4.3 Standardization of processes and documents for PPPs

For routinized and easily to be defined projects in road construction in state administrations there exist standardized contracts – but only for traditional procurement and not for PPPs. The types of tendering procedures and the most important features of these procedures are defined in procurement law. The most frequently used tendering procedure in transport is a sealed bid procedure in which an unspecified number of firms have the possibility to bid for the project (“offenes Verfahren”).

In its statement to the EU green book on PPP in 2004 the Austrian government – which was relatively PPP-“friendly” at that time when a coalition led by the conservative party with the nationalist party was in power – considered flexibility to be an advantage of PPP which would allow for adjusting contracts according to the public and private partners’ interests on a case-by-case basis. Therefore, it was argued, more harmonization or co-ordination would reduce flexibility and thus make it more difficult to achieve innovative solutions in public procurement.

More recently, a proposal of federal government suggests amending Austrian procurement law in order to include the fostering of innovation as a secondary goal of government procurement activity. As this goal might be conflicting with other goals which are founded in European Union law (e.g. non-discrimination, freedom of competition, equal treatment of bidders etc.) the actual impact of this legal provision remains to be seen.

5 Conclusion

Austria as federalist state has many autonomous decision makers at central, state and municipal levels of government (the latter two accounting for approximately three quarters of public investment

spending) being potentially involved in PPPs. Although tax level is high general government accounts have been in a deficit for decades. The economic policy framework has been characterized by a corporatist culture (“social partnership”); Austria once has had a huge sector of nationalized firms having some elements of a PPP and which have been largely privatized in the meantime.

Austria certainly has not been a forerunner of PPP use; funding of transport has been dominated by government financing. No comprehensive overview of PPP projects at the local and state levels is possible; at the federal level few projects in the transport sector have been realized as PPPs. The major motivation for PPP in Austria was to relieve public budgets. Political priorities at the federal government level have shifted at least twice during the past two decades. In the aftermath of the financial crisis a more skeptical view of PPP emerged at the federal level.

In Austria there exists neither a specific regulatory framework for nor a legal definition of PPP. Public procurement law applies to concessions and allows for a high degree of flexibility of concession contracts. A dedicated PPP unit in the Austrian public sector existed for less than two years with little impact; it was “suspended” (in effect: abandoned) in 2008. No standard ex ante evaluation instrument which is specific for PPP projects exists in Austria.

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Abstract

Belgium shows an ambiguous adoption and implementation of PPP. On the one hand, PPP has become a well-embedded method for infrastructure projects in Flanders, whereas on the other hand, Wallonia has been rather reluctant in embracing the PPP concept. This paper offers insights into the PPP-enabling landscape of Flanders by discussing the sociopolitical, legislative, and institutional aspects that have played an important part in either putting PPP forward or in negatively affecting PPP-readiness. It appears that a strong political will and a clear policy have contributed considerably to the successful introduction of PPP in Flanders.¹

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1 Introduction

Public-private partnership [PPP] has gone through a strong emergence in Flanders—the Dutch-speaking part of Belgium. The first indications of that development could be noticed on the verge of the 21st century. As of 2013, PPP has become a well-embedded method for infrastructure projects. Particularly the financial and budgetary aspects of PPP have played a crucial part in this process. First of all, Belgium's federal public debt ratio does not allow for large investment based on public sector loans. Looking more specifically into the Flemish situation, it can be noticed that the Flemish Government combined the pursuit of a budgetary equilibrium with the desire to be an investment-oriented government. The PPP promise to speed up procurement processes, and the pursuit of risk transfer, have also been important to the rise of PPP in Flanders. Although the Flemish political-institutional landscape is generally of a highly complex character, it has not severely impeded the implementation of PPP. Here, a difference with the Walloon Region—the Francophone part of Belgium—can be noticed. Wallonia is still lacking a coherent PPP policy and regulation, although some activities regarding PPP are observable. For some reason, the Flemish Government has been more susceptible towards public sector reforms, New Public Management [NPM] ideas, and private sector involvement in public services than the Walloon Government. This may well be related with the openness of dominant political parties with regard to substantial private sector involvement.

In this paper, an account is given on the Flemish context for PPP policies and projects. First of all, the Flemish political commitment to PPP is discussed. Subsequently, we discuss the legal and regulatory framework for PPP, and finally we address the PPP-supporting institutions that are present in Flanders. In the conclusion, we summarize our findings, and we try to answer the following question: to what extent does Flanders provide for a PPP-friendly environment?

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

The institutional design of the Belgian political system—including decision-making levels regarding transport modes—needs to be addressed in order to understand our exclusive focus on the Region of Flanders. For several reasons, the Belgian political system is considered a complex one. A large number of political entities and institutions are active on a relatively small territory. Actually, Belgium holds more than fifty ministers and state secretaries, active across six different governments (linked to the federal state, the regions, and the communities).

The large number of entities and institutions brings us to multiple decision-making levels, both in terms of legislative decision-making and executive decision-making. Here, a clear separation between the federal government and regional/community governments can be noticed. The federal government still has the final say over issues which are not yet decentralized to the regions (i.e. ‘residual competencies’). These include, *inter alia*, financial affairs, armed forces, justice, social welfare, and foreign affairs. A number of other issues have been decentralized to regional and community governments, being the Flemish (Region and Community) Government—which is the largest government; the French Community Government; the Walloon Region Government; the Brussels-Capital Regional Government; and the German Community Government. These have jurisdiction over (most aspects of) issues related to transport, public works, water policy, environment, education, housing, labor, economic and industrial policy, and some other policy fields. Although a considerable part of the financing of these parliaments and governments comes from the federal government, the regions and communities act largely independent in these policy fields.

Flanders and Wallonia are the country's two largest regions, and the political relationship between these areas is not always harmonious. The reasons for this tense relationship are embedded in historical political-institutional developments, and will not be addressed in this paper. Nonetheless, it is important to mention that substantial divergences can be noticed between the two regions, in terms of politics, economy, and society. Both regional governments have also adopted a different strategy (if any) on PPP. For two reasons, we merely focus our analysis in this paper on the institutional framework for PPP in the Flanders Region. First of all, the Flemish Government acts autonomously—that is, independent from the Belgian federal government—when it comes to PPP issues and for PPP initiatives in the decentralized policy domains. Second, the Flemish Government is the only government in Belgium that has adopted an official PPP policy and where PPP practice is most prevalent.

At which level(s), then, are investment decisions taken with regard to different transport modes? Railways and national airports are exclusively decided upon at the Belgian federal level. The Flemish Government, which operates at the regional level, plays an important role with regard to decisions on regional airports, inland shipping, roads, bus services, and tramways (the latter two in consultation with the involved local authorities). Yet, decisions on local roads are also made at the local level. The same goes for sea ports; this is predominantly the case in the City of Antwerp, which is affiliated to one of the largest sea ports in Europe. Indeed, the provincial decision-making level is missing here. This is because provincial governments only have a very limited say in investment decision-making procedures concerning transport modes (Meersman et al., 2008).

2.2 PPP policy framework

A first hint of PPP in Flemish policy documents can be noticed in the Coalition Agreement of the Flemish Government which came into

office in 1999 (Vlaamse Regering, 1999), but it took a while before it actually came into play. In 2003, the Government accepted a PPP Decree (see section on legal framework), and once Yves Leterme took office as the Prime Minister of Flanders in 2004, PPP gained momentum. A first official policy statement on PPP was announced in that year. In this statement, the Government referred to PPP abroad, the Flemish PPP Decree, all actors that would get involved in the new PPP policy, and a PPP Knowledge Centre to be created within the Flemish administration. Finally, a few projected Flemish PPPs were listed (Leterme, 2004).

An overarching PPP program, including a significant pipeline and timetable of projects to which the Government is committed to procure and covering all Flemish policy sectors, does not exist in Flanders, and neither it has existed. However, since PPP became apparent in the Flemish political landscape, several policy documents have been published that mention PPP as an element of sectorial policy frameworks. Accordingly, public limited companies [PLCs] have been established which in turn have drafted pipelines and/or timetables for these specific sectors. With regard to transport, which is the policy sector that is predominantly discussed in this paper, policy proposals and implementation have been announced regularly since 2000 (Flemish Parliament, 2000, 2004a, 2004b, 2009). More specifically, in the road infrastructure sector, a PLC called 'Via-Invest' has been founded in order to realize six road construction or renovation projects as part of a PPP program that contributes to solving 'missing links' in the Flemish road network. The works have started in 2007 and are estimated to be finished by 2019 (PMV, 2010). At least two other specific PPP programs can be mentioned here, although these do not concern the field of transport. The first one is the Flemish Sports Facilities Plan, which encompasses a large catch-up movement concerning sports facilities in Flanders, such as multifunctional sports arenas, artificial turf courts, and swimming pools (Anciaux, 2007; Flemish Ministry of Sports, 2012; Vlaams Kenniscentrum PPS, 2012f). A second pipeline can be noticed in the field of education. The DBFM program 'Schools of Tomorrow' has been established in order to

modernize the school infrastructure in Flanders (Agion, 2013; PMV, 2011).

What were the reasons for the Flemish Government to adopt a PPP strategy for future infrastructure investments? The Government's choice for PPP was defended by its alleged positive impact on spreading investment costs and reducing investment expenses. Obviously, the PPP policy in Flanders was primarily based on financial-budgetary considerations: "taking into account the limited budgetary resources, [...] a system of public-private partnership (PPP) and alternative financing must be developed" (Vlaamse Regering, 1999). A significant role was played by off-balance sheet financing as promoted by ESA 95 requirements. These rules indicated that the public investment capacity could increase without direct consequences for the Government's annual budget or the public debt—investment on a 'credit card basis' (Ducatteuw, 2005). In fact, with regard to quite a few PPP projects that have been realized, ESA neutrality was perceived as the *sine qua non*.

Although doubts have arisen on the desirability of off-balance sheet financing as a motivation for PPP policy over the course of years, the Government's 2004 policy statement has never been officially updated. Nonetheless, regular ministerial letters have been published on the implementation of the Flemish PPP policy (Leterme, 2005, 2006; Peeters, 2007, 2008, 2011), and some changes in the motivation for PPP can be noticed. Partly due to the financial crisis, the mere financial-budgetary focus on ESA neutrality as a motivation for PPP has to compete with a rather project-related motivation for PPP nowadays: value for money and the achievement of synergetic partnerships have certainly grown in importance. In 2009, the Belgian Court of Audit criticized the dominance of ESA neutrality as a motivation for PPP:

Because of budgetary restrictions, in particular because of the imposed precondition [by Europe] of ESA neutrality, the Government of Flanders considered alternative financing or PPP the only possibility to realize the policy objectives more rapidly with regard to many projects. Therefore, there is a risk that insufficient attention is paid to other types of surplus value. (Rekenhof, 2009, p. 12)

According to the Court of Audit, off-balance-sheet financing should not be the only motive for PPP, and there seems to be a growing consensus about that. Merely using ESA neutrality as a basis for project approval or rejection would lead to suboptimal results, and that is why “when looking for new formulas to realize investment objectives, one should increasingly take into account both the financial, the operational, and the social surplus value of those formulas” (Rekenhof, 2009, p. 86).

The change as desired by the Court of Audit is occurring: aspects other than ESA neutrality increase in importance. Attention is no longer solely paid to the former, one-sided motivation, but increasingly to a rather integrated motivation which is aimed at achieving added value in both financial, societal, and operational terms (De Braekeleer, 2006; Ducatteuw, 2005; Rekenhof, 2009; Vlaamse Regering, 1999). In this respect, we think of value for money and the life cycle approach. Operational surplus value can be found in increased efficiency and transparency, and in risk limitation for both public and private parties. Additional issues that have received increased attention are the partnering between public and private actors, and faster project realization.

On the one hand, ten years of PPP in Flanders have been dominated by ESA neutrality, whereas on the other hand, PPP has developed into a concept that is much more than simply off-balance sheet financing. The latter is exemplified by the fact that the Flemish Government, and particularly its PPP unit, has been propagating the use of an integrated surplus value scan for some time now: a standardized instrument that allows to examine the diverse surplus values of a PPP project in an early stage (Peeters, 2011, pp. 43-44; Vlaams Kenniscentrum PPS, 2012b). Moreover, it has been mentioned explicitly in the latest government coalition agreement that PPP action will only be undertaken if surplus value is likely to be achieved through PPP.

2.3 Previous and current PPP experience

A clear, let alone exhaustive overview of PPP projects in Flanders does not exist, which makes it difficult to determine the exact number or volume of PPP projects that have hitherto been realized. Table 1 provides an indication of current PPP activities in Flanders. Additionally, table 2 indicates the volume of large recent PPP programs and projects. It appears that a substantial amount of PPP project volume has been realized in Flanders since the 2004 PPP strategy came into play—especially if we compare the Flemish figures with those of other Belgian governments and regions (DLA Piper, 2007, 2009; Vlaams Kenniscentrum PPS, 2012c).

The volume of Flemish PPP projects ranges from small to major investments. For instance, several large PPP programs concerning tramways, sports facilities, and road construction works (Via-Invest) have been closed on the level of the Flemish Government. On the local level, attention has rather been paid to projects of small scale, such as sport courts, swimming pools, and brownfield development (SERV, 2007).²

² Although it is not the main subject of this paper, it is interesting to mention that PPP has gradually developed in Wallonia and on the Belgian federal level as well. In Wallonia, social housing and inner-city restructuring are two policy areas in which PPP has been established (Voets et al., 2011). Nevertheless, a real Walloon PPP policy does not exist. Neither the Walloon Region, nor the French Community has a Knowledge Centre for PPP. For the time being, the number of ‘traditional’ PPP projects (DBFM, etc.) is rather limited compared to the Flanders Region. Nonetheless, the Walloon Region has a lot of sui generis structures, such as SOFICO (Société wallonne de financement complémentaire des infrastructures). This government company is sometimes considered to be a PPP. With regard to the Brussels Capital Region, we can mention the concession project Aquiris (water treatment), and concrete plans for the use DBFM for the renovation of tunnels. Furthermore, we can refer to the Eupen DBFM operation for school infrastructure for the German-speaking Community. Finally, on the federal level a few large PPP infrastructure projects are being or have been realized, such as the Liefkenshoek railway tunnel in Antwerp and the Diabolo railway tunnel in the Brussels Airport area. In addition, important progress was achieved in the field of PPP prisons. All in all, PPP is

Table 1: Overview of sectors and projects with regard to PPP activities in Flanders (*Vlaams Kenniscentrum PPS, 2012c*).

Government level	Sector	Title of program/ project
Flemish Government	Sports facilities	Flemish Sports Facilities Plan
	Housing	PPP Housing
	School Infrastructure	Schools of Tomorrow
	Road infrastructure	Via-Invest Flanders
	Tramway infrastructure	De Lijn – Tram depots and tramway extensions
Local level	Sports infrastructure	Various projects of different size and scope
	Area development	Various projects of different size and scope

A final remark to be made here concerns the character of the Flemish PPP market, more especially the demand side of the market. This demand is of a small-scale, fragmented nature, which has emanated from the complexity of the political-administrative landscape. In this landscape, numerous levels of power have led to a fragmentation of skills, resources, and practices. Furthermore, the scope of local and regional public bodies is relatively small, and so is their demand for projects to the private market. These circumstances have influenced PPP practice: many projects put to procurement are initially (too) small. An important response from the Flemish government was to opt for clustering of local projects. Such clustering is often required to optimize the return of a project, and to attract private partners (Sander Van Garsee & Verhoest, 2008, p. 42). For instance, by tendering a cluster of four relatively straightforward projects to a

gradually acquiring a more solid position in the landscape of Belgian infrastructure projects. New markets and policy areas have emerged.

single consortium, as was done with artificial turf courts in the Flemish Sports Facilities Plan, economies of scale were achieved.

Table 2: Total volume of large PPP programs and/or projects in Belgium (based on Steven Van Garsse et al., forthcoming).

Region/ entity	Investment (€ mln)	Estimated annual availability fees (€ mln)			
		2012	2013	2014	2015
Federal Government	1265	9	50	113	113
Flanders	2480	25	53	77	144
Wallonia	1014	135	213	162	130
Brussels	360	50	50	50	50
German Community	146	N/A	N/A	N/A	N/A

Tendering costs were significantly reduced due to the fact that only one integrated procedure had to be followed instead of four separate procedures (Van Gestel et al., 2011). Also with regards to local social housing and schools, the Flemish government clustered projects under remit of local authorities into large-sized compound contracts, in which the Flemish government acted as principal negotiator on behalf of the involved local authorities (Van Gestel et al., 2013).

2.4 Political stability

Political support for PPP in Flanders has been relatively high and common among the dominant political parties, ranging from center-right to center-left on the political spectrum. Elections have not remarkably affected the Flemish PPP policy either; although several governmental shifts have occurred since the launch of the Flemish PPP policy, the support for PPP has gradually increased, regardless the composition of coalitions. The Greens and extreme leftish

political parties were critical, but did not exercise sufficient political power to influence the political decisions sufficiently.

It is only since a couple of years that critical reflection concerning PPPs has arisen, especially with regard to the dominant focus on budgetary motivations. This criticism is likely to be related to the financial-economic crisis rather than to the political stability of either the Belgian Federal Government or the Flemish Government. Moreover, the Flemish Parliament has requested new tools that allow more intensive monitoring of large-sized infrastructure projects (mostly PPPs) during contract negotiation and building phase, as response to the problematic, failed negotiation of the 'Lange Wapper' Bridge in the city of Antwerp which was proposed to close the city's ring road. This proposal triggered substantial public contestation.

2.5 Effects of financial crisis on PPPs

It is evident that the financial crisis has had (and still has) a serious impact on PPP in Flanders: the number of closed projects and ongoing negotiations has decreased. Moreover, ongoing negotiations were made much more complex and time-consuming. Again, clear figures on the Flemish situation are lacking. Figures based on the European PPP market, however, clearly indicate some tendencies. For example, bank margins have increased substantially: on the one hand, banks increasingly pass their liquidity rates to their customers and impose higher interest rates, while on the other hand, risk premiums that are internally imputed by banks have also increased. As a consequence, the project financing market, which is very important to the PPP market, has been affected considerably, as it has become more expensive (PWC & Dealogic Loan Analytics, 2012). A decrease in the number of PPP projects can be noticed at international level (EPEC, 2012). Moreover, the average duration of project financing has been shortened significantly, thereby impeding the long-term perspective for PPP projects. This in turn imposes the need for refinancing every now and then.

In terms of changes in PPP policy that are related to the financial crisis, one specific policy measure may well become more evident in the future: the increased government funding of PPP projects through the investment of public equity. For instance, there has been a tramway project in the city of Antwerp in which project bidders found it difficult to find the required funding as part of their DBFM bid, which caused a delay in the project's tendering procedure. In order to prevent this kind of delays in the future, it might be useful if the government steps in as an equity provider early in the process. Moreover, there is experimenting with new forms of PPPs in which the private financing element has changed, like DBMs, or in which the scale has been reduced to a minimum size (DBFM-light).

It remains to be seen whether the financial crisis creates further opportunities for other criteria (like value for money) than financial aspects to achieve a more important position in the Flemish PPP strategy and project-related choices. Earlier in this paper, it was addressed that ESA neutrality has decreased in importance as the institutionalization and implementation of PPP policy advanced. Probably, the financial crisis has emphasized further the risks involved with off-balance sheet financing, which may be for the benefit of other motives for PPP.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

The Flemish Parliament adopted a PPP Decree in 2003. This legal document was aimed at supporting public-private initiatives in Flanders (Vlaamse Overheid, 2003). It approved the establishment of a PPP Knowledge Centre, and a number of judicial facilities were created to enable public-private real estate development (Leterme, 2004). Since its establishment, the PPP Decree has not been amended substantially, as the Decree appears to function well. A

specific PPP or concession law with regard to the transport sector does not exist in Flanders, nor on the Belgian federal level.

What does exist on the federal level, though, is the Public Procurement Act. This Act was established in 1993 and has been updated in 2006 (Belgische Regering, 1993, 2006). Logically, the establishment of this Act was heavily inspired by the European Union. Especially the 2006 update emanated from the 2004 EU Procurement Directive. Although the 2006 update is fully in line with this EU Directive, Belgian practice proves that there is a major difference between drafting a law and implementing it. As of today, only parts of the Belgian Public Procurement Act have been implemented, and it might take a while before all legal elements are indeed put into practice. The competitive dialogue procedure, for instance, was only implemented in 2011, which is five years after the adoption of the Act.

3.2 Scope and boundaries of specific PPP law

The official Flemish PPP Decree does not comprise a lot of paperwork. On the contrary, it contains only six pages of text, which indicates the goal it is supposed to serve: clarifying PPP and its related concepts. Despite this goal, the PPP Decree sometimes fails to provide for an unambiguous explanation of terms. As an example, we mention the definition of PPP: “PPP projects are projects that are realized by public and private parties, jointly and in a partnership, in order to create added value for both parties” (Vlaamse Overheid, 2003). The Flemish PPP Knowledge Centre adds that both types of parties preserve their own identity and responsibility, and that the surplus value can either be financial, operational, or social (Vlaams Kenniscentrum PPS, 2012d). Some elements of a PPP are made clear, but a lot of room for discussion obviously remains.

If we look at the Decree’s clarity on other boundaries and scopes, we can see an ambiguity regarding sectors and types of infrastructure and service that are considered to be appropriate for PPP procurement. Actually, the only clear distinction that has been made

on this topic is the distinction between public sector actors on the one hand and private sector actors on the other. No information is provided on the eligibility of specific infrastructure or service types for PPP, which leaves the field for application of PPPs very open. The PPP Decree provides more clarity when we look at the determination of competent contracting authorities: it clearly indicates which entities are eligible to act as public partners in a PPP. Eligible private parties are not listed in the Decree. Any actor other than the public actor is considered a private actor, but that does not say anything about its eligibility. Yet, this does not seem to cause problems in determining which private actor is eligible for specific projects.

3.3 Elements provided in legal framework

As we proceed to elements of the PPP Decree, we notice a weak procedural element. The Decree does not provide for any procedural information: no account is given on regulatory requirements for (decision-making) procedures. It does not include clarifications on private partner selection through competitive procedures, nor on non-competitive procedures in exceptional circumstances, procedures for unsolicited proposals, or review procedures (Vlaamse Overheid, 2003). The PPP Decree seems to be a conceptual starting point for a new policy rather than a legal guideline for public and private actors.

The Belgian Public Procurement Act, on the contrary, provides clear procedures for the selection of private partners through competitive procedures. The same goes for non-competitive procedures in exceptional circumstances, and for review procedures. In addition, the Public Procurement Act addresses the issues of provisions for public authorities to support private actors and to provide them guarantees, and it also addresses provisions for step-in rights for lenders—neither of these provisions are offered by the PPP Decree. However, in regard to procedures for unsolicited proposals, a similarity between the PPP Decree and the Public Procurement Act

can be noticed: no clear rules are imposed here. This is in line with the EU Procurement Directive, which does not mention the concept of and procedures for unsolicited proposals either (European Parliament & Council of the European Union, 2004).

Neither the Flemish PPP Decree, nor the Belgian Public Procurement Act offer regulations on contract termination events, compensation provisions, or provisions for the collection of fees or payments by the government. These issues are not laid down in any regulation. It is here that the Flemish PPP Knowledge Centre has contributed to knowledge building by publishing several reports and books on contractual issues, such as a handbook on DBFM and a publication on output specifications (Delporte et al., 2009; Steven Van Garsse et al., 2009).

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

The Flemish Government operates a PPP unit: the PPP Knowledge Centre. This unit, which is a public body that falls under the auspices of the Flemish Ministry of the Interior, is publicly financed and was established in 2002 in order to boost the introduction and implementation of PPP in Flanders. Moreover, the PPP Knowledge Centre is a network organization that provides Flemish authorities with PPP advice, inspiration, and support if needed (Vlaams Kenniscentrum PPS, 2012e).

In its capacity of field developer, the PPP unit provides both the Flemish government and the private sector with information on PPP policy and PPP opportunities. With that, it also attempts to promote the PPP self-reliance of these parties. As a knowledge broker, the unit takes up an advisory role and collects and shares PPP knowledge, experiences and models with all parties involved. The process guidance function comprises the provision of advice and

guidance to the Flemish public administration in its quest for potential PPP projects and the design of these projects. The Flemish PPP unit does not coordinate any projects; this task remains to belong to the responsible administration. Finally, the PPP unit monitors the added value of PPP projects through ex-ante and ex-post evaluation. It does not have any formal green lighting role, and therefore it cannot be considered a ‘gate keeper’ that approves or rejects PPP programs or projects through binding advice. Yet, there is a mandatory procedure which requires that the PPP unit publishes an advice on a proposed PPP project. The existence of such an advice is a formal requirement for any proposed PPP project to indeed be recognized officially as a Flemish PPP project. However, project sponsors are not obliged to follow the formulated advice.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

When it comes to ex-ante evaluation, several different instruments have been used in Flanders, such as the Public Private Comparator [PPC], the Public Sector Comparator [PSC], and the so-called ‘PPP balanced score card’, which is a tool that was developed by the PPP Knowledge Centre. The PPC substantiates whether a PPP implementation of a project creates surplus value compared to a classical project realization, whereas the PSC takes place at a later stage and implies a benchmark for the evaluation of the offers from the private partners (Rekenhof, 2009). Both instruments never became common practice to consider the appropriateness of PPPs in Flanders, and were very rarely used. More recently, quantitative instruments, like PSC and PPC, became increasingly controversial, since the test results can often be manipulated in favor of choices that have already been made.

The third instrument, i.e., the PPP balanced score card, is used to measure several different aspects (financial, but also social and project-related criteria) of a potential PPP project. In so doing, it allows for a comprehensive verdict. Nevertheless, this instrument is

primarily qualitative compared to the PPC and PSC, and less precise and detailed on the financial benefits of PPP projects. What these three instruments have in common, however, is that they are not mandatory, nor does a PPP project have to score well before it can be approved. These instruments until now do not really serve a gate-keeping role.

An important part of the institutional setting for PPPs is formed by the allocation of roles and responsibilities to public actors and agents in the PPP project cycle. A few things are interesting to be discussed here. Although it has been officially established by the Flemish Government, the Flemish PPP Knowledge Centre basically lacks any coercive power, let alone direct responsibility, in both pre-tender, tender, and post-award phases concerning PPP projects. Interestingly, there is another governmental actor that quite often becomes involved with projects: *Participatiemaatschappij Vlaanderen* (PMV). This independent investment company, founded as an autonomous agency under private law in the late 1990s, is fully owned by the Flemish Government and supports economic investment initiatives in Flanders. It acts as an entrepreneur and market broker, and it provides financial levers if the market needs support and necessary private initiatives fail to evolve. PMV collaborates with private partners via funds and PPPs (Rekenhof, 2009; Vlaamse Regering, 2011). Since PMV puts its own money at stake in PPP projects and since it often acts as the contracting party, it is quite logical that it has a rather significant voice in PPP project cycles than does the PPP Knowledge Centre.

Other than the interplay between contracting authorities, the PPP Knowledge Centre, and PMV (in those projects in which it participates as equity provider), no public actor or agent bears direct or indirect responsibility in either pre-tender, tender, or post-award phase with regard to PPP projects in particular. However, when it comes to large infrastructure projects in general, the Flemish Financial Inspectorate plays an important part as the financial and budgetary advisor of the Flemish Government. Although the advice of the Inspectorate is neither binding nor obligatory, a project may

well be debated at a high political level if the Inspectorate has given a negative advice.

4.3 Standardized processes and documents for PPPs

As PPP has become part of the Flemish landscape of infrastructure development, Flanders has recently shown some first steps towards the drafting and using of standard contracts, procedures, and project structures during the last few years (Delporte, et al., 2009; Steven Van Garsse, et al., 2009). Nevertheless, these PPP-related institutions will not find themselves generally accepted or applied.

The PPP Knowledge Centre has developed a standard DBFM contract (Vlaams Kenniscentrum PPS, 2012a), but only quite recently, so empirical evidence on the experience with these contracts is very limited. Dexia, a European banking group, has developed a model PPP contract as well. This contract does not have any formal status; it should be conceived as a service from a private financial actor towards other private actors.

Other standards that have been developed concern PPP models. It has happened more than once that the government—be it the Flemish Government or a Flemish municipality—developed a (large) PPP program, which allowed for standardized project structures. Examples of these structures can be found in the Flemish Sports Facilities Plan (Flemish Ministry of Sports, 2012; Vlaams Kenniscentrum PPS, 2012f). The transport sector also provides a good example: standardized DBFM models have been used in the Via-Invest projects regarding missing links in road infrastructure (PMV, 2010).

A typical Flemish PPP model that has to be mentioned here is the ‘hybrid PPP model’, which has been highly atypical to international standards for quite some time—and which in turn might explain the prudent, if not cautious reaction of market actors regarding the introduction of this concept, a couple of years ago. The model includes characteristics of both a contractual PPP and a participatory PPP and is widely used in Flanders nowadays (Van Gestel et al.,

2009, 2010; Van Gestel, et al., 2011). Nonetheless, it would be incorrect to consider this hybrid PPP a pure standard. Rather than it has officially been announced as a standard, it might best be considered a standardized habit.

One of the distinguishing characteristics of the hybrid PPP model is that the public actor participates for max. 25% of total shares in a public-private special purpose vehicle [SPV], together with a private bank consortium or investors. This SPV overarches a policy domain by providing equity, and it structures single DBM contracts with private design/building/maintenance consortia (Van Gestel, et al., 2011). Hybrid PPP models are used for a number of reasons. First of all, it allows the public actor to facilitate the financing of a project. This has proven to be useful in times of crisis, when banks are reluctant to provide private financing. Second, participation enables the public actor to have a crucial voice in the project, and it allows for safeguarding the public interest. One of the major drawbacks of the Flemish hybrid PPP model is that it increases considerably the complexity of PPP structures and projects and that the model is unknown to internationally operating banks, investors and building consortia.

Finally, we come to write about standardized tendering procedures. Due to the EU Procurement Directive, tendering procedures are highly standardized nowadays. The competitive dialogue procedure, however, has hitherto only been used to a limited extent. This procedure was only implemented in 2011, and apparently still has to find its way to full usage—which means that the negotiation procedure still is the most popular way to find a private partner.

5 Conclusion

PPP is increasingly finding its way in Flanders and has, within a timeframe of about ten years, acquired a solid position in the Flemish landscape of infrastructure projects. However, a rather noteworthy observation would be that we see a policy that institutionalizes. PPP

has proven to be a dynamic phenomenon over time, and as of today, new markets and policy areas are opening up, and PPP types other than DBFM are being developed. Partnerships have become rather normal phenomena, and the benefits of PPP are increasingly pursued in projects that would have followed a traditional public procurement path in the past. There is no doubt that this gradual settlement of PPP in policy practice was facilitated by political commitment which was transposed into PPP policy and legislation, and by a gradual development of PPP-supporting institutions. Many of these contextual factors have not been present in Wallonia, which might explain the difference between the relatively wide use of PPP in Flanders and the limited (yet upcoming) use of PPP in Wallonia.

As the Flemish Government took a highly proactive role in PPP practice, it developed and implemented a hybrid PPP model, which allowed for public equity investments in SPVs. Moreover, this was combined with a strategy to cluster local projects in large-scale Flemish PPP projects in several cases. Although this typical Flemish model has proven to be valuable in a number of cases, its complexity need not be neglected. Some would accuse the Flemish Government of being too radical in implementing this new PPP model, as the government did not have much previous experience in tendering PPPs. Moreover, the complexity of these hybrid clustered PPP projects proved to make contract negotiations long and difficult, and standardization of contracts only came in the game late. Together with the financial crisis of 2008, this combination of factors reduced the support for the PPP strategy of the Flemish government to some extent. The government is now actively seeking for new ways to proceed by developing standards for contracts and procedures, by pursuing a more differentiated project model strategy adjusted to project characteristics, by being more careful with clustering of local projects if it is not really beneficial, and by trying to increase the weight of non-budgetary criteria in deciding for PPPs.

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Abstract

France has a long tradition in involving the private sector in public works and services, especially in the transportation sector. Although a strategic document specifically aimed at PPP has never been published, France has developed a legal framework that puts different procedural instruments to involve private partners in construction and/or operation at public bodies' disposal. There are two main procedures for PPP that can be used in the transport sector nowadays: public service delegation and partnership contracting. In order to promote the latter and to assist the procuring authorities in partnership procedures, a special PPP unit was created.

1 Introduction

France has a long tradition in involving the private sector in public works and services, especially in the transportation sector. In the 19th century, the cooperation concerned the construction of shipping canals and bridges. Since the 1950's, concession, that is the oldest form of Public Private Partnership in France, has been used for the construction of a large majority of interurban motorways. In the 1990's and 2000's, modern forms of PPP were developed: public service delegation (PSD) in 1993 and partnership contract (CP) in 2004. In 2011, France was in capital terms the largest PPP market for new projects, mainly due to the introduction of a few very large PPPs (EPEC, 2012b; CEF-O-PPP, 2011).

In the transport field there is quite a small number of projects, but some of them are very expensive (high speed line projects for example) (CEF-O-PPP, 2011). In the urban public transport, private sector is often involved for operating the service, but rarely for building the infrastructure. In France (except Paris region), nowadays 71 % of the urban public transport networks are operated using a public service delegation (DGITM-CERTU-GART-UTP, 2010), but we only notice very few PPPs that include both the building of a new line of transport and the operation of the urban public transport service. In the urban public transport, partnership contracts have not been used yet.

Involving private sector in public tasks has a large support in the political field with no real differences between the different big political parties. However, it should be noticed that nowadays some municipalities choose to go back to an “in house” management to operate some public services. But, it is too early to say, if it is a durable trend.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

For roads, tunnels and bridges, there are several competent authorities, depending on the status of the infrastructure: the national level for motorways and for the most important roads; the departmental level for the majority of roads; and the local level (shared between municipalities and inter-communal structures) for local and urban streets.

Concerning railways, the infrastructure is owned and maintained by a national company: Réseau Ferré de France (RFF). As regional traffic is organized by the regional level, regions also participate in the infrastructure planning and financing. The central state and the regions define regional railways infrastructure investments in cross-sectoral programs called “contrats de projets Etat Région”, which are established in partnership every 6 years.

The decisions in urban transport are made by the local organizing authorities. These authorities are mostly inter-communal structures and can be either in charge of the sole transport sector or have their largest competencies in other fields. The influence of the other government levels is rather limited, even if in the last years the central state has given subsidies to dedicated line transport systems (undergrounds, Bus Rapid Transit and tramway systems).

For airports and ports, the major ones are governed at a national level, whereas the local ones can depend more on decisions taken by local authorities or by private parties (such as Chamber of Commerce and Industry).

2.2 PPP policy framework

There is no specific separate strategic document outlining an explicit policy strategy on PPP and PPP is not specially mentioned in sectoral transport-policy documents. In its general presentation of the

law introducing partnership contracts (Gazette des Communes, 2004), the French Ministry of Finance identified several arguments in favor of PPP. Involving private partners could help to increase the efficiency of projects either with a large part of the investments dedicated to the realisation of infrastructure, or with the use of sophisticated and new technologies. It's also relevant for projects which use is easy to be priced, and/or in local context. Moreover, PPP enables to share risks between private and public partners and to mobilize some existing private financing capacities.

But, in fact, the reasons why a PPP solution is chosen are not always so explicit, documented and linked with quantifiable facts. For instance, today, about 71 percent of the urban public transport network is delegated to the private sector while there's no quantifiable data to measure the difference in the efficiency with "in house" provision. Ideological factors can also play an important role in this choice. However with ideological factors we don't mean political factors. Indeed, political orientation of elected representatives doesn't seem to have a big impact on their choice. A recent survey of 201 elected representatives shows that 77% of them have a good opinion of PPP (Ifop/Mars, 2011). Moreover, one argument for doing PPP is to strengthen the know-how of French private firms.

As mentioned before, there is no PPP framework neither in general nor in transport sector. However, in the transport field, there is a national scheme for transport infrastructure, in which projects are identified and prioritized to some extent. At regional level, there are strategic contracts between the national and the regional authorities, including a large part for transport infrastructure. For urban public transport, the state has launched two calls for proposals in 2008 and 2010 in order to subsidize such projects supported by local authorities. These calls for proposals aim to increase the length of dedicated line transport system outside Paris' area from 329 km in 2005 to 1800 km in 2020, as required by a law adopted in 2009. These documents can, of course, include PPP projects, but are not PPP-specific.

2.3 Previous and current PPP experience

Since the 1950's, concessions have been used for the construction of a large majority of interurban motorways. Even before, they have been used for the construction of shipping canals and bridges. Between their introduction in 2004 and the end of 2012, about 170 partnership contracts have been signed, representing an amount of 13 billion euros. In the transport field, there has only been a limited number of projects (10), but these represent about 4,9 billion euro (interview with MAPPP).

Moreover, there are about 12 000 to 15 000 public service delegations (PSD) (IGD, 2006). But only some of them can be considered as a PPP as defined by the OECD (2008). Indeed, several types of PSD should be distinguished as some relate only to the operation of the service (for example “affermage”), whereas other cover both investment and operation of infrastructure (for example concessions of public service). In urban public transport, about 71 % percent of the network is operated via public service delegation. Only very few urban public transport PSD include both building and operating. Furthermore, the annual public investment is about 90 billion Euros. The percentage done through partnership contracts (not including public service concessions) varies a lot from year to year, but seems to be about 5 percent (or a little less than 5 percent) in average (EPEC, 2012a; interviews with MAPPP and IGD).

2.4 Political stability

The changes in the political landscape, particularly the last presidential election, have not fundamentally changed the political will in supporting PPP. The new president has strengthened in a declaration of January 2013 10th that public bodies should use the best way for funding and building new projects and that PPP is one of the available instruments.

2.5 Effects of financial crisis on PPPs

The financial crisis has had an impact on PPPs, as the new and more restrictive banking regulations have made it more difficult for private partners to finance projects (Pignon-Xardel et al., 2010). However, a specialist from the PPP unit highlighted that PPP has still helped to realize projects that couldn't have been done another way, especially at the present time with reduced financial capacities for the public actors (interview with MAPPP). The years 2011/2012 were characterized by the signature of some big PPP projects. Moreover, at the moment, 89 partnership contracts are under competitive dialogue including 8 PPPs in the transport field.¹

2.6 Change in PPP policies because of financial budgetary crisis

In order to stimulate PPPs and more generally public investment, the government developed in 2009 an economic recovery plan which aimed to simplify procurement procedures and grant more public guarantees. But this plan is not PPP-specific and deals with all public investments. Hence, concerning public guarantees, the 4 February 2009 law, introduced a state guarantee for payment of loans granted by credit institutions to companies involved in a PPP concluded before the end of 2010. The state guarantee must not exceed 80% of the amount of loans or debt securities. Moreover, 8 billion euros of savings fund have been reserved for the period 2009-2013 for loans at a very favorable rate to companies under PSD or partnership contracts. There is also a work on progress on the possibility for public bodies to issue project bonds for financing projects. (Pignon-Xardel et al., 2010; Law 2009-122, February, 4th, 2009).

¹ See <http://www.economie.gouv.fr/ppp/accueil>

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

Whereas PPP has no general legal definition in France, each PPP form has one. And for each type of PPP, there is a specific legislation. A “Public Service Delegation” (PSD) is

A contract whereby a public actor entrusts the management of a public service in its responsibility field to a public or private actor, whose remuneration is substantially related to the results of the operation of the service. PSD can be only used when remuneration of the private actor substantially depends on the results of the service. The contractor may be responsible for building works or acquiring property which is necessary for the service. (translation from Article 38 of Law 93-122 du 29 janvier 1993).

For the PSD, the legal reference is the "Sapin" law of January 29, 1993, modified by the MURCEF Act of December 11, 2001. A public service concession is a particular type of public service delegation, in which both building and operating are delegated to a private operator.

There is also a separate regulation framework for a special type of concession called public work concession, which object is to get a concessionaire to build the complete infrastructure. The benefit for the ‘concessionaire’ is the right to exploit the construction and earn income from tariffs. This type of concession is regulated by the order 2009-864 and the decree 2010-406 of public works concessions.

When a concession concerns both public works and public service, the applicable legislation is the one of public service if the service is the primary object of the contract and the one of public work if building a public work/construction is the primary object of the contract. Moreover, Order No. 2004-559 of 17 June 2004 introduces a new form of PPP: the partnership contract. The “partnership contract” is An administrative contract by which a public actor entrusts a third party, for a period determined by the amortization of investment or retained financing terms, a global mission that aims at

building or modifying, servicing, maintaining, operating or managing a work, an equipment or an intangible property necessary for public service, and all or part of their funding with the exception of any participation in the capital. It can also focus on all or part of the design of these structures, equipment or intangible goods and services that contribute to the exercise of the public service mission. The private contractor is responsible for project management. After a decision by the public actor, it can be charged with acquiring the property necessary for the completion of the transaction, including, where appropriate, by expropriation. It may get transferred, with the agreement of the contracting party concerned, all or part of the contracts awarded by the public partner who may participate in the execution of its mission. The remuneration of the holder shall be subject to payment by the public actor for the duration of the contract. It is linked to performance objectives assigned to the counterparty. The partnership contract may allow the private party to collect, on behalf of the public entity, the payment of benefits by the end user. (translation from Ordonnance n° 2004-559 du 17 juin 2004, article 1 and Code Général des Collectivités, article L1414-1)

It should be stressed that the French definition of concession is not totally the same as the definition used by the European Union [EU]. In France, ‘concession’ refers to either a public works concession or a special type of public service delegation, whereas according to the EU regulation, concession is a more general term covering all the French public service delegations and also some partnership contracts (IGD, 2006).

There is no transport-specific law on PPP, except the law of 18th April 1955 that leaves the possibility of using a concession for building and operating motorways. This law is older than the general regulation on concessions mentioned below.

3.2 Scope and boundaries of specific PPP law

There is no legal restriction concerning the sectors and types of infrastructures/services, in which PPP can be used. However, to use

a partnership contract, a public authority must justify that its project meets one of the three following criteria (Ordonnance 2004-559): complexity, urgency and efficiency of the partnership contract in relation to other tools of public procurement.

Public service delegations and partnership contracts are not regulated by the general public procurement law (Code des Marchés Public - current version is from 2006, last update 2012), but by specific dispositions of the Code General des Collectivités (L1411 to L1415) and of the Decree 2009-243. Among the several specific dispositions for partnership contracts, there is an adapted procedure for very urgent projects. In such cases, the competition is restricted, but such a procedure is not to be considered as completely non-competitive. The same procedure occurs in cases of unsolicited proposals.

3.3 Elements provided in legal framework

As already mentioned, the general procurement law does not apply to PSD and partnership contracts. The specific legal framework on PSD and partnership contracts does not include contract models, but a large list of mandatory provisions to be covered in the contract. For instance, termination events and provisions for fee collection have to be part of the contract.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

A special unit in charge of PPP was created by a decree in October 2004 and formally implemented in May 2005. It is called *Mission*

d'Appui aux Partenariats Publics Privés (MAPPP) and as of 2013, MAPPP is composed of 9 employees.²

This unit is an administrative service and it deals with cross-sectoral PPP. Its scope is a certain kind of PPP - the partnership contract.

According to the decree, the MAPPP is a central governmental unit under the Ministry of Economy, Finance and Industry. The unit's mission is to:

- inform and promote the use of partnership contracts,
- support the implementation of partnership contracts through assistance to public procuring authorities in preparing and negotiating PPP and procuring methodological standard settings,
- valid the preliminary assessment submitted to the unit.³

Another organization named Delegated Management Institute (IGD), created in 1996, regroups the main public, private and associative actors dealing with public services. It is a non-profit organization designed to promote the improvements in the quality and performance of public services. In particular through the involvement of the private sector through another kind of PPP: public service delegation (PSD), including concession.⁴ In 2006, IGD and MAPPP created a club in common: the Centre d'Expertise Français pour l'Observatoire des Partenariats Publics Privés (CEF-O-PPP). Finally, we can point out that sectoral units on PPP exist in different ministries (transport, defense, justice, etc.).

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

As required in the regulation framework, before launching procedure for partnership contract, a preliminary assessment is required to compare the various options of purchasing, particularly in terms of total cost, risk sharing, performance, and sustainable development

² See <http://www.economie.gouv.fr/ppp/accueil>

³ See <http://www.economie.gouv.fr/ppp/accueil>

⁴ See <http://www.fondation-igd.org>

issues. This preliminary assessment must be conducted by the public procuring authority. For state contracts, the preliminary assessment must be validated by the MAPPP before the tendering process is settled. For local procuring authorities, the preliminary assessment can be submitted to the MAPPP before its validation by the local authority's deliberative assembly and before the tendering process is issued. For state projects, MAPP is also involved just before the relevant contract is signed in order to assess the budgetary impact of the contract and to give its opinion to the minister of economy and finances on it. However, the determination of the investment needs (particularly through socio-economic assessment), the realization of the preliminary assessment on the partnership contract and the tendering process are the responsibilities of procuring authorities. (MAPPP, 2011; interview with MAPPP).

4.3 Standardized process and documents for PPPs

According to the type of PPP, the situation towards standardized documents in transport is different. Hence, no standard contracts exist for PSD and concessions, but the MAPPP has developed some standardized clauses for partnership contracts. Concerning the tendering process, standard procedures are mandatory and used in all projects. Partnership contracts may be awarded under a competitive dialogue, invitation to tender or negotiated procedure, according to conditions defined in the law (order 2004 559 of June 2004 on partnership contracts and decree 2009-243).

The rules for public service delegation procedure and concessions are set out in a law (loi Sapin of January 29th 1993). After having ruled on the principle of a PSD, a public invitation to bid is issued by the transport authority. A list of candidates eligible to tender, according to their financial and professional guarantees is edited. Then, after a first examination of the tenders, the procuring authority enters freely into negotiation with one or more candidates. At the end of the procedure, the procuring authority decides which company gets the contract.

5 Conclusion

In 2011, France was the largest market for new PPPs in Europe and, in general, partnership contracts represent about 5 percent of the whole French public investments. In France, there is a general support for involving private actors in public services, even if some municipalities have chosen to go back to an “in house” management to operate some public services.

There are two major procedures for PPP: the partnership contracts and the public service delegation. The latter is used for a very large spectrum of contracts type, some PSD (concessions) have to be considered with no doubt as PPP as defined by OECD (2008), others are only concerning service operation.

Partnerships contracts and public service delegation are not regulated by the general public procurement law. Specific regulation applies: for example, there is a specific procedure with restricted competition for project with a huge degree of urgency or for unsolicited proposals. The legal framework does not include contract models, but a large list of mandatory provisions to be mentioned in the contract.

The special PPP-unit under the Ministry of Finance was set up in 2005. It plays an important role in assisting the procuring authorities in partnership contracts and in validating preliminary assessments on PPP projects.

It is difficult to quantify the impact of the crisis on the use of PPP. Strategies for economic recovery are not PPP-specific. However it should be noticed that a lot of big PPP project were signed in 2011 and 2012.

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Interviews on January 23, 2012

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Abstract

From the implementation of the first PPP projects in the Netherlands to date, the Dutch government has invested largely to increase public capacity, and to provide standard procedures and mechanisms adapted to the Dutch context. The establishment of a PPP unit and the creation of platforms, where public and private parties share their expertise about PPPs, are examples of initiatives that have contributed to an increasing confidence for PPPs in the Netherlands. The Dutch government has supported PPPs as means to bring value for money, considering infrastructure as a service rather than a product to the market. In the Netherlands, increasing public capacity at national and local level and the realization of a continuous flow of projects are still on the government's agenda to improve the conditions for a successful PPP program.

1 Introduction

Two main factors influence infrastructure development in the Netherlands: flood protection and space scarcity. With half of the country lying below one meter above sea level, and 20% located below sea level, the government has been committed for centuries to provide measures that protect the country against potential flood events. Moreover, the Netherlands is one of the most densely populated countries on earth. Its density of population is 405 inhabitants per square kilometer, which is three and a half times higher than the European average. Worldwide, only Bangladesh and Taiwan have a higher density of population among major countries. For this reason, lack of space and high demands for infrastructure have a strong influence on PPP development in the Netherlands. From the development of the first PPPs to date, the Dutch government has invested resources to increase public capacity, and to provide mechanisms to bring value for money through the development of PPPs. An active PPP unit, the creation of platforms where public and private parties share their expertise about PPPs, and the adoption of standard contracts and procedures adapted to the Dutch context are examples of the initiatives that have contributed to generate confidence for PPPs in the Netherlands. Providing an active project portfolio and improving public capacity at both national and local level are the current ambitions of the Dutch government to keep momentum for the development of PPPs.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

Planning of transport infrastructure is highly regulated in the Netherlands. The Ministry of Infrastructure and the Environment is responsible for the planning of infrastructure and Rijkswaterstaat, the

executive agency, is responsible for the implementation of that policy.

Major investments in transport infra are the result of a strict planning process: the so-called MIRT procedure. Before an initial decision is made to invest in infrastructure, suggestions and plans are discussed and negotiated with local municipalities and provincial governments. Once an initiative is thought to have potential, the Minister can take a starting decision, after which an initiative can be further investigated for its potential and various alternatives will be studied. Once a preferred alternative is selected and a project decision has been made, a decision has to be made on how to procure the project.

2.2 PPP policy framework

In the 1980s, the Dutch government mentioned PPPs for the first time as a concept imported from the UK. At this time, public funds were scarce, and the government saw PPPs as a means to improve the national infrastructure by involving the private sector. PPPs were seen as a new form of cooperation at different levels of government aiming at increasing the volume of investment (Klijn, 2009). In 1989, the Dutch government launched two projects in the road sector: the Wijkertunnel and the Noordtunnel. Due to the lack of public expertise and competition, these projects had an inadequate model of concession structure, and they suffered from cost overruns (Virtuosity Consulting, 2005). These experiences decreased the appetite for PPPs. Only in 1998, the Dutch government put private participation on the political agenda. Confronted with scarce public funds, the Dutch government identified a number of projects in which the private sector could be involved. In order to support the involvement of the private sector, the government published the report “More value through cooperation” (Dutch Ministry of Finance, 1998). In this report, the government aimed at formulating successful conditions for PPP success by evaluating previous international experiences. The first Dutch PPP policy contained conditions for effective partnerships between private and public

parties, emphasizing the importance of political support, guidelines and standards for contracts and procedures, market consultation, and instruments to compare PPPs to the traditional contracts. Specifically, the Dutch government considered that bringing value for money to improve the efficiency of infrastructure was one of the main strengths of PPPs. The PPP unit has been dedicated to assess the evolution of PPP development in the country, evaluating the main challenges that arise during project development and their potential causes.

The Dutch government published the report “Nota Mobiliteit” in 2005 (Ministerie van Werker en Waterstaat, 2005). This report emphasized the intertwinement of environment, spatial quality, and social needs leading to a strong connection between transportation and spatial planning policies. Furthermore, the “Nota Mobiliteit” stressed the importance of a clear procurement strategy, the public capacity to ensure lifecycle knowledge, the need to ensure social accountability, and the benefits of early market involvement. The publication of the “Nota Mobiliteit” acted as a political statement to reaffirm political willingness and generate confidence in PPPs in the Netherlands. In 2008, a committee of the Ministry of Finance distributed a report on efficient investments in infrastructure, including an analysis of private finance in the Netherlands (Commissie Private Financiering van Infrastructuur, 2008). Nowadays, providing a good project portfolio and improving public capacity to identify, award, and govern PPPs are the main priorities in the Netherlands. The government also plans lowering the threshold for PPPs, which implies that local governments will also consider PPPs.

2.3 Previous and current PPP experience

In late 1980s, the Dutch government had little experience with PPPs for the first projects. The lack of experience resulted in long preparation times, and high advisory and bidding costs. Moreover, both public and private parties had to get used to their new roles and

responsibilities. For this reason, the first projects did not live up to the expectations and the government invested resources to increase public capacity to identify, award, and govern PPPs. The commitment of the PPP unit has positively contributed to increasing the trust of both public and private parties to embark on PPPs. The first Design Build Finance Maintain (DBFM) contracts in the Netherlands copied British schemes and applied them in the Dutch context. The A59 and the N31 in the road sector and the HSL South in the rail sector showed how bringing in British schemes resulted in long discussions among the involved parties because they had to get used to an unfamiliar arrangement. The government noticed the need to adapt procedures and contracts to the Dutch context. From the early 2000s to date, actions like the establishment of the private sector comparator [PSC], the public-private comparator [PPC], the market scan, the elaboration of the standard DBFM, and the guidelines to apply the competitive dialogue procedure are some of the examples of the measures that the government has taken based on project experiences in the country. The publication of evaluation reports for every large infrastructure project put in evidence the lessons to learn at the project level and the potential solutions to improve the situation for future projects.

Given the importance of learning based on previous experiences, the PPP unit encouraged providing an active project portfolio. There are currently 32 PPP projects indicated in the multi-annual program of the national government, with a total investment of 20 billion euro. Furthermore, two rail projects, ten maritime infrastructure projects, and twenty road infrastructure projects are under investigation. The current challenges remain improving contract management, capacity building within the government, attracting institutional investors, and supporting local government to develop the capacity to launch PPPs (Rijkswaterstaat, 2012).

2.4 Political stability

From the first efforts to improve cooperation between private and public sectors in the late 1990s, there has been political commitment to deliver value for money through PPPs in the Netherlands. Government coalitions have changed over the course of years, but the PPP program has retained its position on the political agenda. In recent years, there has been increasing political support to evaluate potential opportunities to launch PPP projects. This is illustrated by the announcement of Rijkswaterstaat in 2004 of their new policy “market, unless”. This government procurement principle meant that tasks that are not part of the public sector’s core business should be outsourced to private parties. This caused a substantial change in procurement practice and led to a large scale implementation of DBFM contracts for large-scale projects (Lenferink et al. 2012). This policy has not changed in the last decade, and it is widely supported.

2.5 Effects of financial crisis on PPPs

The current global financial climate has also affected the Netherlands. The enthusiasm to provide long-term debt has decreased, and the Dutch government has adapted to the situation. In 2009, the Dutch Ministry of Finance suggested three measures to battle the effects of the financial crisis on DBFM projects. The three suggested measures were to (1) reduce the number of required financiers, (2) reduce credit dependence, and (3) fine-tune agreements to take the existing market developments into account (CMS Legal Services EEIG, 2010). Furthermore, the government published the “Crisis and Recovery Act” which allows for shorter decision-making procedures for certain types of projects, and it will result into a large number of projects to stimulate both economy and employment (Rijksoverheid, 2012).

Despite these changes, the Dutch government has not changed its position towards PPPs, although being aware that the government can still provide cheaper funding than any private party. Value for money is still the main driver behind launching PPP projects (Allen and Overy, 2010).

The financial-budgetary crisis has certainly affected PPP projects, but it has not changed the Dutch PPP policy. The Dutch government, as all European Union member states, is looking for new ways to attract private capital. Recently, the government introduced index-linked financing to make PPP contracts more attractive to pension funds. Another change that was made due to the financial crisis was an effort to change the period of compliance. Nevertheless, the essence of the policy has not changed.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

In the Netherlands, there is not a specific PPP law. The Netherlands is a civil law jurisdiction operating with a civil code.

3.2 Elements provided in legal framework

The Public Procurement Decree (Bao) and the Tendering Decree regulate public procurement in the Netherlands. The Procurement Decree implements Directive 2004/18/EC of the European Parliament on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (CMS Legal Services EEIG,2010).

In 2004, the European Commission published the Green Paper (European Commission, 2004) addressing various topics associated to the public procurement of PPPs, particularly the framework for the procedures of the selection of private partners and the advantages of the competitive dialogue procedure. The competitive dialogue is a procurement procedure which aims at preserving competition and allowing the contracting authorities to discuss aspects of the contract with the bidders (Rijksoverheid, 2009). The competitive dialogue procedure allows for pre-bid individual negotiation with selected

bidders, which makes it different from the common open or restricted procedure. The government and the bidder appoint in a dialogue over the public requests and the proposed private solution (Lenferink et al., 2010). Involving bidders at early stages of the project promotes cooperation about essential contract aspects like risk allocation (European Commission, 2004). Since 2004, the competitive dialogue has been part of the procurement instruments available to the contracting authority as far as member states have opted for the implementation of that scheme (Nagelkerke et al., 2008). The Dutch government adopted the competitive dialogue procedure because the DBFM is complex enough to justify its use, and nowadays its use is more extended in the Netherlands. The Second Coen Tunnel was the first infrastructure project using competitive dialogue for procurement. Before the competitive dialogue was implemented, the Dutch government used the negotiated procedure with prior notification to tender PPP contracts. The governmental agency PIANOo helps contracting authorities to professionalize their public procurement process. In 2009, PIANOo published a guide for the competitive dialogue (Rijksoverheid, 2009) to be used by public agencies to make them understand the different steps, procedures and decisions to be made during procurement.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

There is an active PPP unit at the national level. The “PPP Kenniscentrum” [PPP Knowledge Centre] was created in 1999. During its first years, the PPP unit was committed to giving momentum to the implementation of PPPs, advising government agencies, and providing private companies with general information regarding PPPs (Bult-Spiering & Dewulf, 2006). Its role has evolved

over the years, as have its activities. In 2001, the agency highlighted the need for aligning objectives in public agencies, and for creating public capacity to structure and formulate clear and functional specific outputs (Kenniscentrum PPS, 2001). After 2002, the PPP unit's main aim became to encourage the use of PPPs and to provide an appropriate project portfolio to generate knowledge and improve capacity on both public and private sides. In 2006, the government altered the role of the PPP unit by placing it under the auspices of the Ministry of Finance. As a consequence its functions evolved to elaborating regulations and guidelines for PPP development in the Netherlands (Ministerie van Financien, 2006). The main tasks of the PPP unit are to make the knowledge and expertise with PPPs accessible at the national level, for local authorities and semi-public institutions. The PPP unit currently focuses on providing capacity building and promotion by advising and bringing knowledge into PPP projects. Moreover, it provides a central repository of knowledge sharing about PPP experiences in the Netherlands.

The Ministry of Finance, the Buildings Agency, the Ministry of Defence, and the Ministry of Public Works cooperate with the PPP unit to learn about the PPP experiences in the country. On the website <http://www.ppsbijhetrijk.nl/> it is possible to check the latest information about PPPs, as it provides an overview of current and upcoming PPP projects of all departments involved. There are also a list of publications and an agenda for PPP-related events.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

As mentioned in the first section, transport investments are the result of a long planning process, the MIRT procedure. Different government levels are involved in the early phases of this planning process. This planning process is a clear illustration of the Dutch "Polder Model".

In the Netherlands, the competitive dialogue procedure is widely used for large infrastructure projects. This is a major difference with

other countries. Between 2006 and 2012, the competitive dialogue was applied by Rijkswaterstaat 27 times.

4.3 Standardized process and documents for PPPs

Both the PPP unit and the PPP policies in the Netherlands have emphasized the importance of providing standardized procedures and contracts to identify, award, and govern PPPs. Since 2002, the Dutch government has put in practice initiatives to systematize and standardize instruments to manage PPPs. Nowadays, the government uses standard ex-ante evaluation tools for large infrastructure projects (above 112,5 million euro). The market scan, the public private comparator (PPC), and the public sector comparator (PSC) are examples of these instruments. The market scan is an evaluation of the potential added value of involving the private sector in a project at an early stage. The market scan is compulsory for projects listed in the long-term infrastructure transport program. The PPC is a Dutch financial assessment, which is mandatory for projects beyond a 112,5 million euro threshold. With the PPC, the government determines whether there is an added value of using a PPP procurement compared to traditional procurement (Eversdijk et al., 2008). During the tender phase, and once the government makes sure that there is enough money available for the project, the government calculates the PSC to estimate the value for money the project will deliver (Dewulf et al., 2012). In doing so, the government offers an overview of the total costs during the project lifecycle, and it is a reference for comparison among final tenders. In 2002, the government published guidelines for the use of the PPC and the PSC to ensure value for money and project suitability for PPPs (Kenniscentrum PPS, 2001, 2002, 2004, 2005).

Regarding contracts, the most common PPP contract form is the DBFM contract. It involves a contract in which the government outsources the activities of designing, financing, and implementing to private partners. In 2009, the government published a standardized DBFM contract (Rijkswaterstaat, 2009) based on the knowledge and

experience gained in previous projects. This standard DBFM is currently used for PPP projects in the road sector. The Dutch government uses a DBFM contract with availability payments, having a standard contract with a standardized risk allocation. DBFM projects are procured through the competitive dialogue procedure since its introduction in the EU procurement directive in 2004.

5 Conclusion

Since the development of the first PPPs in the Netherlands, the Dutch government has gradually implemented mechanisms to adapt PPPs to the Dutch context. The existence of an active PPP unit and the lessons from the development of pilot projects have contributed to generating confidence among public and private parties. Both the PPP unit and PPP policies in the Netherlands have emphasized the importance of providing standard procedures and contracts to identify, award and govern PPPs. To date, the Dutch government has put in practice initiatives to systematize and standardize instruments to manage PPPs. The government uses standard ex-ante evaluation instruments for large infrastructure projects, and it has published a standard DBFM contract based on knowledge and experience gained in previous projects. The implementation of PPPs in the Netherlands is increasingly influenced by European legislation reflecting in procurement and planning procedures. For instance, the competitive dialogue procedure is widely used for large infrastructure projects, and between 2006 and 2012 this procedure was applied by Rijkswaterstaat 27 times. The financial-budgetary crisis has certainly affected PPP projects, but it has not changed the PPP policy. The Dutch government is looking for new ways to attract private capital nowadays. Recently, it introduced index-linked financing to make PPP contracts more attractive to pension funds.

Providing an active project portfolio and improving public capacity at both national and local level are the current ambitions of the Dutch government to keep momentum for the development of PPPs.

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Switzerland

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Abstract

While PPP is considered a way to improve efficiency, innovation and effectiveness in the public sector and not as a means to move debt off the balance sheet, decision-makers do not seem to be convinced that efficiency gains will be large enough to compensate for higher capital costs. Few PPP projects have been implemented so far, none at the federal level, none in the transport sector. Potential barriers to PPP are complexity of the transport infrastructure funding system, availability of the capacity to manage large projects within the public sector, negative bias against private sector provision, desire to retain exclusive decision-making power, and uncertainty due to long-term and complex contracts.

1 Introduction

Switzerland, a country of 8.0 million inhabitants in the middle of Europe, has been a federal state since 1848. Power is shared between the central state (the “Confederation”) and 26 regional states (the “Cantons”). The distribution of power is defined in the Federal Constitution following a “bottom- up” construction of federalism (Fleiner 2006), which means that the Federal Constitution only specifies the responsibilities attributed to the federal state, all other tasks (residual power) are the cantons’ responsibility. This being so, every canton has to determine the assigning of responsibilities between canton and municipalities, except for where some tasks are explicitly assigned to municipalities by the Confederation. Thus, each canton has the ability to adopt its “own vision” of federalism and democracy (Fleiner 2006). A far-reaching reform was undertaken in 2008, reducing the number of tasks assumed jointly by the Confederation and the cantons and introducing a clear-cut separation of power.

General government expenditure amounts to CHF 198.3 billion (2011, including social security). Excluding inter-governmental transfers to avoid double counting, federal expenditure accounts for 33.9% of the total, canton expenditure for 42.7% and municipal expenditure for 23.4% (OFS 2013). All levels of government have responsibilities for road and railways infrastructure provision, either exclusive or shared.

In the executive branch of the federal government (Federal Council) seats have been shared between the four main political parties since 1959, according to a “magic formula”: Free Democrats, Swiss People’s Party, and Socialist party have two seats each, the Christian Democrats one, according to the new formula since 1995.

The central role of direct democracy is another specificity of Swiss federalism. Most cantons resort to mandatory or optional fiscal referendum for administrative or legislative acts involving substantial expenditure. The referendum allows citizens to exert control over expenditure decided by the legislative branch. There are

scientific evidences that mandatory financial referenda significantly reduce the size of cantonal spending and are associated with lower debt at local level (Feld et al. 2009, Funk et al. 2009).

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

The aim of reassigning responsibilities between the federal government and the cantons in 2008 was to reduce the number of shared responsibilities in order to deliver public services in a more efficient way. Before 2008, building, repairing and maintaining the national road network was a joint responsibility of the federal government and the cantons; cantons received specific (matching) grants from the federal government as compensation (up to 97% of the expenditure incurred). Now, the national road network (about 1800 km) is under the exclusive responsibility of the federal government. The confederation and the cantons are still responsible for the primary road network (2,262 km, each road section is listed in the ordinance). Cantons receive federal (block) grants which can be used to fund any expenditure arising from building, maintaining or operating the primary road network. Other road expenditures (principal roads not listed in the ordinance, secondary roads) are financed from the general revenue of cantons and municipalities. To cover part of this expenditure, however, federal government provides a block grant which is meant as a contribution to the general expenditure arising from roads open to motor vehicles.

The railway network is divided into two parts: the national operator/Swiss National Railways (SBB) network and the network operated by the licenced transport companies (LTC). The federal government and the cantons share responsibilities for the “regional” railways network (joint tasks). The federal government bears 50% of the running expenditure and the cantons bear the remaining 50% on average (it varies from canton to canton depending on the structural

characteristics of the cantons). The federal government also provides for transfers for railways construction works.

The funding system of the Swiss road and railway network is complex. Three federal taxes (half of the fuel tax revenue, the fuel surcharge tax and net receipts from the motorway sticker) are earmarked to fund road expenditure (CHF 3.8 billion). Part of these resources is diverted into a special purpose fund (CHF 1.7 billion, "Infrastructure fund"). General revenue of cantons and municipalities is the other main source of funding to cover road expenditures. The sources of the revenues used to cover the expenditures arising from railway infrastructure and operations are the general revenue of the federal government, the Infrastructure Fund (made up from a contribution from the earmarked road revenue), the general revenue of the cantons and municipalities and the revenues of the railway operators. Some taxes paid by motor vehicles help finance railway infrastructure (eliminating bottlenecks, improving mobility in metropolitan areas). Today, airport and port infrastructure and operating expenses are financed solely through user fees.

Table 1: Distribution of fiscal decision-making power and funding sources in transport.

Transport mode	Type	Decision level	Source of funding
Road	National network	Federal government*	Federal funding, no project under PPP, PPP model considered for a hypothetical large investment project, some market mechanisms**
	Main roads	Cantons***	Cantons, with lump sum federal grants
	Cantonal roads	Cantons	Cantons, currently no project under PPP, but PPP considered for future projects
	Municipal roads	Communes	Communes, possibly with partial canton funding, evaluation of a PPP model for municipal road maintenance****
Railways	Long distance traffic	Railways companies, federal govt	Passenger and freight revenue, public service compensation (federal), PPP model considered for future projects
	Regional traffic	Canton and federal govt	Passenger revenue, public services compensations (cantons and federal govt), Infrastructure Fund (federal)
	Metropolitan (tram, bus, rail)	Canton, communes	Passenger revenues, public funding (cantons and communes), Infrastructure Fund (federal)
Airport	Internat. airports	Federal govt, cantons	User fee
Port (Rhine river)	Cargo port	Cantons (2)	User fee

* Until 2008 joint responsibility of federal and cantonal governments; since then it has been an exclusive task of federal government (building, maintaining, operating and financing).

** The heavy traffic performance-related fee is similar to an indirect toll.

*** Decision to include a specific road in the network of main roads is decided by federal government.

**** Study commissioned by the Federal Road Office (2008) *Kommunale Strassennetze in der Schweiz: Formen neuer Public Private Partnership (PPP) – Kooperationen für den Unterhalt, IBB and IVT*, ETH Zürich.

The complexity of the funding system is probably one of the reasons why decision makers almost always opt for the traditional public procurement infrastructure approach. The second reason is that the budget constraints were (and still are) not too severe and it is still possible to fund most of the projects, even very expensive one, with public money. Third possible reason, the culture in the federal and cantonal administration focuses on quality of facilities and services, abiding by deadlines and much less on value for taxpayers' money, competition and cost containment. Infrastructure project are designed with very high standards, sometimes excessively high ones. Adopting the PPP approach would mean more systematic comparison, seeking optimal, not highest quality and placing the focus on creating value for taxpayers. Lastly, PPP does not only entail sharing risks, but also transferring part of the decision-making power to the private party(ies). The mighty federal offices are unwilling to give up part of their decision-making power.

At the lower level of government (cantons, large municipalities), public authorities and agencies are usually more open to introducing market mechanisms and new forms of service delivery or infrastructure procurement, such as PPP. It is no surprise that PPP solutions have been experimented only at cantonal or municipal level, never at the federal government level. It is however possible that cantonal and municipal projects – usually smaller and less complex ones – are more suitable for a non-traditional procurement approach (this is the opinion of the federal government).

Members of the federal parliament are open to new modes of cooperation with the private sector. In March 2013, a new parliamentary joint group “public private partnership” was created; its members come from six different political parties, from the left to the right of the political spectrum. Their goal is to ensure that PPP be assessed more systematically, along with the traditional approach, for infrastructure procurement and long-term service provision.

2.2 PPP policy framework

The federal government financial policy model from 1999 states that new forms of co-operation between government and private partners should be considered in order to share the risks and improve efficiency and effectiveness, without explicitly mentioning PPP (Lignes directrices des finances fédérales 1999). The federal constitution (art. 178 al. 3) states that service delivery may be delegated to (independent) public or private organizations (PPP is one of the possible schemes)¹.

Since 2009, the federal government financial regulation (Ordonnance sur les finances de la Confédération) explicitly mentions PPP as a strategy for service delivery (Art. 52 a). The Federal Financial Law (LFC) states that agencies have to consider risk and the cost-utility ratio in the decision-making process (Art. 39 d LFC). Art. 57 al. 1 LFC lays down the principle of efficient and effective use of funds. In early 2009, the federal finance administration specifically addressed the question of alternative infrastructure procurement, publishing guidelines on the use of PPP in the federal administration, explaining what should be considered as a PPP project, what is the regulatory background, when federal agencies should consider the PPP option and when not to ("adequacy test") and lastly, how to compare traditional procurement with a PPP strategy (public sector comparator)².

There is no PPP support unit at the federal level, but a Centre of Competence for Public Procurement which provides information on PPP. The federal government has initiated the establishment of "PPP Switzerland", a Think Tank and competence network for all levels of government. PPP Switzerland centralizes information about PPP, provides technical assistance and expertise and supports knowledge transfer. It also helped launch the PPP pilot project. PPP Switzerland has published guidelines for the implementation of PPP for

¹ Lienhard, F. and Marti Locher, F. (2010) PPP im Verfassungsrecht, in: Lienhard A. et al. (Hrsg.), PPP – Was fehlt zum Durchbruch?, Zürich, 17ff.

² Administration fédérale des finances/Federal finance administration (2009) Directives concernant la gestion des projets de partenariat public-privé (PPP) dans l'administration fédérale.

administrative building construction (Praxisleitfaden PPP Schweiz Hochbau, 2010). The guidelines are mentioned in the federal finance administration directives paper and can be considered as quasi-official recommendations. Some cantons have developed in-house competence to prepare and manage PPP contracts. PPP Switzerland has an annual budget of CHF 400'000 (?), two full time positions and an experts' network.

PPP is mentioned as an alternative procurement strategy for transport infrastructure. The operator of the railway infrastructure has the possibility of concluding PPP arrangements to pre-finance specific projects (Federal Law on Future Development of Railway Infrastructure, March 20, 2009).

2.3 Previous and current PPP experience

Based on a restrictive definition of PPP (OECD or federal finance administration guidelines criteria), only two “true” PPP projects have been implemented, none at federal level (Projet Maladière in Neuchâtel [football stadium, sports halls, fire department, mall with shops and restaurants) and project Neumatt (canton of Berne decentralized administrative centre with 19 cantonal services and a regional prison in Burgdorf). The decision to adopt a PPP procurement strategy was based on strict comparison with the traditional procurement model (public sector comparator - PSC). Applying a broader definition, we are able to identify a dozen of PPP- like projects, some in the planning stage. The Swiss Centre of Competence “PPP Switzerland” has established a list of these projects (see: <http://www.ppp-schweiz.ch/de/ppp-wissen/ppp-projekte-in-der-schweiz/>).

In the transport sector, traditional infrastructure procurement is the rule. Until now, no infrastructure project has been implemented using a PPP approach. In a few cases, the PPP option was assessed but finally rejected (for example, Transrun). PPP is still an option in some projects at planning or pre-planning stage (Geneva Lake

crossing, railway tunnel Hergiswil, second tube of the Gotthard road tunnel).

At first sight, it is surprising that in an area, in which the need for infrastructure investment is huge, not a single PPP project has been implemented. It is not too difficult, however, to understand why. Firstly, there has been no real funding shortfall, as several taxes are earmarked for road projects. Even the construction of a second tube at the Gotthard could be financed without having to impose a toll. And if there is a short-fall, the Parliament is ready to increase the rate of some of the earmarked taxes (freeway sticker, for example). Secondly, the Swiss parliament would not accept to use PPP as a means of circumventing the “debt brake” (a budget rule that prohibits the running of a structural deficit). Thirdly, the federal administration is not convinced of the superiority of PPP over traditional infrastructure procurement in terms of efficiency or effectiveness. The federal administration has acquired good management skills for large infrastructure projects. It is unlikely (this is a widely shared opinion) that efficiency gains through private management would be large enough to compensate for higher financial cost (interest spread). The obstacle to the adoption of a PPP scheme for railway infrastructure is also related to the network complexity and the highly regulated environment. Because of the high density of rules, the room for efficiency gains would be limited. The numerous grants and compensation from different government levels and multiple sources is also an obstacle to PPP. At the beginning of a project, the exact financial participation of the various parties involved (national railways/SBB, federal government, Infrastructure Fund) is not known. The amount available for a specific project is not based on a formula, but is subject to negotiation. This uncertainty is hardly compatible with the constraints of project finance.

2.4 Political stability

The political landscape at federal level is relatively stable. The magic formula (new magic formula since 2003) divides the seven federal government seats amongst the four ruling parties. At the parliamentary level, the four governing parties have a large majority in both chambers. Lastly, the members of parliament, who support alternative infrastructure procurement methods belong to the right, centre right and centre left parties, all of them being represented in federal government (see the new parliamentary joint group “public private partnership”).

At the local level, a majority of the population as well as of politicians have a preference for the public delivery of basic services (such as water, solid waste treatment, health, social services and education) and this has not changed over time. The acceptance for private delivery – by concession or subcontracting – is higher for services that are perceived as non-essential, such as providing high-speed internet or television signals.

The opinion according to which public administration and public enterprises have become fairly efficient is widespread within the federal and cantonal administrations (not so much amongst taxpayers). In addition, railway operators are perceived as relatively efficient. The margin to improve efficiency is likely to be limited, probably not large enough to compensate for the interest rate spread.

2.5 Effects of financial crisis on PPPs

The recent financial crisis and economic downturn had a negative effect on public budgets at all levels of government. Social transfers have increased, while tax revenue growth has slowed down (or: is slower). But the global impact on public budgets was relatively mild; even at the low point of the recession budgets showed a fiscal surplus, simply smaller ones. The long period of stagnation in the 1990s, when Switzerland had the weakest growth in Western Europe, had a much more negative impact on budgets (especially cantonal and municipal budgets).

At the federal level, the government and parliament have a pragmatic view of the merit of PPP for infrastructure procurement: PPP finance should be adopted if it can deliver more value for the money than traditional procurement. At cantonal and municipal level, some still think that PPP is a way to provide infrastructure when the level of debt or deficit does not allow public bodies to invest their own money.

Regarding PPP, the main consequence of the financial crisis is its impact on the interest rate spread. Until 2007, the interest rate differential between federal or cantonal borrowing and a private entity borrowing (the special purpose vehicle in a PPP) was rather limited. The crisis has increased risk awareness and the spread is now larger. Thus, it is becoming less likely that the higher financial cost can be compensated for by a gain in efficiency.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

There is no specific legislation on PPP. However, Art. 52a of the federal finance ordinance and Art. 12 al. 3 of the Federal Law for the Development of Railway Infrastructure explicitly mention PPP and recommend considering PPP solutions, without specifying how these instruments should be implemented (Zuffrey, 2010).

All companies transporting passengers professionally (Licensed Transport Companies – LTC) must have been granted a concession. These concessions are not PPP-like arrangements: they are not primarily used for optimal risk sharing between the public and private sectors, nor are they aimed at improving efficiency and creating value. They are a legal instrument to control and coordinate the various actors using the railway network. The owners of these LTC companies are usually public bodies (cantons and municipalities) and the infrastructure is (mostly) financed with taxpayer money.

3.2 Elements provided in the legal framework

Procurement laws constitute the legal framework for PPP: there is a federal and 26 cantonal procurement laws applying to cantonal and communal contracting authorities. At the federal level, legislation includes the Federal Act on Public Procurement and the Ordinance on Public Procurement. The contention that PPP is always subject to procurement law is contested (Zuffrey 2010). Competitive dialogue was introduced at the federal level on January 1st 2010, (OMP art 26).

An obstacle to applying PPP solutions to road infrastructure projects is the absence of a legal basis to subject the Swiss road network to a toll collection system. A toll would violate the basic principles of the federal constitution, as the constitution would have to be amended to allow toll pricing³. A shadow toll would however be possible within the present legal framework.

4 Institutional setting for PPP: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

There is no PPP support unit at the federal level. Some cantons have developed in-house competence for the development and management of PPP contracts. The federal government has supported the establishment of "PPP Switzerland" (Think Tank and competence network for all levels of government). There is however a "centre of competence for public procurement" within the federal

³ Ecoplan (2010) le financement des infrastructures ferroviaires et routières au niveau fédéral, Rapport final, Berne.

administration (subunit at the Federal Office of Construction and Logistics).

PPP Switzerland, a non-governmental organization, which can be considered as a PPP Think Tank, was set up with the support of the federal government. It is regarded as the knowledge centre for PPP solutions in Switzerland. PPP Switzerland also makes recommendations regarding the use of PPP at all levels of government. The yearly budget is CHF 400'000.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

The guidelines of the federal finance administration explain how to compare PPP with traditional procurement and mention the various steps, without being too specific. The guidelines broadly explain how to choose the best procurement option – traditional procurement or PPP – considering the risks transferred to the private entity. The cantons are learning from pilot projects launched by others (for example from Maladière, the first PPP project in Switzerland) and the same kind of arrangements can be observed regarding new projects (Lucerne Sportarena, stadium in Bienne).

There are several barriers to non-traditional infrastructure procurement in Switzerland: institutional, legal, economic and cultural. Thus, it is not surprising that very few PPP projects have been implemented until now, none at federal level and none for transport infrastructure.

In the transport sector, the complexity of regulations and financing mechanisms, the integrated network requiring coordination (railways), the numerous rules for the use of special purpose funds and earmarked taxes are all likely to present an obstacle to PPP finance. The investors in special purpose entities created for a specific project must be able to assess the risks. In the Swiss context, however, this is not always the case. When a decision must be made, the amount of federal funding available for the project might not be

known fully (see Transrun project). Private investors accept to take risks, but they will not embark upon a project if its funding is uncertain.

Agencies at federal and cantonal levels have accumulated experience and know-how in the management of large transport infrastructure projects (national road network, new trans-alpine railway – NEAT). They also believe they have the know-how to manage large and mega projects in an effectively and efficiently, and this is probably true, at least in part. If this is the case, the possibility of achieving efficiency gains using non-traditional procurement is rather limited. Moreover, public private partnership reduces the decision-making power of federal and cantonal agencies. We do not know to what extent the perception of losing power can explain the administration's lack of interest in PPP projects, but it is likely that it does contribute to it. One could readily believe that government agencies do not willingly give up their power.

Finally, one expects the interest rate to be higher for special a purpose entity (with limited equity) than for government. The efficiency gain must therefore be large enough to compensate for the interest differential. Indeed, the differential is higher today than it was before the financial crisis in 2008, as lenders became more aware of risks. It is becoming more difficult for PPP to pass the public sector comparator (PSC) test.

5 Conclusion

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Appendix: Selected PPP projects in Switzerland.

Project	Type	Public partner	Domain	Cost Mill. CHF.
Neumatt: decentralized cantonal administration agencies and regional prison	DBFM	Bern canton	Administrative buildings (19 agencies), regional prison	150 (construction)
Multipurpose project Maladière	DBFM (T)	City of Neuchâtel	Football stadium, sports halls, fire department, ambulance and rescue unit, mall with shops and restaurants	230
Sports facilities in Bienne	DB	City of Bienne	Sport stadiums (football and ice hockey, curling hall), sport training areas and commercial facilities	20
Swissporarena Lucerne	DBF	City and canton of Lucerne	Football stadium, indoor swimming pool, track facilities, gymnasiums, housing (300 units) and commercial surfaces (shops, services, offices)	300
Métamorphose (planning phase)	PPP used for part of the project.	City of Lausanne	Sport facilities, mall, office building and housing	692

SECTION II

SOUTHERN EUROPEAN COUNTRIES

Cyprus

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Abstract

Cyprus has developed extensive experience in a variety of PPP projects. Nevertheless, due to the small size of the country, the total number of PPP projects is relatively low if this number is compared to other European countries. The transport projects are even less. The development of the transport infrastructure of Cyprus through PPP projects is considered to be unattractive. This particularly applies to road infrastructure due to the absence of tolls and the necessary critical mass. Cyprus has difficulties in attracting private investors in transport and in particular TEN-T projects. The experience of Cyprus is reflected by the variety of PPP projects: airports, marinas, ports, public transport contracts, desalination plants, solid waste plants, buildings etc.

1 Introduction

PPPs are developed in Cyprus since the 1990s. This project pipeline has been developed significantly since then delivering or planning to deliver a relative big variety of projects like desalination plants, airports, marinas, solid waste plants, governmental buildings, public parking places, energy centers, ports, urban regeneration projects and roads. The number of PPP projects that are planned or developed in Cyprus cannot be considered significant, nevertheless it is generally acceptable that they offered or will offer a great value for all the stakeholders and above all the end users and the tax payers.

In the last years Cyprus was affected by the Eurozone financial and banking crisis and recently Government of Cyprus, applied for economic assistance from the European Union and the International Monetary Fund (IMF). Due to this, many PPP projects are expected to be postponed for later but also Cyprus will have to set up an inventory and also develop a legal and institutional framework for PPPs.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

Cyprus, a Member State of the European Union (EU) since 2004, is an island of the size of 9.251 square km. Cyprus is a relative small State with almost 900.000 inhabitants and with Gross Domestic Product (GDP) € 17,8 b.(Government of Cyprus, Ministry of Finance, Statistical Service). Cyprus is the third largest island in the Mediterranean Sea (after Sicily and Sardinia) with an area of about a third of the size of Belgium. It is situated at the outskirts of the EU, away from the Continental Europe, at the eastern corner of the Mediterranean Sea, while at the same time it is very close to the

major trade arteries that connect Europe with the Middle East, just northern of the Suez Canal.

The responsible authority for national transport policy and infrastructure is the Ministry of Communications and Works (MCW) of the Republic of Cyprus. The Ministry constitutes from several executive bodies: 9 Departments and 4 semi-governmental, public autonomous organizations supervised by MCW. The Ministry's mission as this is stated in its official web site is *"The provision of efficient and effective services in telecommunications, postal services, road safety with a sufficient road network, modernized buildings, up to-date airports and ports with efficient services, and the promotion of our culture and heritage. And this, with the issue of cost effectiveness in mind in a free economy – involvement of the private sector and avoidance of monopolies – and the protection of the environment"*. In the Republic of Cyprus, the Local Authorities are financial dependant from the central government and they are not involved in the strategic infrastructure development to the extent this is done in other EU Member States. Only some minor projects are adopted by Local Authorities after consultation with the central government. In general, there is not a clear-cut between the transportation policy developed at local level and that developed at national level.

The special territorial and geographical features of Cyprus play a restrictive role in the improvement of Cyprus' competitiveness: it's very small size combined with its insular character, its distant geographical position from the EU's centre of activity, result in a significant increase in the cost for the transportation of goods and services. Moreover, the isolation problems and the weakness in the connection to the main Trans-European Network (TEN-T) routes, play significant role in its competitiveness. In order to be addressed, the above aspects require significant investment in basic and other supporting infrastructure.

Currently, the development of the transport infrastructure of Cyprus through PPP Projects is considered to be unattractive, particularly the road infrastructure. Small peripheral EU Member States have difficulties in attracting private investors in TEN-T projects, because

the cost of the investment is usually equivalent to that of a similar project in a central interconnected Member State, while the rate of return for the investment is significantly reduced due to the lower usage of the developed infrastructure of the project. This ought to be taken into consideration when we investigate the possibility to develop the project through a Public- Private Partnership (PPP).

Maritime Transport: For a peripheral, small and insular Member State of the EU such as Cyprus, the extension and upgrading of port infrastructure constitutes a significant factor for enhancing access capability to EU markets. The main objective of the strategy for a comprehensive development of port infrastructure is the enhancement of competitiveness and effectiveness of the Cyprus ports, in order to respond to the modern needs for the movement of goods and passengers. Their role as important nodes in serving international trade is also upgraded in this way. In respect to Trans-European Network maritime policy, Cyprus considers that emphasis should be given in supporting maritime transport of passengers, especially for peripheral/insular member states, both as an alternative to air travel in general, but more specifically as an emergency service to maintain connectivity among member states during incidents of air transport crises (e.g. natural disasters, terrorist activity). All port facilities of the island are under the jurisdiction of the Cyprus Ports Authority (CPA), a semi-government, public autonomous organisation supervised by MCW and their activities and development are centrally planned, co-ordinated and supervised. Limassol and Larnaca ports, which are the country's major gateways to international shipping, are owned, managed, operated, marketed and developed by CPA.

In regard to PPP projects in the maritime sector, it has been decided to redevelop the Larnaca Port as a part of a PPP Project which will also include the adjacent Larnaca Marina and a big real estate project. A Steering Committee (Planning Bureau, MCW, CPA, Public Works Department) supervised by the Ministry of Finance is responsible for the tender and the negotiation procedures. After extensive negotiation with the successful bidder, the Steering Committee assigns the Project. The Concessionaire currently is in

the phase to acquire the necessary funding. In addition, and regarding leisure transportation, a medium size marina in Limassol together with a real estate project is now under construction implementing a PPP concession contract.

Road Transport: The non-feasibility of establishing and operating a railway network and other fixed track systems imposes full reliance on road transport, a fact which dictates the construction of a modern and safe road network. Interventions in this sector mainly concern the upgrading and modernization of the road network, which constitutes part of the Trans-European Networks (TEN-road projects). In parallel to this, there is the need of upgrading the secondary links, especially in rural areas which do not stand to benefit from the upgraded primary road network and are therefore rendered less attractive. The interventions concerning infrastructure in the road transport sector aim primarily at enhancing mobility and accessibility throughout the island and interconnect the urban and financial centres to the external gates of the island (airports and ports). At the same time they seek to address the significant lack in public transport. The Public Works Department (PWD) of the MCW is responsible for the maintenance, improvement and construction of motorways, the majority of rural and interurban road network and the main urban roads. The Municipalities are responsible for the secondary and local urban roads and the District Administration Authorities are responsible for the paved and unpaved district (tertiary) roads and village roads. The responsible body for regulating road transport in the MCW is the Department of Road Transport (DRT). Its main responsibilities are separated into two broad sectors: the first sector includes the regulation of public bus transport service, aiming at improving the services offered to the public; the second sector includes all those activities relating to vehicles, that is, their registration, their inspection for registration and the issue and renewal of driving licenses and circulation fees.

Cyprus has a dense road-network with 9.431 km of roads and 257 km of high standard motorways (Government of Cyprus, Ministry of

Communications and Works). The density of motorways in Cyprus (27.7 km/1000km²) is twice as high as the EU average and the highest among EU (European Union, Eurostat). The reliance on road transport, due to the absence of a railway network and the lack until recently of a reliable public bus transport system, has led to a high car ownership rate (the third highest figure in Europe).

The roads are developed in Cyprus through standard project contracts (independent contracts for preliminary studies (feasibility, Environmental Impact Assessment studies and traffic studies), detailed design studies, construction contracts, and maintenance contracts) and lately in some big projects combine Design & Build Contracts. PPP Projects in road transport are not widespread. The development of the road infrastructure of Cyprus through PPP Projects is considered to be unattractive due to the fact that there are no road tolls in Cyprus. The only project that proceeded to a bid as a PPP Project was the Paphos- Polis Motorway. The negotiations with the successful bidders failed due to the increase of the lending cost (affected by the Global Economic Crisis). A Steering Committee was responsible for the negotiations (Planning Bureau, PWD, Control Department) supervised by MCW. Some minor PPP projects, concerning local car parks are in use or under development by the Local Authorities.

A coordinated effort by the MCW to enhance bus public transport by improving the quality of service and infrastructure of buses, have materialised. The Government of Cyprus is making every effort to develop a reliable, fast and inexpensive bus service throughout the country, thus encouraging its use by the public, instead of the private car, aiming at reducing congestion and fuel emissions. Six PPP contracts (five services for each of the five districts and one inter-district service) were assigned after negotiations to the Bus operators for a ten year period offering bus services to the whole of the island. A Steering Committee was responsible for the negotiations (Ministry of Finance, DRT, PWD, Control Department) supervised by MCW. The DRT is responsible for regulating the contract.

There are also thoughts by the MCW to develop an integrated speed cameras system in Cyprus through a PPP Project in order to improve the traffic safety records.

Air Transport: Currently air transport is the only mode of passenger transport to/from Cyprus because there are no ferry services (passenger ships) that connect Cyprus with Europe. Under these circumstances air transport is extremely vital for Cyprus and its economy. There is a wide network of air-routes connecting Cyprus with Europe, Africa and Asia. Air transport policy objectives in Cyprus include the growing of air transport in a controlled way, the development of sufficient airport capacity, and the adoption appropriate air traffic management measures. The liberalisation of air transport, in combination with the development of the new airports may create the potential for Cyprus to become a regional transit hub between Europe and the Middle East. The Department of Civil Aviation (DCA) of the MCW is responsible for the provision and regulation of Air Traffic services in the Nicosia Flight Information Region and the control towers at Larnaca and Paphos airports, the development and operation of the country's airports and the development of air transport services with third countries.

The process of modernizing Cyprus' airports (Larnaca and Paphos) has proceeded with the selection of the private consortium, which has taken over the development and operation of the new airports under a PPP project (Design, Build, Operate, Transfer) for a period of 25 years. After the bidding and the successful negotiations, the private consortium operated the old airport facilities for a three year period, until construction of the new airports was completed. A Steering Committee was responsible for the negotiations supervised by MCW. The PWD is responsible for regulating the contract in cooperation with DCA.

2.2 PPP policy framework

Generally there is a positive approach for PPP Projects. This is reflected on the variety of Projects planned and developed through a PPP path, as well as from the fact that these projects were planned and developed unchallenged in respect to the contract choice. The only project that was challenged by the Political Opposition in the late 1990s/ early 2000s was the airport development project. The political opposition challenged the airports PPP project on political rather on techno-economical issues (labour issues, involvement of private sector in public traditional affairs). The opposition was diminished when they step in the government.

The National Reform Programme (NRP) is considered as the main strategy development document of Cyprus. In this document the PPP methods are not identified as an independent project development path which can support the sustainable infrastructure development. Nevertheless, PPP's are identified as a method to develop specific projects (e.g. airports). Although in some cases the contract method is not identified in the NRP, many projects will be developed as PPP contracts (e.g. marinas, solid waste plants).

In the transport sector each project is consider to be unique. The responsible authority for transport infrastructure is the Ministry of Communications and Works (MCW) of the Republic of Cyprus. The MCW after the necessary consultation with all the relevant stakeholders proposes a Project to proceed as a PPP contract. The final decision is upon the Government (Council of Ministers).

An integrated approach on PPP's in Cyprus is found in other form of PPP Projects (desalinations plants- Ministry of Agriculture and Marinas- Ministry of Tourism). The number of projects planned or developed in each of the two categories allowed the responsible authorities to follow an integrated approach rather follows the unique approach.

2.3 Previous and current PPP experience

In Cyprus 30 projects were identified as PPP oriented, either planned or developed in the last two decades (Zapiti Stella, 2013). Five out of the 30 projects belong to the transport sector (the marinas are not included). Cyprus has developed some experience regarding PPPs with the concession of the Paphos and Larnaca airports, desalination plants and marina projects, as well as a number of other projects at earlier stages of preparation. Although, the number of PPP projects that planned or developed in Cyprus cannot be considered significant, it includes a big variety of economic disciplines.

In the late 90s the first PPP Projects were the development of two desalination projects due to the shortage of water in Cyprus. Although Cyprus developed a huge programme for constructing dams in the 70s and 80s, the water shortage was a sustain problem. In the following years four other desalination plants developed. The combination of these measures solved the water shortage problem permanently for Cyprus. The total investment for desalinations is expected to reach the € 175 m.

Moreover, in the late 90s the efforts for redeveloping of the two main airports of Cyprus led to a PPP Contract in 2006 for a 25 year period (Larnaca & Paphos International Airports). The redevelopment of the Larnaca Airport will increase substantially the passenger capacity of the airport from about 5.1 m passengers in 2005 to 7.5 m passengers per year in 2010 (the respective figures for Paphos are 1.9 m in 2005 and 2.7 m passengers per year in 2009) (Government of Cyprus, Ministry of Communications and Works). The project had an immediate economic impact of € 640 m invested in the first phase.

In the early 2000s a revised Strategy for Tourism was prepared. This strategy included the development of several marinas around the shores of Cyprus. The marinas will be developed through PPP Projects. Every project includes relevant marina services and a real estate component. The progress of the strategy cannot be considered satisfactory. Only one marina (Limassol Marina, total investment € 350 m) has been built so far and is expected to operate in the next

few months. Two other marinas (Larnaca Marina in conjunction with the adjacent Port and the Agia Napa Marina- total investment € 250 m) were assigned to the successful bidders, but not constructed yet. Another project is in standstill due to legal implications (Paphos Marina total investment € 350 m).

Considering road transport, the only road project that was decided to proceed as a PPP contract (Paphos- Polis Motorway) failed during negotiations, due to the increase of the lending cost (affected by the Global Economic Crisis). The Project was criticized by many stakeholders because it was not a viable option. The total investment is expected to reach the € 300 m. Other road projects are in the initial steps to be investigated whether they can fit in the PPP Project pipeline.

Regarding Maritime Transport, the redevelopment of the Larnaca Port was decided to proceed as a part of a PPP Projects in early 2000s. The 35 year contract will include also the redevelopment of the adjacent Larnaca Marina and a big real estate project (99 year renting). The Larnaca Port will be redevelopment mainly as a Cruise/ Passenger Port, but it will sustain its capacity as a Freight Port. After extensive negotiation with the successful bidder, the Steering Committee assigns the Project. This project could make Larnaca Port a major cruise ship centre in the region and it will provide an economic boost to the city of Larnaca due to the tourist influx in the area. Also its development into a mainly passenger port together with the redevelopment of the Larnaca International Airport will introduce the “fly and cruise” concept in the area, thus positively boosting the tourist sector in Cyprus. The Concessionaire currently is in the phase to acquire the necessary funding. There is a concern that the project will be affected by the Global Economic Crisis. The total investment is expected to reach the € 750 m.

Furthermore, Ministry of Commerce, Industry and Tourism recently choose the preferred bidder for the construction and management of the main Cyprus Oil Terminal in Vassiliko. The PPP Contract will be assigned after negotiations and the total investment is expected to reach the € 300 m).

A Strategic Plan for the Management of Solid Waste was formed in the early 2000s indicating the replacement of 113 uncontrolled or semi-controlled landfills under operation with the establishment of four regional centres (one per administrative district) for integrated management of solid waste. The regional centres include mainly the construction of modern solid waste treatment plants which are designed, constructed and operated under PPP contracts. Two Plants are in operation and another two will follow, replacing the traditional landfills. The Projects were procured by the Ministry of Interior and the contacts are managed with the involvement of the affected Local Authorities.

At local level some minor projects, mainly car parks, were procured from Local Authorities as PPP's and are now in use.

There are also thoughts by the Ministry of Communications and Works to develop an integrated speed cameras system in Cyprus through a PPP Project in order to improve the road safety records of the island. Standard contract procedures failed repeatedly due to legal implications. Also the Ministry of Communications and Works is developing ideas even for the new Archaeology Museum of Cyprus, a project estimated in € 100 m. The Ministry seeks out the value that private sector should be benefited (e.g. real estate, car parking management).

The Ministry of Interior is planning a regeneration project with the development of a new big square in Nicosia, replacing the demolished GSP football stadium in the centre of the city. This scheme is planned to be developed as a PPP project combined with a real estate project and the management of an extensive underground parking place. A techno-economical study has been assigned in order to investigate the value for money for the various stakeholders

Finally since the early 2000s the majority of the new erected Governmental Buildings are developed through PPP contracts (Design, Build, Maintain, Transfer) for a period of 10-15 years.

2.4 Political stability

In 24th of February 2013 presidential elections were conducted and a new President with its government resumed office. The new President is supported by a coalition of right & central wing parties. In his manifesto the new President included strong supporting messages for the cooperation between public and private sector through PPP projects including the development of ports, marinas, conference centers, technological parks, governmental buildings etc. Furthermore, having in mind the failure in the negotiations in the PPP project of Paphos- Polis Motorway, the new President during his election campaign proposed among others the investigation of the option to introduce tolls in Cyprus. Through the proposed tolls, he suggested that the projects could become more attractive for investors.

Although the previous government (left wing party) had a positive approach for PPP Projects, emphasis was given to the development of projects through traditional contracts.

2.5 Effects of financial crisis on PPPs

In 2012, Cyprus was affected by the Eurozone financial and banking crisis. In June 2012, the Cypriot Government applied for economic assistance (bail out) from the European Union and the International Monetary Fund (IMF). Many Projects including PPPs are expected to be postponed.

In the Memorandum of Understanding (MoU) that will be signed between the Government and the lenders of Cyprus (EU & IMF), Cyprus will commit to develop a legal and institutional framework for PPPs. Also Cyprus will commit to set up an inventory on PPPs Projects. These conditions included in the MoU are a prerequisite to further develop projects through a PPP contract. Under these conditions, no other PPP Projects will advance further before the Cyprus Government fulfills its relevant obligations. The signed PPP Projects can proceed as planned.

The planned PPP projects in Cyprus affected mainly by the difficulties in identifying financial resources. Already the negotiations for the Paphos- Polis Motorway with the successful bidders failed due to the increase of the lending cost. Also, there are concerns that the concessionaire in another project (redevelopment of the Larnaca Port) will fail to acquire the necessary funding.

2.6 Change in PPP policies because of financial budgetary crisis

The new Government and many political and economic actors in Cyprus consider that PPP Projects are a factor that can bring Cyprus economy back to the right track. More projects are investigated whether they can be developed as PPP's by finding the right explicit value for all the involved stakeholders.

3 Legal and regulatory framework for PPP

In Cyprus there is no special legislation for PPPs. Concessions are included in Public Procurement Law 12 (I) / 2006: the Coordination of Procedures Public procurement contracts, Works and Services and Related Matters Law, (Chapter 7). The above law includes provisions identical to the relevant provisions of the EU Directive 2004/18EC. It includes clear procedures for procuring PPPs and selecting private partners through competitive procedures and in exceptional circumstances non-competitive procedure. Since this is the main law for public procurement it also includes the procedures for traditional ways of procurements like open and restricted procedures.

In addition, there is not any model PPP/concession contract or any mandatory list of provisions. In each project all the main aspects like

contract termination events, compensation provisions or Provisions for collection of fees or payments have to be formulated separately. There is only a guide for “Best Practices for award and execution of public procurements” published from the Directorate of Public Procurement of Ministry of Finance, which includes some basic provisions for PPP projects but it is not mandatory.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

It is generally acceptable among the professionals on PPPs that a supporting institution in each country can gather and deceminate experience and knowledge on these issues. In Cyprus there is not an official PPP support Unit. Nevertheless, an unofficial Unit exists in the Planning Bureau (Ministry of Finance). This unofficial Unit which consists of less than five civil servants has a general overview of the PPP Projects developed in Cyprus. The unofficial Unit is involved in policy guidance, policy evaluation and in negotiations with preferred bidders (Zapiti Stella, 2013).

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

A number of Ministries and Departments are already involved in the development of PPP projects (see Table 1).

Table 1: Roles and responsibilities for public agents in the project cycle.

	Contracting authority	Ministry of Finance	Unofficial PPP unit	Council of Ministers
Pre-tender				
Project initiation	●	-	○	○
Assess feasibility and value for money	●	○	-	-
Budgeting	○	●	-	-
Project approval	-	●	○	●
Tender				
Invitation to tender	●	-	-	-
Bid evaluation	●	-	○	-
Negotiation	●	-	○	-
Bid approval	●	-	-	-
Post-award				
Contract management	●	-	○	-
Payment oversight	○	●	-	-
● = direct responsibility, ○ = indirect responsibility, - = not applicable				

However, there is not a readily identifiable and defined process to prepare and procure a PPP project. The Line Ministries have responsibility for the development and subsequent ownership of projects in their sector. In general, line Ministries are responsible for

project initiation, relevant feasibility studies, tender procedures and contract award, whereas the Ministry of Finance has the primary role for budget approval and payment oversight. The Ministries have strong technical skills, nevertheless consultants are appointed to provide support in legal and project financing issues.

Some Ministries/Departments are much more aware of the use of PPPs than others and there is a wide variation in understanding of PPPs and their applicability across Departments. Widespread knowledge of PPPs has yet to be developed together with greater consistency on where and how it might or should be applied. There is a risk that PPPs may not always being used where they could be and the future risk that they might be used where not appropriate or ultimately unfeasible. From the so far experience, the procurement time is very long and challenges to bid decisions appear to be a particular problem causing severe delays and extra costs in the procurement process.

There is not a consistent approach to the use of economic costs and benefit analysis at the early stages of selection of projects for public investment (conventionally procured or procured through PPP). The choice of the PPP route for projects was primarily driven by the need to mobilize substantial long term private investment or the ability to mobilize private sector resources through real estate development opportunities. The decision whether a project is to be a PPP project, is taken by the Council of Ministers following a proposal of the relevant Ministry. Usually the projects selected are high cost or projects that can generate income or be self-financed, for example airports, marinas etc.

The PPPs are procured under the Law 12(I)/2006 with provisions identical to the relevant provisions of the Council Directive 2004/18EC. Negotiating procedure is used for all cases of PPPs projects. Specific regulations (201/2007 for central government and 243/2012 for local authorities) issued under the above Law, have provisions under which the Council of Ministers or Town Councils respectively can appoint Management/ Steering Committees for complicated projects. These Steering Committees are responsible

for all decisions concerning the tendering out, evaluations of bids, negotiating with the bidders and the selection of the preferred bidder. In central government the Management/ Steering Committees are headed by the Permanent Secretary or a Director of the Line Ministry and have members, officers from the relevant Ministries and the Planning Bureau and sometimes the Ministry of Finance. In the Management/ Steering Committees representatives from the Attorney General, the Accountant General and Auditor General can attend with no voting right. Steering Committees are assisted by consultants who prepare the contract documents and they also assist in the negotiation with the preferred bidder.

In addition, a Project Manager is assigned at the relevant Ministry with a team, who oversee all the procedures for the project and report to the Steering Committee. The Steering Committees have the authority to select the preferred bidder and make their proposal to the Permanent Secretary of the relevant Ministry. The Permanent Secretary of the Ministry has the authority to assign the contract to the preferred bidder and sign the contract.

In any case the decision of the Ministry or Town Council for the assignment of a contract to a bidder can be challenged before the assignment, by the other bidders at the Tender Review Authority. A certain law 104/2010 (Review procedures concerning the award of the Public Contracts) was issued for this procedures. In this case there can be no assignment until a decision is taken by the Tender Review Authority. The Tender Review Authority can issue decisions about the legal process followed but has no authority to decide which will be the preferred bidder. The decision for assignment of the contract to a bidder can only be made by the Permanent Secretary of the Ministry, following the decision and the proposal of the Management Committee. If the Ministry does not take into account the decision of the Tender Review Authority, then the Tender Review Authority has the authority to stop the procedure of assigning a contract (up to six months after the assignment). There are also cases of challenging the decisions in the Tender Review Authority by different bidders for more than one time. The bidders can also challenge the decisions of the Ministry at the

Supreme Court, and can issue an interim order in order to stop the procedures in some cases (Paphos Marina). The decision of the Supreme Court is final.

From the financial point of view, in most cases concession contracts are financed by the Concession Company using equity and debt.

The above procedures apply for the transport projects too. There are no differences and no specific documentation for transport projects.

5 Conclusion

Cyprus developed and planned significant variety of PPP Projects and gained the necessary experience from this specific contract development pipeline. Nevertheless, the selection of the PPP Project has not been always for the right reasons. In addition, due to relative small magnitude of the economy, the numbers of projects that are planned and developed are still low, not allowing the Cypriot stakeholders to gain experience in complicated issues like legal and financing. Deficits also are recognized in the governmental administrative level and the legal framework. These deficits are recognized by the Cyprus Government and in the following years actions are expected to be taken. Even fewer are the transport PPP Projects in Cyprus, with the two airports (Larnaca & Paphos) be the best example to be developed so far. The development of the road infrastructure of Cyprus through PPP Projects is considered to be unattractive due to the fact that there are no road tolls in Cyprus. The global financial crisis hit Cyprus hardly, leading the Government of Cyprus to ask financial assistance from the European Union and the International Monetary Fund. PPP Projects are broadly acknowledged as a factor that can bring Cyprus economy back to the right track. More projects are investigated whether they can be developed as PPP's by finding the right explicit value for all the involved stakeholders. In these peculiar times, innovation in PPP's (in selecting, planning, developing and delivering projects) by benefiting the end users should be the ultimate goal.

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Greece

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Abstract

Delivering public infrastructure through private financing and investments has been a policy in Greece over the years. In this context, Public-Private Partnerships (PPPs) have been endorsed in a finance-approach, also, through the support and co-financing of European Structural Funds. The delivery method has, in general, social acceptance. Despite this positive approach towards PPPs there is a significant deficit in standardization, which leads to increased transaction costs.

1 Introduction

Private initiative and investments supporting the provision of principal infrastructure have always been an element of economic life in Greece and the Greek culture over the centuries. The first reference to a collaboration or partnership between the public and private sector with the scope of realizing public works or addressing a public “need” is dated in the 4th century BC (Venieris, 2007). The Athenian liturgical system in the Classical period (479-322 BC) provided a private, voluntary solution for the provision of public goods where direct government taxation and public procurement were not feasible. Private initiative ranged from the *choregia* (festival plays) to the trierarchy (command, outfitting and maintenance of a war ship for one year) (Davies, 1971 in Kaiser, 2007).

In complement, paying user tolls or fees for public services has also been an element of social culture since antiquity. This is expressed, for example, in the myth of paying *Charon* the pass to the underworld. More recently, in 1927, Greece was the second country in Europe, following Italy (Milan) in 1926, to introduce tolls on major roads leading to central cities (Jordi, 2008). Notably, other European countries with extended road tolling systems, like France, Spain or Portugal, only introduced tolls in the 1950s and 1960s.

The New Greek State (as of the 22nd January, 1830) looked for foreign investments for the development of infrastructure. For examples, following international trends (the Suez and the Panama Canals), the Greek government decided to construct the Corinth Canal in 1869 and, finally, commissioned a concession for 99 years to the *Soci t  Internationale du Canal Maritime de Corinthe* in 1881. While this company failed, due to its relation to the French Panama Canal concessioner, the Corinth Canal is still (2013) under concession.

In the 1920s, following the Minor Asia Catastrophe over 1,3 million refugees arrived in the Athens area, essentially tripling its population. The drastic need for financing and technical expertise for

severely needed social infrastructure led to construction of legacy infrastructure projects delivered through private finance and repaid using user fees. These included the water supply system concession (including the Marathon Dam) with the American interests company Ulen & Co. Power & Tractor was the concessioner for the generation and distribution of electrical power. Both concessions were completed in the early 1970s. Later again, seeking knowhow, the Siemens concession for telephony was introduced. Finally, the tourism sector also benefited from various concessions while seeking financing.

With the re-introduction of private financing as a public infrastructure/service delivery model under the umbrella term “Public Private Partnerships (PPPs)” in the 1990s, the Greek Authorities and the European Commission agreed within the framework of the Community Support Framework 1994-1999 (CSF II) to maximize private sector partnerships in the development of transport-related infrastructure (PricewaterhouseCoopers, 2005). Similar provisions were made for the CSF III (2000-2007) and the National Strategic Reference Framework (NSRF, 2007-2013).

Over the years, the need to deliver public infrastructure along with the social acceptance of a user fee system (tolling), regardless of the various setbacks, has established private financing of infrastructure in Greece.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

Central government has institutionally controlled all infrastructure-related public procurement schemes mainly through the Ministry for the Environment, Planning and Public Works (MEPPW—today Ministry for Development, Competitiveness, Infrastructure, Transportation and Networks, or MDCITN). This has often caused coordination problems with other central government institutions and

ministries involved in implementation procedures. This is in addition to the fact that sectoral actions may have been promoted while ignoring the wider policy goals (Dimitrakopoulos, 2001). Evidence of the low involvement of regional and local authorities on the financing and decision-making level is the fact that based on data on procurement markets in OECD countries, Greece has one of the highest ratios (0,56) in central government to general government spending compared to other countries (Evenett & Hoekman, 2004). Accordingly, most of the transport-related planning and procurement decisions are implemented by the Ministry of Public Works (MEPPW or MDCITN). Ports and maritime transport are, however, addressed by the Ministry of Maritime, as maritime and shipping have always been central in Greek economy.

2.2 PPP policy framework

There are two major elements setting the framework for PPP policy in Greece: the EU Cohesion Policy and the Eurostat accounting treatment for PPPs. The latter allowed for the classification of PPPs as non-government assets, and their recording off the balance sheet of the government. EU Cohesion Policy is primarily targeting “Convergence objective 1” regions. In this context, Greece has benefited significantly from the respective financing. The intensity of financial support peaked at around 3,7% of GDP during the 1994-1999 period (CSF II). It declined to 2,9% during the 2000-2006 period (CSF III). Almost half (45,9%) of the expenditure during the first period went to infrastructure, compared to 21,9% in the second period (Kamps et al., 2009). However, private financing was shot through PPPs in order to carry out the “Greece 2010 – Strategic Development Plan for Transport Infrastructure” (Greek Ministry of National Economy, 2003).

For the Greek, as for many other governments, PPPs have been seen as a means to launch investment programs which would not have been possible within the available public sector budget within

reasonable time, as reported by the European Investment Bank (2005).

2.3 Previous and current PPP experience

Over the last few decades, a number of successful (and unsuccessful) attempts of private financing for the delivery of public infrastructure and services have been carried out. These have been affected under various legislative settings. Examples include:

- Numerous parking facilities in the greater Athens area, as well as in other large cities such as Thessaloniki, Chalkida, Agrinio, Larisa and Ioannina. The MEPPW (or MDCITN) had assigned the procurement responsibility to local authorities and other public entities (e.g. the Port Authority of Piraeus and the Athens Metro);
- Concessions to exploit coastal areas for industrial use. An example is the transshipment port of Astakos in Western Greece;
- Provision of rights to local authorities to create joint venture companies for the development of “economic activities”, for instance the municipal company of “Ano Liosia”, in the greater Athens area, for the production of biogas;
- Rights for the operation of casinos;
- Concessions for the development, operation and exploitation of marinas;
- Supply and distribution of natural gas;
- Development of wind farms, small hydro plants and photovoltaic installations and farms;
- Exploitation of state-owned hotels and touristic exploitation of coastal zones.

While there are numerous small-scale projects (e.g. parking facilities, marinas), the transport sector is characterized by a small number of very large projects. There have been two waves of such projects.

The first wave of large-scale transport PPPs included: the Athens International Airport; the Athens Ring Road (Attica Tollway) and

the Rio-Antirio Bridge. These were tendered and awarded in the late 1990s.

The second wave (awarded between 2007-2008) included the so-called “axis of development” motorways. These were the Maliakos-Kleidi Motorway (Aegean Motorways); the Elefsina-Corinth-Patra-Tsakona Motorway (Olympia Odos); the Antirio-Ioannina Motorway (Ionia Odos); the Central Greece Motorway (E65 motorway) and the Corinth-Tripoli-Kalamata Motorway (Moreas). This second wave also included the Port of Piraeus Transshipment Terminal Concession.

During this period there were a number of failed procurement efforts, such as the Thessaloniki Metro, the Container Terminal of Port of Thessaloniki, and the submerged tunnel of Maliakos.

In short, most large-scale transport projects in Greece over the last two decades have been delivered through a PPP-type model. Egnatia Odos, servicing the east-west axis of northern Greece, is probably the only exception. Therefore, it is not surprising that PPPs would constitute a significant share over GDP for Greece, as indicated in figure 1 for the period of 2000-2005. Notably, this figure only includes the first wave of large PPP projects.

2.4 Political stability

Government support for PPPs is continuous and tender-award procedures have continued over changing governments. For example, both waves of transport PPPs have been implemented under changing government offices. In addition, any opposition registered to date focused on environmental or similar social stakeholder issues, which are independent of the procurement method or model.

In general, social acceptance has been high until recently. Following the recent financial and economic crisis and due to its impact on transportation costs, social movement surfaced declaring the willingness not to pay tolls and other contributions to social services (e.g. urban transit fares, hospital fees etc.). Until then, as there never

was resistance or avoidance in paying tolls, a respective legislation was not in place. The movement eventually died out with the enforcement of the respective new legislation.

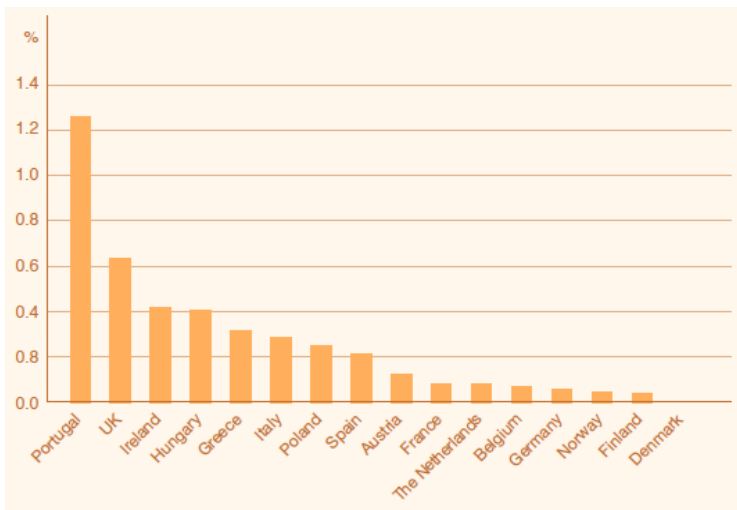


Figure 1: Average 2000-2005 PPP activity as percentage of mean GDP, including deals in procurement and representing investment value, not annual payment (PricewaterhouseCoopers, 2005).

2.5 Effects of financial crisis on PPPs

The financial crisis has had a significant impact on PPP projects and more so on PPPs in the transport sector. as these rely almost exclusively on user fees. This fact corresponds to a dual effect on viability as project revenues have declined due to reduced demand for travel on the one hand, and user demonstrated elasticity to the level of toll tariffs on the other hand.

The impact has been greater for projects under construction. This was also due to the structure of their financing model, as a

significant share of the construction cost was to be provided by brownfield toll revenues. As this source of construction funding declined, lenders imposed a “draw-stop” which obliged four of the five motorways awarded in 2007 and 2008 to a stop in works and entry into a three-year period of renegotiations with the Greek government. In April 2013, the government announced the terms of agreement which included an increase of public financial contribution, a decrease in scope, and the payment of claims. Finally, the crisis has had a significant impact on the construction sector with many jobs lost and a significant brain-drain, as engineers and other specialized workers seek alternatives in other countries.

2.6 Change in PPP policies because of financial budgetary crisis

PPPs continue to be high on the government’s policy agenda. The current National Strategic Reference Framework (NSRF, 2007-2013) turns to PPPs to secure financing. The PPP Law 3389/2005 allowed for the development of a pipeline of smaller scale PPP projects with a construction budget of less than 200 million euro. Since 2009, the process has slowed down and new projects have not been added to the pipeline.¹

The recent study “Greece 10 Years Ahead”, which was sponsored by McKinsey & Company, the Hellenic Bank Association and the Hellenic Federation of Enterprises proposes investment in infrastructure (including transport) as a measure to come out of the crisis (McKinsey & Company, 2012). Funding for such projects can only be secured from private sources. However, now, some are skeptic as others were in the past under similar conditions of economic distress. The confidential letter (July 4th, 1926) of Emmanuel Tsouderos, governor of the Bank of Greece, to the governor of Greece, Theodoros Pangalos, exemplifies a similar expression:

¹ See <http://www.sdit.mnec.gr>.

(...) I believe that only through foreign capital may the country's wealth develop, for not only do we lack the essential funds for this, but above all we do not possess the appropriate technical staff and mechanical means. Nevertheless the mass surrender of these enterprises, which until they become productive require a cost for the service of loans granted, is not an act of wise economic policy.... At moments of economic difficulties for a country, it is not profitable that many foreign interests should be involved; no one can predict what claims may be made in the event of unpredictable obstacles (...). (Veremis, 1982, 169).

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

The Expert Committee on PPPs (2004), set up by the Ministry of Economy and Finance, reported on a number of obstacles to further PPP implementation in Greece. These included the legal framework, provision of knowhow and support to public authorities, absence of a PPP taskforce (or unit), the boundaries PPP scheme application, procedures for the execution of guarantees, the definition of responsibilities between the various authorities, project maturity process, budgeting of contracts, financing provisions, taxation, return on equity, and capital security.

In September 2005, a PPP Bill was ratified by the Greek Parliament as the PPP Law 3389/2005. The Bill is aimed at small to medium-sized projects with a maximum construction value of less than 200 million Euro. Law 3389/2005 defines contractual PPPs for Greece, endorses the Eurostat classification of assets as off the government's balance sheet, and includes the provisions of the EU Green Paper (COM, 2004) on PPPs.

3.2 Scope and boundaries of specific PPP law

Law 3389/2005 establishes the PPP Task Force and its responsibilities within the Ministry of Economy and Finance, and it sets out PPP tendering and negotiation procedures. It also defines the boundaries of PPP applications within the Greek State. More specifically, it states that activities exclusive to the State cannot be the subject of a PPP and it explicitly references national defense, justice, policing, and the execution of penalties.

While the PPP Law addresses many issues, as identified by the Expert Committee for PPPs (2004), it still leaves many issues in ambiguity. For example, the Law fails to define and “protect” society with respect to the notion of “public good” (Koukidis, 2006). Further shortcomings with respect to its scope refer to the boundaries between PPPs and privatization (Venieris, 2007).

However, the Law is specifically supporting regional and local governments. Larger projects over 200 million euro continue to be managed through central government, their respective contracts to be ratified and set as laws of the Greek State. Most transport projects belong to this second category. However, the fact that transport PPP delivery is affected through Parliament has a number of implications. These include:

- Full transparency of the entire procedure since everything is debated in Parliament;
- Contracts, as they are approved by Parliament, are made to be “Laws of the Greek State”. In this sense, they represent ultimate “complete contracts” and renegotiating or changes in terms of contract involve ratification;
- (Transport) PPP contract management may become an arena of political discourse and strategic maneuvering unrelated to the actual contract activities.

3.3 Elements provided in legal framework

Overregulation has always been a problem in Greece. Regulation with respect to PPPs is no exception. Prior to Law 3389/2005, but also in conjunction with it, there has been significant legislation. For example, foreign investments in Greece are protected by article 107 of the Hellenic Constitution and decree 2687/1953. Public Procurement Works and Construction Law 1418/84 and Presidential Decree 609/85 foresee procurement for co-financed or private finance. Payments to private sector parties are regulated by Law 2052/1992. Urban transport project financing is also under Presidential Decree 159/2000. Law 1815/1998 amended Law 2366/1995 and refers to the exploitation of airports etc. Then, there is legislation with respect to licensing in specific sectors of economic activity. Procurement laws in adoption of EU directives with respect to public procurement (e.g. 2004/18/EC and 2004/17/EC) should also be added to this list. This endless list of laws and regulation demonstrates the difficulties that may arise in implementing projects within the labyrinth of Greek legislation.

In support of PPP implementation (and other private investments), a fast track law was ratified in 2010. More specifically, Law 3894/2010 (as amended by Law 4072/2012) works as an accelerating and transparency-enhancing mechanism for the procedures relating to the implementation of strategic investments in Greece, whether these consist of Private-Private ventures or Public-Private Partnerships. This Fast Track law accelerates the licensing procedure by creating a legally-binding timeframe, activating the investment process, and enhancing the efficiency of public bodies' relevant actions. It applies to investments over 100 million euro or 15 million euro for industrial investments, 3 million euro for projects under the JESSICA fund (Joint European Support for Sustainable Investment in City Areas), and for investments over 40 million euro, which, however, creates over 120 new jobs.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

One of the major contributions of Law 3389/2005 has been the establishment of the PPP Task Force along the lines of other similar units in EU Member States. Notably this unit was set up within the Ministry of Economy and Finance, and not within the Ministry of Public Works (MEPPW or MDCITN, see section 2), which has been, in principal, responsible for public procurement.

The main responsibilities of the PPP Task Force (or Special Secretariat for PPPs) as defined in Law 3389/2005 involve:

- The coordination of PPP projects that are promoted or planned by Public Entities and the evaluation of projects that may be implemented via a PPP scheme according to the provisions of Law 3389/2005;
- The elaboration of information received from professional and business entities or associations, including the Greek Banking Association, the Technical Chamber of Greece, the Economic Chamber of Greece, and the Association of Contracting Companies;
- The study of comprehensive proposals elaborated by public or private entities for the construction of works or the supply of services;
- The monitoring of all financial obligations undertaken by public entities, and especially of the future burden upon the Public Investment Program that may or will result from the payments to be made to Partnerships subject to the provisions of this law;
- The diffusion of expertise to all relevant stakeholders;
- The standardization of documents, which can be used for the needs of the contract award procedures;
- The standardization of all kinds of partnership contracts or ancillary agreements, in order to assist public and private entities

in formulating the terms and conditions of their partnership contracts.

Parallel to the PPP Task Force operating within the Ministry of Economy and Finance, the unit responsible for PPP contracts originated by the Ministry of Public Works continues to operate, prepare and monitor large PPP contracts in their domain. This is in addition to units within the sectoral and regional operational programs of the National Strategic Reference Framework (NSRF, 2007-2013), which are responsible for overseeing the financing through the respective program.

In practice, the PPP Task Force of Law 3389/2005 operates in support of regional and local governments as well as public entities, and reflects on a bottom-up approach in contrast to the top-down approach followed in the case of large-scale PPP projects.

In support of PPP projects by local authorities, two initiatives may be identified. The first is the “Joint European Support for Sustainable Investment in City Areas” (JESSICA). This is an initiative developed by the European Commission and the European Investment Bank, in collaboration with the Council of Europe Development Bank (CEB). JESSICA is an important mechanism of urban regeneration projects finance through land-based financing. In Greece, there is growing interest as public authorities have incurred excessive debt and have lost access to the commercial debt market. However, the use of mechanisms such as JESSICA requires a well-designed land-financing system, planning flexibility, and an efficient system of public administration. This is the most important challenge for the implementation of JESSICA in Greece, given the tight timeframe of the Initiative and the availability of the Structural Funds for the period 2007-2013 (Triantafyllopoulos and Alexandropoulou, 2010). In 2012, the European Investment Bank committed 155 million euro in loans in support of the JESSICA Initiative in Greece (European Investment Bank, 2013).

The second initiative is the “Thisseas” (Law 3274/2004) Initiative, which was introduced by the Ministry of Interior, Public Administration and Decentralization (MIPAD). This was a five-year

program for the development of local self-governments that also aimed at promoting the adoption of local PPPs. Thisseas supported 34 local actions, grouped in the following three sub-programs: (i) organization and development of municipal public services; (ii) local development and environmental protection, and (iii) social and cultural infrastructure and activities. All three sub-programs foresaw funding for the elaboration of master plans in order to investigate the potential of implementing proposed partnerships and selecting cases that may be considered for PPPs. A rather important aspect of the Thisseas was that it encouraged the creation of local networks and partnerships between local authorities. This is a crucial factor in enabling a more holistic approach in facing urban needs within regions. By May 2007, municipalities had filed 219 PPP proposals, 136 of which have been approved for funding by Thisseas with an average budget of approximately 100.000 euro (Karaiskou, 2007). The majority of projects focused on the tourism sector.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

According to Law 3389/2005, the PPP unit of the Ministry of Economy and Finance is responsible for the initial project appraisal and prioritization of projects. More specifically, pursuant to its responsibilities, the PPP unit evaluates the financial and technical parameters, as well as the associated legal and other issues. It then proceeds to draw up a non-binding list of projects and services (“List of Proposed Partnerships”) that may be implemented through partnerships and may be included in the provisions of Law 3389/2005. For each project or service included in the List of Proposed Partnerships, a brief report setting out the rationale is prepared. The flow of activities for the award of PPP contracts under Law 3389/2005 is presented in figure 2.

With respect to project appraisal and prioritization, the Technical Chamber of Greece (Konaldis, 2005) has expressed severe criticism stating the position that for a project to be considered for PPP model

delivery, the project should be included in the National or Regional Planning Scheme and in the Development Program. In addition, it has been noted that the Law on PPPs does not effectively protect public interest as there are only minimum provisions with respect to bidders' qualifications, project performance criteria, and project and infrastructure insurance.

4.3 Standardized process and documents for PPPs

One of the obligations of the PPP unit is to introduce standardization to both tendering and contractual procedures. The unit was set up after the PPP law was put into force (September 2005), only allowing for a few years of operation before eventually the country went into recession. However, a pipeline of potential projects was developed which, regardless of the circumstances, are slowly proceeding. This process will, eventually, lead to forms of standardization allowing local and regional authorities to deliver projects through PPPs with lower transaction costs.

PPPs with construction budgets over 200 million euro are not considered in the PPP Law. These projects follow a top-down decision-making process as they are originated and managed by central government. To date, these projects concerned the transport sector and they are addressed on an ad hoc basis. This approach may be justified due to their scale and importance to the entire national economy. It is also important to allow for flexibility in addressing project development and implementation based on their individual risk structure. To this end, a maturing process has been identified in the Greek PPP market (Roumboutsos and Anagnostopoulos, 2008). However, regardless of this maturity and the permissible (by law) flexibility, the five large concession projects tendered and approved in parallel in the second wave of PPPs had many (if not all) aspects in common, which introduced a form of standardization that is questionable with respect to achieved results. For example, the entire tendering process still took almost seven years to complete. Equally so, the tenders for the Port terminals of Thessaloniki and Piraeus

were very similar, regardless of the different risk structure and scope of business (Psaraftis and Pallis, 2012).

5 Conclusion

Greece has a long history of using private financing to accelerate infrastructure development programs. In recent decades, co-financing large-scale transport infrastructure through the use of European Structural Funds has characterized the country's respective strategy, which, in principal, is finance-driven. Large transaction costs related to tendering procedures result from the central decision-making level applied in the implementation of PPPs. The economic crisis and the recession have had a negative impact on the viability of many PPP projects underway and/or in operation, but for the time being, these have not changed the overall policy towards this method of public infrastructure and service delivery.

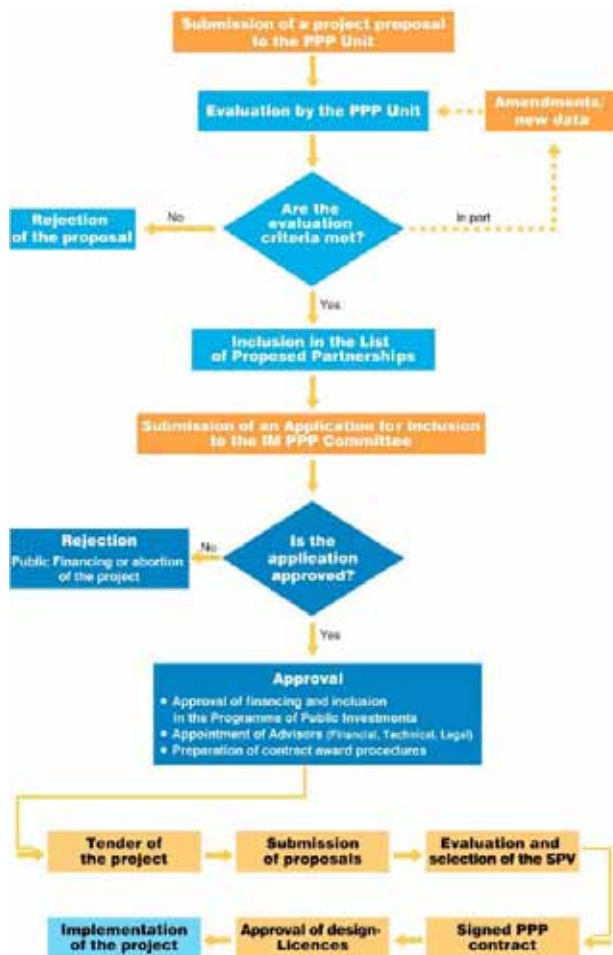


Figure 2: Law 3389/2005, Approval Flowchart (source: <http://www.sdit.mnec.gr>).

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Italy

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1 Introduction

The use of Public Private Partnership for delivering public infrastructure in Italy started in the early 1990s when new laws on railway services encouraged the development of an high-speed railway network in Italy. After that, a new legislative framework on PPP, represented by the Merloni law in 1994 and, successively, by the Code of Works, Services and Supplies Public Contracts in 2003 (Vigliano and Bicchieri, 2007), favored its adoptions by both central and local governments and public companies (OECD, 2010).

Italian implementation of PPP has its own features which distinguish it from other models adopted in Europe and in the world. In particular, the analysis of the PPP adoption in Italy reveals that PPP in Italy is less effective and efficient than in other countries. In particular, with regard to the administrative issues, three main factors contribute to slow down the use of PPP: 1) the complexity of the administrative procedures and the distortions of competition due to the so-called “right of pre-emption”, which used to discouraged firms to participate to biddings; 2) the difficulty of regulating through contracts a proper allocation of risks, due to the “civil law” system in force in Italy; 3) the high administrative risk characterizing the adjudication procedures (Iossa and Antellini Russo, 2008).

With regard to the financial aspects, the main critical issue is the source of funding used for Italian PPP projects. The funding of PPP projects in Italy is generally granted by banks and rarely provided by capital market, by selling bonds or shares to investors (Etro, 2007). Italian banks tend to ask for traditional guarantees for the financing (Bentivogli et al., 2008) and this situation has been exacerbated by the recent financial crisis: nowadays, banks require greater spreads, reduced leverage and more guarantees in order to grant a loan. The mean duration of the loan was also reduced (UTFP, 2010).

Finally, as for the Italian Government's influence on the use of PPP there are still some shortcomings in the legislative regulation that does not allow the PPP to be used in an effective way.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

In the last ten years, in Italy PPP projects have been planned and realised on national level and local level. In particular, PPP transport projects at national level mainly regard the construction of motorways. Decisions on programs, amount of investments, and financing related to these projects are formulated by the national government.

In Table 1 are summarized the transport PPP projects in the road sector that have been implemented or are in the negotiation phase in the period 2002-2012.

At local level there are PPP projects that were implemented or are in the negotiation phase, including include: urban transport, underground garage, underground railway, local road networks, and seaport hubs. Decisions related to the development of these projects are taken at regional, provincial, and municipality level.

Table 1: Transport PPP projects.

PPP Project	Private funding (%)	Current status
Highways Asti-Cuneo	60%	Under construction
Highways Pedemontana Piemontese	69%	Award
Highways BRE-BE-MI	100%	Under construction
Highways Est Esterna di Milano	100%	Under construction
Highways Broni-Pavia-Mortara	96%	Deal
Highways Cremona-Mantova	85%	Under construction
Motorways A22 Brennero-Modena	100%	Suspended bidding
Highways Pedemontana Veneta	92%	Under construction
Highways Medio padana Veneta Nogara-Mare	96%	Under bidding
Highways Adriatica	86%	Under bidding
SR 10 – PD-VR	100%	Under bidding
Tunell of Torricelle (Verona)	100%	Project Approved
New network roads in Veneto	100%	Project Approved
Road Valsugana Valbrenta – Bassano Ovest	100%	Project Approved
GRA of Padova	100%	Project Approved
Via del Mare, Meolo-Roncade – Jesolo	100%	Project Approved
Motorways A4 Portogruaro-Bibione	100%	Under bidding
Motorways A23-A28 Cimpello-Sequals	55%	Under bidding
Highways Campogalliano-Sassuolo	78%	Award
Highways Ferrara-Porto Garibaldi	85%	Deal
Highways Cispadana Porto di Ancona- grande viabilità	100%	Deal
Highways Roma-Latina and Cisterna Valmontone	65%	Under bidding
Motorways A1 San Vittore-Campobasso	51%	Project Approved
Highways Caianello-Benevento	67%	Project Approved
Highways A1-Aeroporto di Grazzanise	35%	Award
Highways Ragusa-Catania	55%	Under bidding

Source: CRESME, 2012.

2.2 PPP policy framework

There isn't a general or transport-related PPP strategic policy framework in Italy. The basic regulations for PPP were formulated by the Public Procurement Law (No. 109 of 1994). This has been replaced by the Code of Public Contracts (Decree 163 of 2006) that implements the Directives 2004/17-18/CE.

The triennial Program on Public infrastructure plans the development of the public infrastructures exceeding the value of EUR 100,000, including those that will be realized through PPP. Projects below EUR 100,000, evaluated by a dedicated support structure (UTFP) as potential PPPs, are included in the Strategic Infrastructure Program (PIS).

Although, there are no general or transport-related PPP policy frameworks, the Italian Government seems particularly positive towards using PPPs. The main motivations for PPP as a tool for Public Infrastructure delivering for political decision makers are:

- increasing capacity in infrastructure delivery and public service provision through involvement of the private funding (off-balance sheet issues);
- transferring a number of risks to the private partner;
- improve cost transparency in the service management;
- exploiting the competences and experiences of the private party in the public services management.

2.3 Previous and current PPP experience

The incidence of PPPs on the total amount of public procurement has increased in terms of value from the 5,9% in the 2002 to the 42,0% in the first semester of the 2012, and in terms of number of bids from the 1,0% to the 18,4% in the same period. Figure 1 shows the number of PPP project by value and by number of bids in the period

2002-2011. Figure 2 shows the trend in the same period of the number and values of awarded PPP projects. Figure 3 and 4 show the number and value of PPP bids classified by sector.

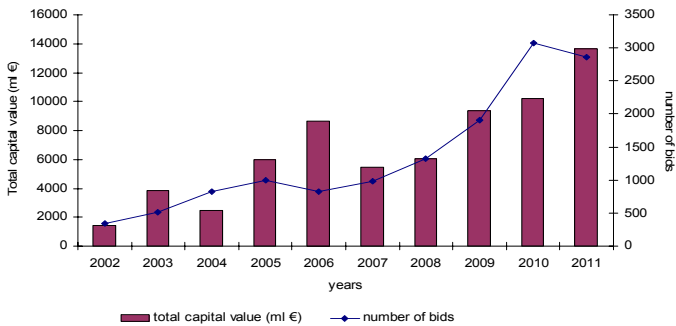


Figure 1: Number and values of PPP bids.
(Source: CRESME)

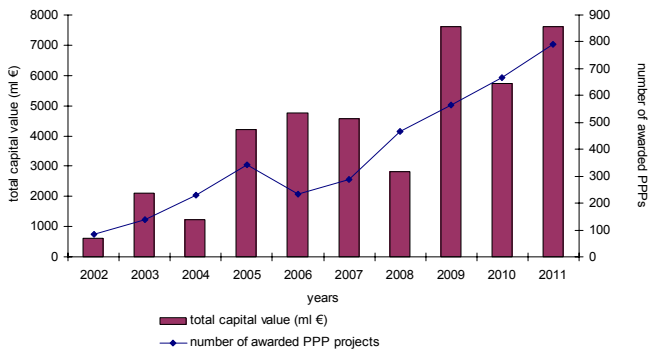


Figure 2: Number and values of awarded PPP projects.
(Source: CRESME)

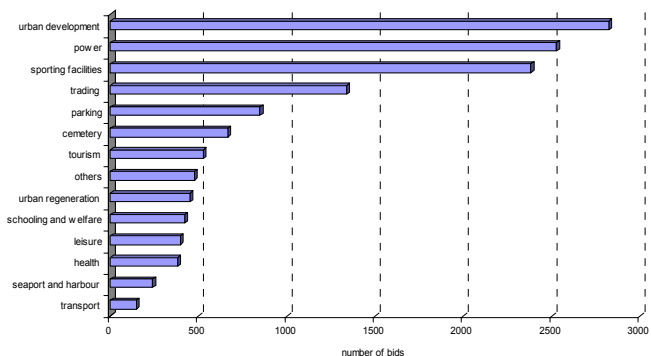


Figure 3: Total number of PPP bids by sector (2002-2011).
 (Source: CRESME)

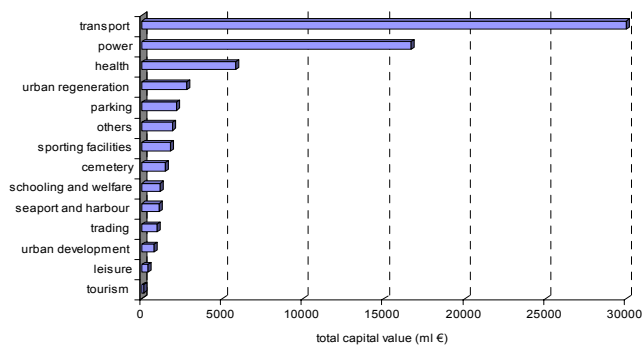


Figure 4: Total capital value of PPP bids by sector (2002-2011).
 (Source: CRESME)

As can be noted, in the period 2002-2012 in Italy transport PPP projects value about 30.000 million euro and cover the 44,6% of the total value of PPPs.

Furthermore, the trend in the period 2002-2012 shows an increase in the number of bids and in the capital value of PPP projects, pointing out that the financial crisis has not slowed down the use of PPP as a tool for public infrastructure procurement.

With this regard, the Italian government has reacted to the financial crisis by implementing a set of measures (Resolution No. 32009 of 6 March 2009) that provide for additional public funds to be allocated in order to carry out infrastructure considered to be a strategic asset for national economic and social progress, and to encourage the private sector to cooperate with public institutions.

2.4 Political stability

The Italian political landscape in last ten years has been characterized by a certain stability, due to the continuity of the center-right government (four Berlusconi governments), intermediated by drastic changes in government coalitions. However, the political support to PPP did not change substantially and PPP program has remained prominently on the political agenda. In particular, in the last ten years, a number of legislative measures aimed at defining more clear guidelines for contracts and procurement procedures have been adopted to encourage PPPs.

2.5 Effects of financial crisis on PPPs

The main effect of the financial crisis can be expressed by the decrease of awarded projects. In the 2012, the number of awarded projects is decreased by 30% compared to the previous year 2011.

2.6 Change in PPP policies because of financial budgetary crisis

Government funds for PPP projects have been increased in order to tackle the effects of the financial crisis. In particular, the government has increased the Infrastructure Fund with a further amount of 5 billion euro to be invested in school safety, prison building, archaeological and museum infrastructure, environmental recovery and strategic and mobility infrastructures.

Other measures addressed to guarantee and support the profitability of the projects are:

- Development of alternative project financing forms (eg bonds). Project bonds are used in the period in which the project has not yet generated cash flows, by facilitating the access to financial resources for the initial investment;
- Provide security instruments (eg FGOP) for major infrastructure projects: a useful tool to facilitate access to credit and thus enable the financial closing of important strategic infrastructure;
- Enhancing public banks for granting loans;
- Introducing forms of support bank lending, such as FRIS and the Public Debt Fund.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

In Italy there is no a specific legislation on PPPs, neither for PPP projects in general or for transport PPPs specifically. The law on concessions established in the provisions of the Code of Contracts

(Law 163/2006, art.143) is usually applied to PPPs. This law implements the EU Directives 2004/17-18, and defines PPP as contract, between a contracting authority and one or more operators, aimed at the execution of works and the supply of services.

3.2 Elements provided in legal framework

The Code of Contracts (Law no.163/2006) provides elements that regulate PPPs, in particular:

1. Norms to regulate the non-competitive procedures for projects below 40,000 euro (Art.125);
2. Rules of compensation to guarantee a minimum revenue to the concessionaire (Art.143);
3. Procedures for the unsolicited proposals (Art.153)
4. Requirements to be satisfied by the promoters to apply to the tender (Art.153-Art.38)
5. Definitions of the contract termination events, that can be due to the Grantor default, the Concessionaire default, or Convenience or Force Majeure (Art.158);
6. Provisions for step-in rights for lenders. The step-in right allows the lenders to designate a substitute in the case of termination of the concession for reasons due to concessionaire default (Art.159);
7. Compensation provisions in the event contract termination (Art.160).

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

There is an active PPP supporting unit at the national level – Technical Unit for Project Financing “UTFP” - established in the 2001 (Law 144/1999) in order to promote the use of project financing to raise private capital for public infrastructure delivering. UTFP is funded by Government budget. It is directly controlled by the Department of Planning and Coordination of the Economic Policy (DIPE), belonging to the Council of Ministers, and supports the Inter-ministerial Committee for Economic Planning (CIPE).

The major tasks of the Unit are technical support, promotion of PPP arrangements and approval of all PPP projects at national level, or projects that involve support from budget or state owned infrastructure. In particular, UTFP provides:

- Technical assistance: provision of technical, legal and financial assistance to public authorities. It provides support in the evaluation of infrastructure projects financed by private capitals; activates collaboration with institutions, organizations and associations;
- Green lightning of PPP projects;
- Promotion: promotes within national and local government the use of project financing for public infrastructure delivery;
- A central repository of knowledge: collecting and sharing of data, documentation, and relevant information on PPP projects, in order to improve knowledge and expertise on PPPs in both public and private sides.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

There are no standard ex ante evaluation procedures for project appraisal and prioritization. The Public Sector Comparator ("PSC") is still scarcely used by the public administration.

The public administration acts with different structures in the evaluation of the projects and has different level of responsibility in stages of the project cycle.

In particular, in the pre-tender stage the PPP-supporting unit (UTFP) is involved in the project approval, by verifying and establishing the feasibility of the PPP project.

After approval, the tendering procedure is generally managed by task forces established by the national or local government.

After signing the PPP contract, the responsibility for the contract management is usually assigned to a specific team, created by the national or local administration. Furthermore, the supervision of the contract is delegated to a central government unit - the Italian Supervisory Authority of Public Contracts, AVCP, established in 1994 (Law 109/1994). This unit supervises the public procurement, both at national and regional level, in order to ensure compliance with the principles of fairness and transparency in awarding procedures, the effective and appropriate execution of contracts, and compliance with the competitions rules set out in each tender.

4.3 Standardized process and documents for PPPs

In Italy standard models used for PPP projects in the transport sector do not exist. A standard contract exists only for the hospital sector.

Standard tender procedures are referred to PPP projects in general and not specified for the transport sector.

For Concessions, the Code of Contracts (Law 163/2006, art.143) sets out the details of the procedure for the selection of the Private Party.

In particular, the law provides for different kind of procedures to be used to award public contracts, and defines the criteria to select the best tender based the lowest price and and/or the most economically advantageous bid.

For PPP, the Code of Contracts (Law 163/2006, art.153) sets out the details of the procedure for the selection of the Private Party. In particular three different procedures are defined:

1. One stage procedure: in order to ensure the completion of works supply or services delivery, the contracting authority launches an open call for tenders. Any interested economic operator (called Promoter) may submit a tender. The contracting authority ranks the tenders which apply with a preliminary, definitive and executive design, and negotiates possible amendments to the preliminary project with the best Promoter. In case of failure of negotiation, i.e. the preferred Promoter does not accept the suggested amendments, the contracting authority starts the negotiation with the second best tenderer, by asking for the same amendments to the project.
2. Two stage procedure: the contracting authority launches an open call for tenders. It selects the best offer and launches a second tender on the basis of the project previously selected in order to select the concessionaire. If there aren't better offers, the promoter of the best offer wins the competition, otherwise it starts a negotiation.
3. If the public authority doesn't launch the tender within the deadline, any interested economic operator can submit a proposal. In this case, the following procedures can be applied:
 - a. If the preliminary project requires changes, the contracting authority may conduct a competitive dialogue with the promoter aimed at developing

more suitable alternatives capable of meeting its requirements.

- b. If the preliminary project does not require changes, the contracting authority may issue a contract of grant (ex Art.143 Code) or launch an open call for tender following the two stage procedures 2.

5 Conclusion

PPP in Italy is a rather recent practice. In fact, even though in 1994 and 1998 the Merloni law set the framework for using private sector contractors, only later a special PPP taskforce, UTFP, was created and its powers were reinforced in 2001. In addition to the administrative delay in defining the set of rules for the PPP, there are other reasons, related to the administrative, financial, and political aspects, that make the application and use of PPP, although considerable in size, less effective and efficient in Italy than in some other countries, which are considered to be forerunners in PPP, like UK and Portugal.

Particularly, as for the Italian Government's influence on the use of PPP there are still some shortcomings in the legislative regulation that does not allow the PPP to be used in an effective way. First of all, Italian law does not prescribe the estimation of Value for Money before the approval of a PPP project. Nowadays, the evaluation of the feasibility of a PPP project is simply based on the "Economic-Financial Plan" which is made by the private sponsor. Secondly, in Italy the SPV is normally formed by local or national Governments and/or public companies (Bentivogli et al., 2008), as a consequence the level of commitment of the private sector is quite minimized.

An extensive use of PPP contracts is made for power projects, characterized by 2.527 bids and a total capital value of almost €16.671bn. Other sectors with a relevant amount of PPP projects

include sporting facilities, hospitals, urban developments, and other regional activities. Even if the number of transport PPP projects has little relevance on the total, a significant expenditure characterizes these, with €29.957bn mainly devoted to road networks. Consequently, the transport sector becomes the most relevant in terms of expenditure.

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Portugal

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Abstract

Portugal has been one of the most active European countries in the PPP market in the last decades. Regardless of public debate and some criticism of major infrastructure projects, several Governments since 2003 demonstrated their commitment to PPPs by launching tender procedures for some of the major transport projects, as well as by implementing legislative and institutional reforms to improve the execution of PPP projects, namely the new Procurement Legislation and the creation of executive agencies to monitor and control business-State participation. As the current financial crisis has become more severe, the Government has begun to renegotiate its shadow toll concessions, including the conversion of some of them into toll roads. Other potential PPP projects such as the new Lisbon Airport and a high speed rail link between Lisbon and Porto have now been put on hold.

1 Introduction

In Portugal, the Public Private Partnership (PPP) emerged with the official justification to overcome public budget constraints and to meet new requirements of the quality of service, especially important in projects where the investments are high and the quality of the service more demanding as it is the case of the projects at the transport sector. Therefore, compared to traditional procurement models, PPPs were expected to improve the quality, effectiveness and efficiency of the services in the road, rail and sea port sectors' development, by taking advantage of the competitive pressure and transferring most of the investment risk to the private sector, as well as adopting the most appropriate and innovative technical solutions brought by the private sector and the consolidation of the financial market. In brief, the stated objective was to enhance value for money in transport infrastructure delivery.

However, the results have been less positive than expected. PPPs have been intensively used in the country and have become the rule. Portugal is now the number one country regarding the involvement with PPP in terms of GDP percentage in Europe. In practical terms, the country entered into the common pitfall in which the projects not fitting in the budget for public investment would be the object of transfer to the PPP model, assuming that liabilities accruing from these contracts would not be registered in public debt. Given the life cycle of these infrastructures, these contracts are typically signed for thirty years and with significant optimism bias regarding demand volumes. The immediate consequence has been a strong dependence from financial markets and banking when optimism is streamlined to reality.

In the following sections, we highlight the fact that the backcast analysis of the transport infrastructure cases reveals that the main problems of PPPs in Portugal are related to the inappropriate sharing of risks between the public partner and the private partner. Contract renegotiations together with audits from the Court of Accounts provide a good evidence of this problem. In addition, the absence of

a Public Sector Comparator (PSC) jeopardizes the quality of public decision. In section two, we describe the decision process in Portugal and the PPP policy framework, the current state of art, and the impacts from the economic crisis. In section three, the legal and regulatory framework is presented. The fourth section analyzes the institutional setting, and finally, section five concludes the analysis.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

In Portugal the engagement of private partners in transport infrastructure delivery was initiated in the early 1990s in the railways sector, using concession contracts. This situation was maintained until 2003 when the first PPP-specific legislation was adopted (Decree-Law n° 86/2003). With the legal vacuum for PPPs, governments were adopting specific legal regimes for each group of projects, based on concession models and on general public procurement procedures. Depending on the contractual nature and complexity of these projects, negotiated procedures were used.

The Ministry of Finance and the relevant Minister in charge of the project (i.e. in the case of Transport, the Ministry of Public Works and Transport) used to have the responsibility for controlling and supervising PPPs under the PPP Law enacted in April 2003. The Law also led to the adoption of a Public Sector Comparator (PSC) and Value for Money concepts, and it imposed specific requirements to ensure that PPP-based projects are approved only if they involve a significant and effective transfer of risk. The law is intended to complement existing sector legislation and applies to all central and regional government projects (PwC, 2005). Despite this legal stance, the PSC was never used.

The Budgetary Framework Law, Law n° 91/2001 of August 20th which was republished as an annex to the Law n° 48/2004 of August 24th, established several obligations under the state budget when

using PPPs, for instance that the budget presents a table showing the expected annual costs of each PPP. The PPP option is to find itself subject to an analysis of value for money for public expenditure (Article 19) and should be a ceiling on the commitments of the State with the PPP (Article 31).

In Portugal, programs regarding transport are mainly at governmental level since highways, sea ports and rail projects are projects of regional or national characteristics. Regarding two tramway projects, Metro do Porto and Metro do Sul do Tejo (MTS), both have metropolitan characteristics (i.e. extending to several adjacent municipalities) with decision-making taken at the municipalities' level. The rail project of FERTAGUS, North-South Axis, also has a metropolitan characteristic.

2.2 PPP policy framework

As established by Decree-Law n° 86/2003, a PPP in Portugal is referred to the contract or set of contracts, through which private entities, called private partners, are committed, in a stable and lasting basis, towards a public partner to ensure the development of an activity leading to the satisfaction of a collective need. In these contracts, financing, investment and exploitation liabilities are partially or totally with the private partner. The law understands the following entities as public partners:

- State (Government) or State Public Entities;
- Funds and autonomous services;
- Public Statute Companies and all entities created by these companies.

The concession is the legal instrument, most frequently used in Portugal as public service partnerships, involving in most cases the design, financing, construction, maintenance and operation of the infrastructures designed to meet the public needs. The infrastructure sectors in which a significant part of the contracts is already concluded are the road transport sector and the water and waste

treatment sectors (Santos, 2007). However, many of these contracts came a long time before the publication of the Decree-Law n° 86/2003 of April 26th. Considering the issues raised about the allocation of risks between the parties, which is one of the striking features of PPPs, the Government approved the Decree-Law n° 141/2006 of July 27th, and through it established the following key objectives (DGTF, 2008):

- Further development of technical and political articulation between involved Ministries across the various project stages;
- Increase in flexibility, efficiency, financial control, and transparency in the preparation, design, development, and modification of PPPs;
- Clarification of the risk-sharing model, particularly as a result of unilateral changes by the public partner, safeguarding legitimate rights and interests of private partners;
- Establish procedures to be followed whenever the project may generate new charges for the public partner or the State.

However, it is considered that the legal framework for PPPs applies to all partnerships in which the equivalent of the private partner is also a public company, a cooperative, or a private non-profit institution. Consequently, Águas de Portugal SA, and Estradas de Portugal SA are two of the most relevant public companies concessionaires of the State. The first company manages a large set of sub-concessions of municipal water systems supply and sanitation through companies established in partnership with municipalities or private entities. The second one, with the publication of Decree-Law n° 380/2007 of November 13rd, holds the concession of the national road network, including the management of existing concession contracts in which the State still assumes the direct grantor position and launches new projects in a sub-concession regime (DGTF, 2008).

Besides these two sectors, PPPs were launched and tendered in the healthcare sector. The process started in 2002 with the strategic definition of the “Mission Statute for PPP in health sector,” and from 2004 onwards, a total of ten PPPs were launched at a rhythm of two to three projects per year. In this sector, two types of PPPs were

launched: for hospital management, typically with ten years' contracts, and for construction and management of hospitals, typically with thirty years' contracts.

In the field of education, PPPs were also intensively used, and their success is contestable. The program was launched in 2007 with the creation of a public company called "Parque Escolar, E.P.E.", and at the time the investment for the modernization of 332 schools by 2015 was estimated to be 940 million euro. This included four pilot schools until 2008/2009 (pilot set for phase 0), phase 1 with 26 schools by 2009/2010, phase 2 with 75 schools, and phase 3 with 100 schools. The overall budget exceeded the initial target of 940 million euro to 3168 million euro only for the first 205 schools, up to phase 3. This amount does not include financial costs associated with bank credits to finance the program. Early 2011 phase 4 was launched with 90 schools and 1350 million euro of additional estimated investment. The objective of 332 schools was maintained, but since 2009 no more estimated budget for investment was presented.

In the domain of renewable energies, a PPP model has been used in Portugal since 2005.

In the field of rail transport, examples of both executed and cancelled projects worth mentioning are: the rail concession of FERTAGUS Train (North-South Axis) (in operation), the Metro do Porto (Oporto Tramway) (in great expansion), the Mondego Tramway (cancelled), the Tramway of Sul do Tejo (MTS) (under reassessment), and the final section of the Lisbon-Madrid high-speed network (tender was launched in June 2008, after the government decision of suspending the project).

Finally, in the port sector, Portugal has been following the global trend to greater "privatization" of the sector, being however more appropriate to refer a greater private sector involvement in port activity than privatization "strictu sensu". The continental territory has nine commercial ports, five of which constitute the main system (Douro and Leixões, Aveiro, Lisbon, Setúbal and Sesimbra, Sines), which are administered by the Port Authorities (PA) with the status of public limited companies entirely publicly owned, and four

secondary ports (Viana do Castelo, Figueira da Foz, Faro and Portimão), administrated by IPTM – Instituto Portuário e dos Transportes Marítimos. Each Port Administration has a legal personality, financial and administrative autonomy, having a body of its own management.

2.3 Previous and current PPP experience

Portugal has been one of the most active European countries in the PPP market in the last decades. It is considered as one of the top European countries regarding PPP investment when measured as a percentage of GDP as shown in Figure 1. However, the universe of concessions is higher than partnerships and represents about 20,5 billion euro in terms of cumulative investment, corresponding to 75 concessions under exploitation and five under construction (Figure 2). The share of the cumulative investment in transport PPPs is fairly high, accounting 98% of the total cumulative investment in 2010 which represent 16 billion euro, as shown in Figure 3.

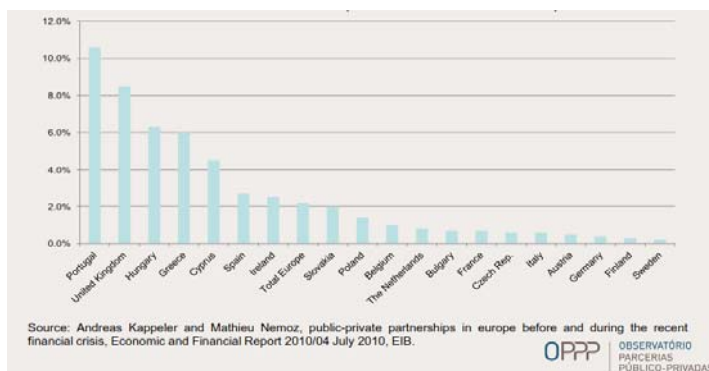


Figure 1: PPP investment in Europe (Reis, 2011).



Figure 2: Evolution of the cumulative investment in Portugal
(Source: DGTF, 2011).

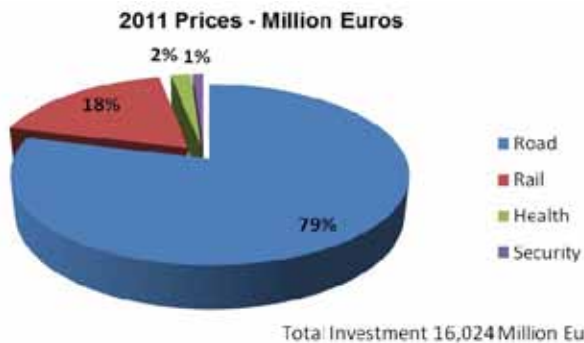


Figure 3: Share of cumulative investment by sector in Portugal
(Source: DGTF, 2011).

2.4 Political stability

The Government demonstrated its ongoing commitment to PPPs in 2008, despite public debate and major criticism towards most

infrastructure projects, by launching tender procedures for some of the major transport projects as well as implementing legislative and institutional reforms to improve the execution of PPP projects. At that time, the opposition, which is the current Government (mid-2013), claimed that the country did not have the financial means to support the program of PPP investments. However, in the elections in September 2009, the ruling Socialist party was re-elected, albeit with a reduced majority. The then Prime Minister has promised large-scale public works as a way to deal with the economic crisis. To sum up, the effects of the credit crisis have brought some of the major PPP projects to a standstill (e.g. High Speed Rail Link and New Lisbon Airport) (EPEC, 2009).

2.5 Effects of financial crisis on PPPs

Many PPP projects were already under way when the economic situation deteriorated into the well-known crisis in late 2008. The Government decided to continue with these projects under the argument that the response to the crisis would require greater public investment and more of the private sector so as to increase market confidence and stimulate the economy. However, it was unclear if there was sufficient financial capacity in the Portuguese banking system to embrace new projects and the credit crunch has also greatly reduced the risk appetite of the private sector (EPEC, 2009).

However, regarding projects that were already at the best and final offer (BAFO) stage, the constraints on commercial bank funding were clear. In many cases the European Investment Bank (EIB) assumed the primary lender's role, but it was not able to intervene in all PPP projects. Therefore, projects such as the High Speed Train or the New Lisbon Airport are now at a standstill.

Regarding the rail sector, there are three existing contracts. FERTAGUS Train (North-South Axis) is performing well, in particular after contract renegotiations, while MTS was under reassessment and High speed rail was suspended because of the financial crisis (Reis, 2011).

The road sector was also affected by the financial crisis and, as a consequence, a first wave of tolled roads was implemented reverting the former shadow tolling roads. In the third quarter of 2011, the net financial flows with road PPPs amounted 133 million euro, showing a decrease of 44% over the same period, by the decrease in gross charges and the increase in toll revenues (DGTF, 2011).

It is worth mentioning that in Portugal, one of the Troika's recommendations regarding PPPs was to avoid engagement in new PPPs before the assessment of the current ones is finalized and the legal and institutional framework is created. Furthermore, considering the possibility of renegotiation of the existing PPPs with the purpose of reducing State payments was another recommendation of the Troika (Reis, 2011).

2.6 Change in PPP policies because of financial budgetary crisis

The government was forced to counter the economic crisis with policies of increased investment in infrastructure, but despite the availability of aid from European funds, the available funds were not sufficient for so many projects that have been initiated (EPEC, 2009).

After consulting Eurostat, Portugal has decided to reclassify three highway contracts which were originally off the Government's balance sheet to make them on-balance sheet. All three projects had originally been structured under shadow toll schemes and were then subject to renegotiation with the same partners in April 2010.

Under the original structure, the public partner was bearing the demand risk through a shadow toll arrangement and there was no collection of tolls from users of the motorway. The government introduced real tolls, after the renegotiation, which are being collected by the private partner under a separate agreement and paid to the government. The shadow toll payment mechanism has been replaced with an availability payment independent from traffic flows. The private partner thus bears no demand risk and has no

stimulus to incentivize demand. At the time of this renegotiation the Portuguese authorities felt that they could continue to classify these projects as off-balance sheet since availability risk remained with the private partner, who had taken on the full risk of construction when the roads were originally built (EPEC, 2011).

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

European Union (EU) procurement directives were implemented into a New Public Contracts Code in 2008, which also applies to PPP projects. Electronic tendering and competitive dialogue was also introduced by this Code.

This New Public Contracts Code was perceived as positive by several international institutions as it harmonized and systematized the various procurement rules which had previously been spread through different statutes (EPEC, 2009). Partnerships can develop through various legal instruments to regulate between public and private entities, including the contract for a public works concession, the concession of public service, the continuous supply contract, the contract for services, the management contract and collaboration agreement, when considering the use of an establishment or existing infrastructure belonging to other entities other than the public partner.

3.2 Scope and boundaries of specific PPP law

The DL n° 141/2006 excludes from the application of the Law all projects with an updated cumulative burden of less than 10 million euros and an investment of less than 25 million euros, as well as all other contracts for the supply of goods or provision services for a term not exceeding three years, involving no automatic assumption

of obligations to the public partner at the end or beyond the term of the contract (DL n°141/2006).

As indicated in the Article 4 of DL n° 86/2003, of April 26th, the essential aim of PPPs is to improve efficiency allocation of public resources and to achieve a quantitative and qualitative improvement in the service through effective control by potential users and public partner allowing for continuing evaluation.

3.3 Elements provided in legal framework

Concerning the compensation provisions, the article 11, number 3 of DL n° 86/2003, of April 26th indicates that at any time of the private partner selection, the process can be interrupted or cancelled by order of the finance ministers and the protection sector, without any right to compensation provisions, whenever according to the assessment of the goals to pursue, the results of negotiations conducted with the candidates do not match, in satisfactory terms to the purposes of public interest underlying in the partnership, including the respective estimated global burden of affordability.

The events determining contract termination, compensation provision, and provision for collection of fees or payment by the government are determined on a case-by-case basis, and there is no general establishment.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

The PARPÚBLICA – Participações Públicas SA (SGPS), was created by Legislative Order No. 35/2003 of August 20th with the aim of providing support to the Ministry of Finance in the overall PPP-monitoring context. Meanwhile, it was created within the

Directorate General of Treasury and Finance, the Office to Monitoring the State Business Sector, the Public-Private Partnerships and Concessions (GASEPC) (Order No. 936/07 of September 21st). On the other hand, the control of PPP has been one of the strategic objectives of the Court of Auditors (TC), which also published guidelines for the development of the external audits to PPP. The TC scans the scope of engagement with the private sector, how public money is used, and whether the forms of funding are framed according to legal norms. In audits conducted by the TC, slippage in terms of time and costs for transport concessions, schools, and health sector was found.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

The evaluation of partnerships should take into account the desirability of prior testing before the positioning of the private sector regarding the type of partnership in the project, including the identification of potential stakeholders and analysis of market conditions, as well as when appropriate, to update the strategic objectives of the project.

According to the Article 8, number 1 of DL n° 86/2003, the sectorial Ministers planning to initiate processes of PPP must notify the Ministry of Finance in order to set up a committee to monitor the preparation and preliminary evaluation of the project, presenting the respective strategic study and drafts of legal instruments to perform the procedure prior to hiring. The monitoring committee is appointed by order of the Ministers of Finance and the sectorial tutelage, and the coordinator is appointed by agreement between the Ministers of Finance and protection sector. In exceptional cases the legislature eliminates the constitution of the monitoring committee.

The commission is expected to assess the likelihood of the assumptions made in the studies supporting the project and validate whether they are aligned with the Government objectives and able to maximize their positive impact on the economy.

The monitoring committee may request any service or agency of the ministry or sector entities referred to in number 2 of article 2 of DL n°86/2003, as appropriate information and technical support that may be necessary for the development and execution of the project. Moreover, the monitoring committee should be actively involved in the project development, assuming responsibilities in monitoring and controlling the implementation of the partnership agreement to be signed, so that they can proceed effectively, the monitoring and control the execution of this contract.

The monitoring committee reports to the Ministers of Finance and tutelage, including a review of the compliance of the final version of the project to be developed by the partnership with the conditions to be met and the risk sharing with the statement of charges for public partner, as well as the potential impact of risks that the public partner may have. The Ministers of Finance and sectorial tutelage decide then about the launch of the partnership and respective conditions set by decree to be issued within thirty days of the submission of the report.

The committee reviews the proposals in order to evaluate the fundamental and quantitative assessment of the burden for the public partner or the state, estimating the potential impact of risks (directly or indirectly), the effects to the public partner arising from the content and nature of each proposals, in addition to assessing the respective relative merits. This committee shall prepare a report that will form the basis of the contracting authorities or the act of the governing body, in the case of legal entities.

The procurement will be made by order of the Ministers of Finance and sectorial tutelage or, in the case of legal entities, by an act of its management preceded by joint order in favor of those ministers who must consider the report prepared by the commission.

The effective establishment of a PPP on the basis of DL n° 141/2006 is based on a public initiative, as shown in Figure 4 and Table 1:

Roles and responsibilities for public agents in the project cycle in Portugal.

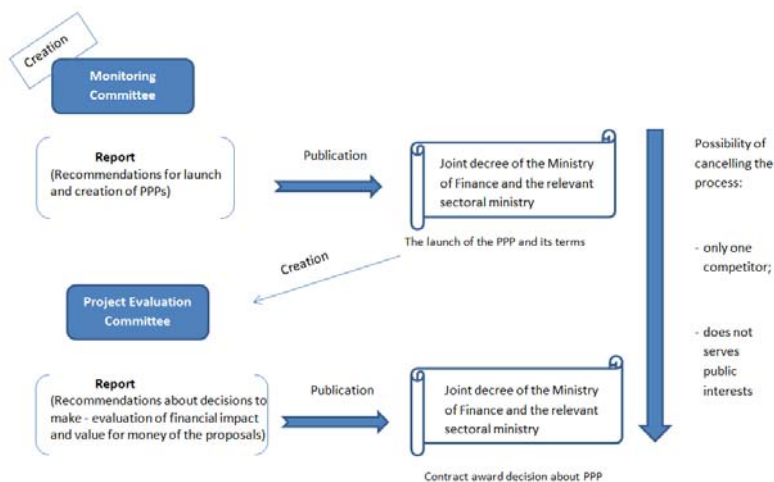


Figure 4: PPP actual constitution process in Portugal
(adapted from DL n° 141/2006).

In Portugal, PPPs are subject to two evaluations: one is an endowment budget and the other is an evaluation methodology in order to verify its efficiency and sustainability. For each project there is an inter-ministerial committee, which includes representatives of the MFAP (Ministry of Finance and Public Administration) and the Parpública. Each PPP project of the Central Administration is subject to a review process at certain milestones of the preparation, negotiation and renegotiation phase. This review process allows the Minister of Finance to stop the project and gives him the power to veto the project if it did not demonstrate efficiency, or if it jeopardizes the budgetary discipline. The legal procedure states that the project team prepares a preliminary feasibility study and (by law) carries out an analysis of the Public Sector Comparator (PSC) - an analysis of the expected cost of the project if it were developed without recourse to private finance. The Jury of tenders for PPP takes into consideration the value of PSC as the maximum value for

the cost of the contract, keeping the state the right to cancel the contract if it is higher than the PSC.

Table 1: Roles and responsibilities for public agents in the project cycle in Portugal.

	Contracting authority	Ministry of Finance	PPP unit (Parública)	Monitoring Committee	Project Evaluation Committee	Court of Auditors
Pre-tender						
Project initiation	●		○		-	-
Assess feasibility and VFM			○	●	-	-
Budgeting			○	●	-	-
Project approval		●	○		-	-
Tender						
Invitation to tender	●		○	-		-
Bid evaluation			○	-	●	-
Negotiation		●	○	-		-
Bid approval		●	○	-		-
Post-award						
Contract management		●		-	-	●
Payment oversight	○	●		-	-	●
● = direct responsibility, ○ = indirect responsibility, - = n/a						

The PPP contracts enable the costs and risks to be transferred from the present generation to the future generations causing it to be an

excessive risk. Portugal recognized this problem by creating the PPP unit in Parpública and by establishing the review procedure of the project described above. This procedure applies to central government; it does not apply to public companies or local governments.

Transparency and accountability could be promoted by including it in the budget of the investment program in public enterprises. Regarding the PPP, it should be included in the information of risk analysis. Additionally, before deciding to launch a PPP, the PSC should be discussed in Parliament (Curristine et al., 2008).

4.3 Standardized process and documents for PPPs

In Portugal, there is no standardized contract for PPPs in general, and nor for transport. Each case is different. Regarding the tendering procedures, it is already mentioned above how the process should be carried out.

The PPP is launched by administrative decision (“despacho”) which must contain certain elements such as:

- Program’s contracting procedure;
- Specifications;
- Analysis of options that determine the configuration of the project;
- Project description and method of financing;
- Demonstration of its public interest to justify chosen partnership model;
- Demonstration of affordability of costs and risks of the partnership on the basis of multiannual financial programming of the general government;
- Environmental impact statement, as required pursuant to the applicable law.

The launch of the partnership will be made using the applicable public procurement awarding procedure (DL n° 141/2006).

5 Conclusion

In Portugal, the engagement of private partners in transport infrastructure delivery was initiated in the early 1990s in the railways sector, using concession contracts. This situation was maintained until 2003, when the first PPP-specific legislation was adopted (DL n° 86/2003).

Many contracts came a long time before the publication of the Decree-Law n° 86/2003 of April 26th, which established the characteristics and rules to be complied with the launch of PPP in Portugal. Considering the issues raised about the allocation of risks between the parties, which is one of the striking features of PPPs, the Government approved the updated version of Decree-Law n° 86/2003, which is the Decree-Law n° 141/2006 of July 27th. Apart from these two decree laws, which are transversal to all sectors, there is a specific legislation that is designed to complement the individual circumstance of specific sectors such as environment, health or transport.

Portugal has been one of the most active European countries in the PPP market in the last decades. The share of the cumulative investment in transport PPPs is fairly high, accounting to 98% of the total cumulative investment in 2010 which represent 16 billion euro.

When the financial crisis came, the transport sector was affected and projects like High Speed Rail, the New Lisbon Airport and some new highways are now at a standstill. Projects which were already contracted have been subject to renegotiation.

Despite the serious conclusions taken by the audits of the Court of Account regarding deviations in time and money of the projects under PPP contracts, we can conclude that the problem lies not in the PPP instrument itself but in the misleading ways it has been implemented. Here, we mention some of the pitfalls that have been identified in Portuguese cases:

- Biases in planning and forecasting hindering quality of decision at project selection stage. Competition between projects creates an incentive to project promoters to emphasize benefits and de-

emphasize costs and risks. This consubstantiates what the literature of several cases worldwide reports as “optimist bias”;

- Biases towards developing new project instead of making a more efficient and flexible use from the existing ones, leading to maintain existing infrastructures in poor condition and instead applying funds to new infrastructures;
- Weak regulation, lack of performance pressure, inadequate contractual provisions;
- Biased decision-making whenever projects are assessed in isolation. A systemic view is required, projects must be assessed within portfolios and programs;
- Lack of robust instruments for decision making, such as national infrastructure accounts (balance sheets);
- Lack of reliable instrument for ex-ante assessments of the project costs (i.e. PSC);
- Non-efficient delivery and delays can surmount up to 30% additional costs, when studies point to possible savings of 20% from efficient delivery.

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Serbia

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1 Introduction

Serbia is located in South East Europe (Figure 1) and extends for 77,500 square km with a population of 7.4 million inhabitants. Serbia's geographic position puts it at the crossroads of two important Pan-European corridors: the Danube River (corridor VII) and the road and railway corridor X that connects central and south-east Europe (Figure 1).



Figure 1: Location of Serbia (Dimireva, 2012).

After the crises that followed the disintegration of former Yugoslavia, including civil war and economic sanctions, the Serbian economy is only half the size it was in 1990 (Dimireva, 2012). Serbia has a transitional economy mostly dominated by market forces but with a relatively large public sector. The economy relies on manufacturing and exports, driven largely by foreign investments. Structural economic reforms needed to ensure the country's long-term prosperity have largely stalled since the onset of the global financial crisis.

Serbia has made some progress towards EU membership, signing a Stabilization and Association Agreement with EU in May 2008 and getting EU candidate status at the beginning of 2012. However, due to unresolved issues, primarily related to the status of the Province of Kosovo (which declared independence in 2008), the negotiations have not started yet.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

Whether decisions regarding the development of a transport infrastructure in Serbia are made at the national or local level depends on the type and functional level of the particular transport facility. The Ministry of Transport and the Ministry of Construction and Urbanism are responsible for major projects at the national level, including main highways, railways, airports, and intermodal transport terminals. The development of ports on the Danube, Sava, and Tisa rivers is mainly under local jurisdictions, and most of the existing ports have already been privatized. Construction and maintenance of local or urban road networks, as well as public transport, are under the jurisdiction of local communities.

For each transport mode there is a corresponding public company responsible for the development and management of the transport infrastructure at the national level. In the case of road infrastructure, there are two companies: *PE Roads of Serbia*, responsible for the management of construction and maintenance projects on the state-owned road network, and *PE Corridors of Serbia*, responsible for the construction of new motorways. At provincial and municipal levels, decisions are made only on the projects within their jurisdiction.

Most of the national level transport infrastructure projects in Serbia in the last few decades have been developed as public projects and financed through loans from international financing institutions. In recent years, some projects have been financed by interstate loans (i.e. loans from other countries, like China and Azerbaijan) and with substantial involvement of foreign construction companies.

2.2 PPP policy framework

The implementation of public-private partnerships projects (PPP) in Serbia has been historically underdeveloped, due to political circumstances, crisis, and lack of legal regulations. The new PPP law (*Law on Public-Private Partnerships and Concessions*, 2011) establishes the legal framework for the implementation of PPP projects in Serbia. However, despite declarative political support for PPP projects, primarily due to the huge need for investments in transport infrastructure, relatively high public debt, and severely restricted public finances, momentum related to the development of PPP projects almost stalled after the government change in mid-2012. The Fiscal strategy for 2013 (Ministry of Finance and Economy, 2012) provides a general statement about PPP projects that includes a requirement for comprehensive assessment and analysis of risks at all stages and precise timing of all future costs and obligations for the public sector, including the opportunity for the Ministry of Finance and Economy to stop or suspend a project in the preparation and negotiation stages while awaiting the removal of potential risks or the implementation of measures for their reduction. However, based on the same document, the reduction of subsidies to local governments has been planned, assuming their privatization or development of PPP projects.

Serbia is currently lacking a policy framework for the implementation of PPP projects. Consequently, there is also no comprehensive framework for the implementation of transport PPP

projects. The General Transport Master Plan for Serbia (Ministry of Infrastructure, 2009) mentions only the possibility of using private funding for infrastructure development, without referring specifically to particular potential PPP projects.

Two framework documents (Ministry of Capital Investments & PE Roads of Serbia, 2006 & PE Roads of Serbia, 2012) were developed for road infrastructure to address the implications of the recent adoption of new PPP law (*Law on Public-Private Partnerships and Concessions*, 2011) on potential PPP projects. No similar framework documents are available for transport infrastructure for other transport modes.

2.3 Previous and current PPP experience

The previous and current PPP experience in Serbia is very limited. The old *Concession law* (2003) was characterized by a very complex and long-lasting procedure. According to this law, only six concessions were awarded at the national level, out of which only one or two are still in force (Karanovic and Nikolic, 2012); four have been granted in the mining sector, one was granted for the construction of the Horgos - Pozega motorway (about 350 km), but did not reach the financial close, and another was awarded for the development of the cargo terminal at the Belgrade airport but failed because the private partner, selected on the tender, withdrew from the project after the management of the company changed (Cuttaree et al., 2009).

Due to the complex procedure for awarding concessions according to the former Concession law, local governments were oriented towards the implementation of the *Law on Public Utility Services* (1998) which entrusted the provision of utility services to private companies. It is estimated that between two and three dozen of PPP projects (Nenezic, 2013) were awarded in the field of sanitation and waste management at the local level. In the City of Belgrade, a kind

of service concession has been established where private operators participate in the unique public transport system with a public company, but the documents are not available, so it is not possible to provide further details on the project.

According to the new PPP law (2011), transport PPP projects may be implemented at both national and local levels. However, at the national level, there is no transport PPP project in the horizon, while at the local level there are two projects that are currently under negotiation: an urban transport project in the City of Loznica and an underground garage in the City of Sabac. There is also the potential to develop a PPP project for the maintenance of local road networks at the municipality level (performance-based contracting).

2.4 Political stability

The political situation in Serbia has been relatively stable since 2000, after a decade of conflicts that followed the disintegration of former Yugoslavia. However, some political questions are still not fully resolved (like the status of Kosovo), which has impacted the overall economic situation in the country. Recent government changes that followed the elections in mid-2012 marked a slight decrease in the already weak support for the implementation of PPP projects.

2.5 Effects of the financial crisis on PPPs

The Serbian economy is struggling with its second recession in the last three years, since the economy contracted by 1.7% in 2012 (Filipovic and Savic, 2013). The figures for transport, available until 2011, show that the transport of goods and people has been stagnating since 2007, with limited redistribution between modes: there has been a substantial increase in road transport but a decrease

in water and rail transport (Statistical Office of the Republic of Serbia, 2013).

2.6 Change in PPP policies because of the financial budgetary crisis

Serbia is lacking an official policy on the implementation of PPP projects. However, there is an increasing need for providing infrastructure and public services, for which there are fewer and fewer budgetary resources, putting pressure on the administration to find alternative financing sources in addition to loans from international financing institutions. However, in the context of the Serbian economy, there are very few feasible projects at the national level, since the economy is going through the second recession in the last three years and traffic is relatively low on most sections of the road network. Therefore, these projects would need government support in the form of construction or maintenance subsidies in order to attract private financiers.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

As part of its efforts to join the EU, Serbia had to adapt its legal framework pertaining to public procurements and public-private partnership and concessions to the *acquis communautaire*.

Relatively recently, in November 2011, Serbia enacted a general act incorporating the legal framework for PPPs, including concessions - the PPP Law (*Law on PPPs and Concessions*, 2011) that is largely harmonized with EU rules (EBRD, 2012). In Serbia, before the new

law, there was no general PPP Law governing the realization of PPP projects which had mainly been governed by the *Law on Concessions* (2003) and the *Law on Public Utility Services* (1998) and indirectly by other Serbian sectorial laws and by-laws. With the adoption of this new law, the previous act dealing specifically with concessions has been put out of force.

Serbian legislation also includes the Public Procurement Law (the "PPL") that has been recently modified (*Public Procurement Law*, 2012) and is supposed to be widely applied to the procedure of granting PPP projects. In addition to the PPP Law and the PPL, the following sectorial laws are also applicable to the granting of PPPs: Law on Communal Activities, Law on Public Companies and Performing Activities of Public Interest, Energy Law, Law on Mining, Law on Local Municipalities, Law on Gaming Activities, Law on Public Property, Law on Navigation and Ports on Inland Waters, and others.

There is no specific legislation for transport PPPs.

3.2 Scope and boundaries of specific PPP law

Law on PPPs and Concessions (2011) provides a general definition of PPP as a long-lasting cooperation between a public and a private partner for the purpose of securing the financing, construction, reconstruction, operation or maintenance of the infrastructure or other objects of public importance and the provision of services of public importance. The law also contains definitions of both types of generally recognized models of PPPs: contractual, based on a contract between a public and a private partner, and institutional, based on the establishment of a special-purpose vehicle (SPV) between a public and a private partner. However, it seems that any PPP project developed under this law has to be an institutional PPP, since the establishment of an SPV is considered mandatory for the realization of PPP projects (Radulovic and Nenezic, 2013).

The PPP Law identifies sectors in which a PPP may be granted by reference to general areas and as defined in other laws, such as “infrastructure and other objects of public importance”, “services of public importance”, “exploitation of natural wealth or good in general use”, and “performing activities of general interest”. Certain sectors, such as transport, are specifically mentioned.

The PPP Law identifies the contracting authorities and other public bodies involved in the realization of PPP projects. The public party may be any public body - a state authority or other direct/indirect beneficiary of budgetary means, a social insurance organization and public company, a company performing activities of general interest, or a legal person incorporated by any of the above who performs activities of general interest. All of the above public bodies have the right to autonomously initiate the procedure of PPP project realization within their competencies, as well as to conclude project agreements with private parties. However, when determining the exact contracting authority authorized to grant a particular project, a reference is made to other laws (e.g., “when public bodies and the subject of the concession are within competencies of ...”). Consequently, in some “border-line” or “not explicitly regulated” cases, it may be difficult to determine the exact body competent for certain concession subject.

Based on the PPP Law, the private party can be a natural or legal, domestic or foreign entity, without any restrictions thereof.

The central PPP commission, which is within the government of Serbia, approves all PPP projects at the national level or at lower levels if the project has direct implications on the state budget or state-owned infrastructure.

3.3 Elements provided in the legal framework

Under the PPP law, a private partner is chosen either based on the public procurement procedure laid down in the PPL (applicable to

PPPs) or based on the procedure for awarding a concession laid down in the PPP law (applicable to concessions). The project agreement is also concluded either as a public procurement contract or as a concession contract.

Moreover, even the procedure of awarding a concession prescribed by the PPP law relies upon the rules of the PPL in some parts. For example, (i) if a concession has predominant features of a concession for public works, the public procurement procedure is applied; (ii) if the contracting authority wishes to engage consultants, they have to be chosen in line with the PPL; and (iii) PPL is applied to the procedure to protect the rights of bidders and other participants in the procedure, etc.

The PPP law sets forth that the evaluation criteria have to be pre-determined and published along with the public call. Under the PPL, the selection criteria have to be pre-defined, as well as the methodology for their evaluation. This information has to be contained in both the public call and the tender documentation.

The PPP law provides that its provisions are applied to all investments in the public property and are to be effectuated through a competitive process. However, the PPL law is not applied in cases when the disclosure of information for the constitution of the PPP would endanger national security, when a PPP is constituted on the grounds of international agreements concluded between Serbia and one or more foreign states and if the subject of the partnership is the exploitation of telecommunication network.

Regarding unsolicited proposals, the law provides that if the initiative for a PPP comes from a private party, the public authority must decide on such a proposal within 90 days.

The PPP law prescribes that a participant has the right to object to and challenge the process in accordance with the provisions of the PPL. The PPL stipulates that bidders can submit a complaint to the Republican Commission for the Protection of Rights in Public Procurement Proceedings. Such a decision may be appealed in the frame of an administrative court proceeding.

The content of the PPP contract is regulated in detail. The PPP law contains a list of 28 matters that shall be addressed in the contract, as well as grounds for the termination of the contracts. However, there is no model PPP agreement, although it may be expected, since the web page of the PPP Commission contains a place holder for such an agreement.

The PPP law regulates that the duration of the project should depend on the length of the period required for the amortization of the private party's investment and an appropriate return on the investment. The PPP law sets out the possibility of an extension in the event that the private partner is precluded in the realization of its contractual obligations without its culpability. Based on the PPP law, the contract has to contain the conditions of amendments or termination of the contract (and requires the explanation of the reasons for termination, such as changed circumstances or force majeure).

The law neither explicitly allows nor prohibits compensation to a private party. The PPP law allows the private party to collect tariffs and fees under the condition that such matters should be regulated in the project agreement. The law neither explicitly allows nor prohibits the possibility of receiving payments from the granting authority. Consequently, the parties in the project agreement may agree to such payments.

Provisions for public authorities to support and provide guarantees are not regulated in the law. In practice, the central government can provide guaranties and support to the municipalities and therefore to the PPP projects.

There are also no provisions for step-in rights for lenders or for the substitution of a new private partner.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

According to the PPP law, a Commission for Public Private Partnerships was established in 2012 under the Ministry of Finance (*Decision on Establishment of Commission for Public-Private Partnership*, 2012). After the elections in mid-2012 and government reorganization, the Commission became a part of the government and includes representatives from different relevant ministries and from the governments of Vojvodina Province and the City of Belgrade.

The major tasks of the PPP commission are technical support, promotion of PPP arrangements, and approval of all PPP projects. The Commission has been granted the ultimate power of approving each PPP project, implying that no project can be realized without the approval of the Commission.

It is expected that the Commission for Public-Private Partnership (Commission) will incorporate the value-for-money methodology, which is currently undergoing a public discussion, into its bylaws, establish bylaws on the supervision and registration of awarded PPP contracts, and prepare template PPP contracts and direct financing agreements. The PPP Commission is funded by government budget.

4.2 Procedures for project appraisal and prioritization, the role of main actors in project stages

There is no standard procedure for the identification, selection, and prioritization of PPP projects that is being used in Serbia. The

projects are typically addressed on a case by case basis, and there is no comprehensive program of PPP projects.

The development of Guidelines for use of the *Public Sector Comparator* and the *value-for-money* methodology in the evaluation of PPP project proposals is in the final stage.

The public body, responsible at a certain level (national, provincial or local), may initiate and access the feasibility of PPP project. The assessment should typically be verified by the PPP commission at the national level. After approval, the tendering procedure should be performed. Relevant public bodies at each level are responsible for tendering procedure and monitoring the projects.

4.3 Standardized process and documents for PPPs

There is no standardized process or documents specific for transport PPPs.

For PPP projects without concession elements, awarding is governed by few articles of the PPP law and the PPL. The PPL sets out the details of the public procurement procedure for selecting a private party. There are six different procedures envisaged: open procedure, restricted procedure (i.e. a two-stage procedure), negotiation procedure with and without publishing of public call, design contest, and low value procurement procedure.

For concessions, the PPP law sets out the details of the procedure for selection of the private party.

If the project agreement is awarded under the PPL, the Concession Law, other sectorial laws, and a list of mandatory material provisions must be included in the agreement in case the provisions of the competent law require them. The PPP law regulates the compulsory provisions of a public contract, i.e. the project agreement.

Standard forms of general PPP contracts at the local level are being developed by the non-governmental Association of Towns and Municipalities in order to enable their easier implementation.

5 Conclusion

Most of the transport infrastructure projects in Serbia in the last few decades have been developed as classic public projects and financed through loans from international financing institutions. In recent years some projects have been financed by interstate loans (i.e. loans from other countries, like China and Azerbaijan).

The current legal framework in Serbia, which includes laws on PPPs, public procurement, and communal activities, enables the development of PPP projects. However, very few projects have been implemented in the past, and those only at the local level, and there is no strategic approach at the national level regarding the development and implementation of PPP projects. The main reasons are the relatively poor condition of economy, the lack of feasible projects, particularly at the national level, and the lack of expertise, primarily in the public sector.

The relatively large public debt, insufficient public funds for the development of transport infrastructure, and inefficient public services may lead to stronger consideration of the involvement of private capital in the main transport infrastructure projects in the future.

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SECTION III

NORTHERN EUROPEAN COUNTRIES

Denmark

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Abstract

Public-private partnerships were officially introduced in Denmark in 1999 but no projects were implemented in the first years. In 2004, the Danish government launched a PPP Action Plan with a number of new policy initiatives to promote uptake of PPPs and a list of seven PPP pilot projects. However, in spite of the PPP Action Plan, PPPs did not get off the ground. Research on PPPs in Denmark illustrates that fundamental regulations were partly in conflict at the same time as key ministries including the Ministry of Finance and the Ministry of Economic of Business Affairs had very different interpretations of the pros and cons of PPPs. In particular, the Ministry of Finance has viewed PPP as a more expensive financing route compared with conventional public financing of similar projects. This concern has been particularly evident because of Denmark's strong public finances that have made private finance of infrastructure investments largely redundant. For these reasons, Denmark has been presented in PPP literature as belonging to the group of PPP sceptic countries. However, in the aftermath of the financial crisis and in the context of active lobbying from pension funds and other institutional investors, this situation now seems to be gradually changing. Recent years have witnessed a rapid development in the number of planned and implemented PPP projects and the launch of new political initiatives to support further use of PPP. Consequently, Denmark now seems to be moving out of the PPP sceptic category and into a broader group of countries that are utilising the PPP route for various types of construction and infrastructure projects.

1 Introduction

Denmark is geographically located in Scandinavia in Northern Europe and is a small open economy with about 5.7 million inhabitants. Denmark has a unitary state structure supplemented by a relatively decentralised three-tier governance structure consisting of local, regional and national authorities. Within this three-tier system, regional and local authorities are relatively autonomous and they for example have the right to levy taxes and define service levels across many welfare service areas. In line with the other Scandinavian countries within the group of universalist welfare state regimes (Esping-Andersen, 1990), Denmark has a long tradition of publicly financed and produced services of which a majority are defined and delivered by regional and local governments.

The Danish economy is characterised by a comparatively large public sector which is exemplified by the fact that general government expenditure accounts for approximately 58 per cent of GDP – the highest percentage in the world (OECD 2011). In 2010, GDP per capita was approximately €42,500 (Eurostat 2012). In spite of recent setbacks due to the financial crisis and a relatively large housing bubble, in comparative terms, the Danish economy has displayed small expenditure deficits and a low general government-debt level over the past decades. During the past ten years, the government sector has produced an average annual surplus of 1.4 per cent measured against GDP, which compares to an EU average of -3.2 per cent in the same period (Eurostat 2012). Moreover, as a result of the surpluses on annual government budgets in this period, general government debt was brought down from 72.6 per cent of GDP in 1995 to 46.5 per cent of GDP. For these reasons, private finance through the PPP route has by and large been viewed as redundant by decision-makers within central government ministries (Petersen, 2009).

In comparative terms, Denmark was a late adopter of privatisation reforms. Until the late 1980s, the majority of public companies were still publicly operated and owned, but by the early 1990s the Danish state began privatising a number of public companies. Privatisation reforms resulted in the privatisation of a handful of major public companies including the State Airports, Giro Bank, Data Services and Telecom Denmark (Greve, 2008), but privatisation reforms remained relatively modest in international comparison (Pollitt & Bouckaert, 2004). Consequently, in spite of various initiatives to impose principles of market-based governance in the Danish public sector, most public companies still remain on public hands. Two major infrastructure projects in the 1990s - the Great Belt Bridge and the Oresund Bridge – were constructed as state-owned companies backed by government guarantees. User tolls are collected on these two bridges, but the projects are generally not considered to be PPPs because of the public finance element and the semi-public operation responsibility.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

Denmark's decentralised three-tier government structure means that decisions regarding infrastructure projects are spread across the local, regional and national political levels with high diversity in the responsible government level for various modes of transport. Decisions regarding roads and related maintenance projects are divided between the national level (motorways and some major roads) and the local level (most local and regional roads). Within railway infrastructure, decision-making authority is divided between the local, regional and national levels, whereas the bus system is operated by regional traffic companies that are mainly owned by the local governments. Both airports and seaports are mainly owned by local governments and organized as various forms of publicly owned

companies, but the Danish state has shares in a few air- and seaports mainly in the Copenhagen area.

Although most infrastructure modes are generally classified as public domain, there is a relatively high proportion of private involvement within some infrastructure modes. None of these arrangements are classified as PPPs, but they illustrate the long Danish tradition for public and private interaction in the planning and operation of various types of infrastructure services. For example, many local roads in residential areas are classified as private roads which mean that the residential communities own and maintain these roads. Another form of private involvement applies to the operation of bus routes, where bus operation is contracted out to private operators in many regions. Some regional train routes have also been contracting out to private providers, whereas national train routes have so far remained within the public domain.

2.2 PPP policy framework

The concept of PPP was formally introduced in Denmark by the Danish Ministry of Finance in 1999 (Vrangbæk, 2008). However, the introduction of PPPs went more or less unnoticed in the broader public. In 2001, the Nyrup Rasmussen social-democratic government was replaced by a liberal-conservative government led by Prime Minister Anders Fogh Rasmussen, who announced a more widespread involvement of private partners in public service delivery. In the subsequent years, a handful of government reports mentioned PPP as a means of optimising large-scale construction and infrastructure projects, but no concrete government action was taken, and no money was earmarked for PPP projects in the years that followed.

In January 2004 the Danish Government launched a PPP Action Plan with ten initiatives to support a more widespread use of the PPP

model in Denmark (Danish Government, 2004). Important among these initiatives were seven pilot PPP projects, the establishment of a Danish PPP Competence Unit, and a universal PPP testing requirement. Furthermore, the Action Plan set up pools of money for supporting local and regional authorities in the testing of projects for PPP relevance. Moreover, the government announced that it would launch clear regulations for local governments, which should support utilisation of the PPP model (Danish Government, 2004).

The PPP Action Plan thus seemed to indicate the Danish Government's commitment to the use of PPPs, but a closer scrutiny illustrates that many initiatives have either been seriously delayed and/or had little practical effect on the formation of PPPs. Contrary to many other countries, where PPP competence units are working under the auspices of the Ministry of Finance, the Danish PPP Competence Unit was placed in an agency under the Ministry of Economic and Business Affairs, which traditionally has served as the little brother to the Ministry of Finance. The Danish PPP unit is responsible only for facilitating construction type PPP projects such as schools, office buildings, sports arenas, etc. In contrast, infrastructure PPPs have been given no dedicated institutional support in Denmark, even though five out of the seven pilot PPP projects in the government's action plan were road sector projects and many of the potential PPP projects that are now being discussed are projects within the infrastructure area.

Table 1: Ten initiatives in the Danish Government's 2004 PPP Action Plan.

<i>Action</i>	<i>Status</i>
Seven national pilot PPP projects	Two projects implemented One project planned as PPP Two projects to proceed as traditional procurement projects One project cancelled One project has been analysed but the report has never been released
Universal testing requirement: All national construction projects to be tested for PPP relevance	Implemented in Danish building legislation for state, regional and local authorities (applies only to construction sector, not infrastructure sector)
App. €3.3 million to support PPP testing of infrastructure projects by local and regional municipalities	Few potential transport PPP projects have received support for ex ante testing
App. €0.9 million to support PPP testing of construction projects by local and regional municipalities	Analyses of PPP relevance for app. 15 projects have been partly financed from this pool of money
Clear regulations on local municipalities' budgeting and finance of PPP projects	Regulations unchanged until a special government commission resolved the issue in May 2008
Framework contract with three preferred PPP advisors	The framework contract was delayed significantly but eventually signed in 2006
General PPP guidance documents and legal guidance material	Guidance material and standard contracts have been published by the Danish PPP unit
Web-based portal hosting all official Danish PPP documents	Implemented. Danish PPP guidance material can be found at www.kfst.dk .
Analyses of Denmark's potential use and scope of the PPP model	Two reports produced. One is showing a Danish PPP potential of app. €3 billion in the period 2005-2010.
Launch of a Danish PPP Competence Unit with responsibilities for construction type PPPs	Established in 2005 but funds removed in 2009. Established again in 2011. Exclusive focus on construction sector PPP projects, no expertise in infrastructure PPPs.

The absence of comprehensive initiatives to support PPPs in general and within the infrastructure area in particular is furthermore demonstrated by the nature of the announced pilot PPP projects. Whereas the launch of policy programmes in more PPP enthusiastic countries was supported by pilot projects that were actually to be signed as PPPs, Denmark's pilot projects were only to be tested for PPP relevance. An examination of the pilot PPP projects illustrates that only two schemes have been signed as PPPs. None of the remaining five projects have proceeded to the procurement phase, one project has been cancelled, and in three cases the ex-ante testing concluded that PPP would not be likely to deliver better value for money than public finance. Two of the five remaining projects are still planned to be carried out as PPPs, but procurement has not yet been initiated (see Table 1).

2.3 Previous and current PPP experience

In Denmark, there has until recently been relatively modest experience with PPPs. However, especially within the last 3-4 years, the PPP model has been considered for a variety of construction and infrastructure projects. At the beginning of 2013, 19 PPP projects were planned or implemented in Denmark. This includes projects at municipal, regional and the state level, and further 12-13 PPP projects are expected to be realized in the coming years. Ten of the 19 PPP projects are currently in operation, three projects are in the construction phase and six projects are in the tendering process. Most of the PPP projects have a total contract size over 100 million DKK (app. €13 Million), which is the recommended minimum threshold limit for PPP projects in Denmark (Petersen, 2007). During recent years, though, some PPP projects with a smaller contract value than the recommended threshold limit have been implemented. The first Danish PPP project for within the infrastructure area - a motorway between the towns of Sønderborg and Kliplev – became operational in early 2012. The motorway project is the largest PPP project in Denmark to date with a contract value of approximately

1.3 billion DKK (app. €173 million). With the latest developments in the number of PPP projects, Denmark is now gradually moving out of the PPP sceptic category, and when taking the relative small size of the country into account Denmark is now among the northern European countries with the highest number of planned and implemented PPP projects.

PPPs have so far mainly been used in Denmark in the construction sector (17 projects), while the PPP model has so far been less used within the infrastructure sector (2 projects). PPP activities are primarily focused on education (public schools) and public buildings (courthouses, tax offices and archive buildings). Seven projects have been carried out by local municipalities whereas ten PPP projects have been signed by the Danish state. At the regional sector, PPPs have been discussed and analyzed in relation to a planned construction of a number of new mega-hospitals, but the regional PPP activities have so far been limited to a parking facility in connection with an existing hospital building and a planned new psychiatry ward as a PPP project. If realized, this project will be the first Danish PPP projects within the health sector.

In terms of financing routes, PPPs in Denmark were from the outset financed by private investments by the PPP Special Utility Vehicle (SPV), which typically included a private investor such as a bank or similar. 12 PPP projects have been completed with private funding. Recently, however, a new Danish PPP model with public finance has become more widespread, and this new PPP model has now been used for the signing of four projects. The public finance element in the PPP model implies that the public authority typically pays the construction costs up-front and subsequently pays a fixed rate to the SPV during the operation period (Schmidt-Jensen, 2010). The first infrastructure PPP (the motorway project) was completed as a PPP project with public funding. The scheme became operational ahead of time and has been considered as a success, although there has until now been carried out no ex-post value for money evaluation of

the project. This lack of evidence concerning the value for money of Danish PPP projects applies to the PPP programme as a whole.

2.4 Political stability

The Danish political landscape has been rather stable in its reluctant yet gradually more positive approach towards PPPs. PPPs were introduced by the Nyrup Rasmussen Social-democratic government in 1999, and when the liberal-conservative Fogh-Rasmussen government came into office in 2001, this did not materialize in significantly more focus on PPPs (Petersen, 2011). When a Social-democratic government came into office again in 2011, it declared an intention to analyse the pros and cons of PPPs for investments in large-scale construction and infrastructure projects. However, although there has been a slowly developing upward trend in the political focus on PPPs in recent two-three years, the analyses of PPPs have so far not been commissioned. The political support for PPPs has thus been gradually increasing during recent years, but PPPs have generally not been high on the political agendas of Danish policy-makers, and in international comparison the political interest in PPPs has most of the time been relatively modest.

2.5 Effects of financial crisis on PPPs

The financial crisis has generally had a very little impact on Danish PPPs. This is perhaps most of all the case because private finance of PPPs has never been the main argument for utilising the PPP model in Denmark. Project finance for implemented PPP projects seems to be well-structured and the AAA-rating of the Danish economy might also have played a role in terms of safeguarding PPP projects from the turmoil on the international financial markets. There have been no specific initiatives taken for implemented PPP projects in relation to the fiscal crisis and no projects have been renegotiated or refinanced during the crisis. The perhaps only impact of the financial

crisis on PPPs in Denmark is that the abovementioned PPP model with public finance is increasingly being utilized for new PPP projects because the interest rate gap between public and private finance has increased during and after the financial crisis.

2.6 Change in PPP policies because of financial budgetary crisis

There have been no significant changes in PPP policies in general or within transport that are related to the financial crisis.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

In Denmark, there is no specific PPP or concession law, neither for PPP projects in general or for transport PPPs specifically.

3.2 Scope and boundaries of specific PPP law

As mentioned above, there is no specific PPP law.

3.3 Elements provided in legal framework

In spite of the absence of a specific PPP or concession law, there are a number of regulations that apply to PPPs in Denmark. More specifically, PPPs are regulated by four sets of regulations (see also Petersen, 2010a):

Universal PPP testing requirement:

Since 2004, the Danish Government has enforced a universal PPP testing requirement for public sector construction projects. The universal testing requirement is implemented in national building legislation and was the second initiative of the government's Action Plan for PPP. The testing requirement requires that all major projects are 'examined for PPP relevance', which is formulated in rather broad terms (Danish Government, 2004). Initially, the PPP testing requirement applied only to national level projects, which meant that local and regional government projects were not subject to the testing obligation. Furthermore, PPP testing was only mandatory for construction/building projects whereas all infrastructure projects (roads, railways etc.) were not required to be tested. However, since 2012 the testing requirement has also applied to local and regional government projects.

PPP procurement regulations:

There is no procurement law in Denmark because the government has chosen to implement the EU procurement directives directly into Danish law. PPP projects in Denmark are therefore regulated directly by the EU Procurement Directives (European Parliament and Council, 2004). The competitive dialogue procedure was launched in 2004 to facilitate the procurement of contracts that are 'particularly complex'. More specifically, the aim of the competitive dialogue procedure is to support procurement of projects where the public sector agencies:

- are not objectively able to define the technical means (...), and/or
- are not objectively able to specify the legal and/or financial make-up of a project (European Parliament and Council, 2004: 18).

The competitive dialogue procedure is thus intended to facilitate procurement of PPPs based upon open output specifications. Rather than choosing a preferred bidder early in the process, the public authority pre-qualifies a list of consortia that proceed into the dialogue stage, where the procurement authority arranges a number of bi-lateral meetings with each of the pre-qualified bidders. The

output specification is thereby specified throughout the dialogue process. The process terminates with detailed bids from all remaining bidders, after which the public procurement authority awards the proposal it considers to be the most attractive in terms of price and quality. The competitive dialogue procedure has been used for the procurement of most Danish PPP projects to date (Petersen, 2010a).

Regulation of local government PPP lending:

The use of PPPs in the local government sector in Denmark is regulated in a way that restricts local governments' access to private lending and leasing arrangements. Local municipality access private loans through PPPs is considered to be the same as financial leasing and requires that the municipality is able to reserve an amount equal to the value of the contract in a closed account before signing the PPP contract. This regulation is intended to secure that the PPP model is used mainly as a means of increasing the value for money of construction projects and not as an alternative means of financing projects that the local municipality would otherwise not be able to pay for (Petersen, 2011). The reserved amount is then gradually released over the course of the contract period in order to parallel PPP arrangements with traditional procurement methods.

Tax and VAT for PPPs:

The tax and value added tax (VAT) regulation of PPP projects has been, and to some extent remains, a controversial and complex issue in Denmark. Danish PPP research illustrates that the tax and VAT issue for PPP evolved by chance when Denmark's first PPP project was being planned in 2005 (Petersen, 2009). Danish tax legislation makes it possible for companies to depreciate their assets, and this depreciation can be deducted before the company pays corporate taxes. Also, VAT can be deducted from the company's expenses related to operating and maintaining an asset for commercial purposes, for example a building or infrastructure facility operated under a PPP scheme. However, a PPP company can only depreciate

the building or infrastructure and deduct VAT from its expenses if it is considered to be the legal owner of the asset. In 2004 the Statistical Office of the European Communities (Eurostat) launched a decision that a private partner's legal ownership of a PPP asset is subject to two principal conditions:

- The private partner bears the construction risk, and
- The private partner bears at least one of either availability or demand risk (Eurostat, 2004).

The Eurostat decision applies to PPP projects on an EU wide basis, and has been central to on/off balance sheet discussions for PPP projects in many countries. Eurostat launched this decision based on concerns that some countries would place projects off balance sheet in order to meet the Excessive Deficit Criteria established under the European Monetary Union. However, in Denmark the on/off balance sheet discussion has at least until recently not been an important issue, presumably because the country have meet the Excessive Deficit Criteria by a large margin. EU regulation on the legal ownership of PPP projects has therefore not been as important in Denmark as it has elsewhere, but Danish tax and VAT legislation has nonetheless created some hindrances for PPP projects over the years, and the ownership treatment of PPP projects is still decided by the tax authorities on a case by case basis.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

A Danish PPP unit was established in 2004 as part of the government's PPP Action Plan. Over the years, the PPP unit has on average been allocated 2-3 part-time employees. However, the PPP unit 2009 it ran out of funds and was eventually abandoned. Then in 2011, a new PPP Unit (a so-called PPP Contact Point) was re-established in a new form and within another government agency

than the first PPP unit. The unit is operating under the auspices of the Ministry of Economics and the Interior at the central government level, while there is no PPP unit at the regional and local levels in Denmark. In contrast to countries such as the UK, Ireland, and Netherlands, where PPP units have been set up under the Department of Finance, the Danish equivalent was thus set up in the Ministry of Economic and Business Affairs. Being traditionally the little brother to the Danish Ministry of Finance in most public sector reform issues, this institutional affiliation meant that the PPP Unit was from the outset limited in its ability to coordinate government initiatives across various ministries (Petersen, 2010a).

Furthermore, in 2004, an inter-departmental group on PPPs was created to coordinate policies and other PPP initiatives among central government departments and agencies. Quite paradoxically, though, this inter-departmental group was headed by the Ministry of Finance, a notorious PPP skeptic. For these various reasons, competencies were thus dispersed across various government bodies with different views and interpretations of the pros and cons of PPPs. Danish PPP research has pointed out that this lack of a clear-cut institutional underpinning is one of the primary reasons why PPPs have only gotten slowly off the ground compared with other countries in Europe (Greve & Hodge, 2007; Petersen, 2010a; 2011).

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

There are no mandatory ex ante evaluation instruments for appraisal and prioritization of PPPs in Denmark. Various types of Public Sector Comparators (PSCs) have been developed by the private PPP consultancy industry, but there is no standard PSC tool available and no requirement to use such a tool although some sort of comparator has been utilized for most PPP projects to date. PPP projects are

planned, procured and implemented either by 1-2 national public agencies or by the 5 regions or 98 municipalities depending on the sector and mode of transport. Tender and post-award appraisal is also the responsibility of the public authority that plans and procures the PPP project.

Project screening and appraisal is regulated quite differently for the national level and the local/regional levels. At the national level, PPP projects are regulated in line with financial leasing arrangements and are therefore required to undergo an ex-ante screening and green lighting through the Ministry of Finance and the Parliament Committee on Financial Affairs. Local government PPP projects are also compared with financial leasing arrangements but are subject to much less regulation by state authorities. Local government PPPs are only screened if the municipality applies the Ministry of Economics and the Interior for access to additional lending in relation to the finance of a PPP project. In addition to this, the decentralized government structure implies that there is no mandatory central screening for local and regional government PPP projects.

4.3 Standardized processes and documents for PPPs

There is no standardized contract tool or documents that have been used for procurement of PPPs in general or transport PPPs in particular. Also, there is no standard tendering procedure, but as previously mentioned, most PPP projects in Denmark have been procured under the competitive dialogue procedure. The national PPP Competence Unit is currently working with various forms of templates and standard models for PPPs (Danish Competition and Consumer Authority, 2013). The templates and models have until now mainly served as guidance for public authorities in the early stages of planning a PPP project, and most public bodies involved in assessment, planning or procurement of a PPP project have contracted with one or several legal, financial and technical advisors in the private PPP consulting industry. It thus remains to be seen

whether the new PPP templates and standard models will have any real and lasting impact on the formation of PPPs in Denmark.

5 Conclusion

PPPs were officially introduced in Denmark in 1999 but did not get immediately off the ground. The first PPP policy paper – a so-called PPP Action Plan - was launched in 2004 but produced little action in the following years. Part of the explanation for the reluctant Danish PPP approach was that fundamental regulations were in conflict while key ministries such as the Ministry of Finance and the Ministry of Economic of Business Affairs were not in agreement concerning the potential pros and cons of PPPs. The Ministry of Finance in particular has viewed private finance through PPPs as a more expensive finance route than conventional public finance. This concern has been particularly evident because of Denmark's strong public finances that according to many experts and decision-makers have made private finance through the PPP route largely redundant. Although Denmark has for several years belonged to the group of PPP skeptic countries, this situation now seems to be gradually changing. In the aftermath of the financial crisis and in the context of active lobbying from institutional investors, there has been an increase in the political interest for PPPs both at the national, regional and local level. As a result, over the past 3-4 years, the number of planned and implemented PPP projects has been rapidly increasing. Until now, the PPP model has mainly been utilized for construction projects whereas PPP within the infrastructure area has hitherto been limited to two projects. However, additional 12-13 projects are currently being planned as PPPs and several of these schemes are infrastructure type PPPs. As a result of recent developments, Denmark now seems to be moving out of the PPP

skeptic category and into a broader group of countries that are experimenting with PPPs for the commencement of various types of large-scale construction and infrastructure projects.

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Estonia

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Abstract

Contrary to the increasing attention to infrastructure public-private partnerships [PPP] worldwide, Estonia has been a reluctant adopter of the concept. With only a few operational PPP projects on the national level, Estonia has no dedicated PPP policy-support institutions, and the political commitment has remained low. This offers an analytical puzzle as Estonia has been an eager follower of market-type public-sector reform ideas, while the country's infrastructure is in heavy need of investments. This paper gives an overview of the past and current PPP policy developments in Estonia and offers some preliminary insights into the factors shaping the PPP landscape.

1 Introduction¹

In the past two decades Estonia has been a rather modest user of public-private partnerships [PPP].² With some reservations PPPs have only been used extensively in the port sector, but this purely concerns business transactions of one state-owned company and not public services *per se*. Local governments have also implemented some PPP projects, while the central government – a focus of this paper – has been a very hesitant user of PPPs. A popular, but perhaps a too simplistic view would associate the uptake and evolution of PPPs in a country primarily with attempts to marketize and liberalize public-service delivery and to attract private finances for public infrastructure development. Taken from this perspective, however, the Estonian case offers an analytical puzzle – how to understand and explain the modest uptake of PPPs in a country that during past decades has not only chronically underinvested in its infrastructure, but has been an eager follower of market-type public-sector reform ideas and almost dogmatic in keeping the public-sector debt level as low as possible?

Many macro-institutional processes have shaped the current situation. Perhaps most importantly, so far the major infrastructure investment needs have been met with external funding (most notably the European Union [EU] Structural Funds), which, in turn, have suppressed the need for alternative financing tools, such as PPP. Thus, the influence of the membership and internal processes of the EU may have indirectly affected the uptake of PPPs in Estonia. Also, contrary to many other countries, macro-economic concerns may have acted as a systemic barrier to PPPs in Estonia. Macro-economic stability became the key idea of the early economic policy-making in

¹ I am grateful to Andri Haran, Laidi Surva and Reelika Rattus for their help in preparing this paper.

² PPP is a concept that has proven difficult to define in a precise manner. The PPPs considered in this paper follow the definition offered by the European Investment Bank to a great extent, see <http://www.eib.org/epec/g2g/intro2-ppp.htm> (24.04.2013).

Estonia, and the choices made alongside with the initial decisions have reinforced the dominance of macro-economic stability over other policy concerns during the past two decades (Raudla & Kattel, 2011). This has contributed to the situation where PPPs are predominantly addressed through the lenses of fiscal policy-making in the Estonian policy discourse (see also below) rather than from value-for-money or similar concerns. As PPPs are seen by many policy stakeholders as a potential threat to fiscal and thus overall macroeconomic stability in Estonia, this may also explain the rather cautious treatment of the PPP concept in the country. Moreover, as Estonia can be characterized as a liberal-market economy with weak linkages and a high level of distrust between the state and the market (ibid.), the market stakeholders – potentially interested parties in PPP – have limited access to influence public policy-making in Estonia. In addition to the weak macro-institutional pressures, there has been rather weak international pressure – be it regulatory, normative or economic (Verhoest et al., 2010) – to introduce infrastructure PPPs in Estonia. Especially during the early years of regained independence, when most public policies had to be built up from scratch, international donor organizations had a tremendous influence over policy-making in Estonia (see e.g. Randma-Liiv, 2005). PPPs as a rather specific policy instrument have never played a central role in policy transfer in Estonia compared to, for example, broader health-care, social or economic policies, in which the role of international donors such as the World Bank or the EU has been instrumental in introducing market-based mechanisms into the public sector. The remainder of this paper will leave the macro-institutional perspective and take a rather policy-oriented focus on the Estonian PPP developments, both in general and more specifically in the transport sector.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

In Estonia, the transport infrastructure policy is mainly formulated, and related investment decisions are made, on the national level, whereas the regional and local levels are involved only in limited capacities. In the areas of railways, airports and main ports the central government is the sole policy maker. Roads is the policy field where the decision-making roles are divided between the national and local levels. Finally, decision-making responsibilities in bus transport are shared by the national, regional (county) and local levels.

2.2 PPP policy framework

There are no general or transport-related strategic PPP policies on the national level in Estonia. A modest attempt to formulate a PPP policy was made in the field of housing in 2008, but apart from mentioning the goal to build at least 700 new apartments by 2013 (Ministry of Economic Affairs and Communications, 2008), no actual steps have followed. With regard to transport, the current National Transport Strategy (2006-2013) does not contain any implications towards the potential usage of PPPs (Riigikogu, 2007). In general, PPP policy in Estonia can be regarded as an example of a “no-policy” policy: the existing PPPs have been developed and implemented without any strategic plans or dedicated support structures. Neither there is a significant pipeline or timetable of viable PPP projects to which the government is committed to procure.

However, two specific sectoral cases should be outlined separately here. State Real Estate Ltd, a state-owned company offering real-estate services to public agencies, has implemented four small-scale PPPs so far, and is planning to continue with PPP arrangements in

the coming years, all of which are related to public office renting.³ As will be demonstrated below, State Real Estate Ltd is one of the most active PPP players on the national level and its activities in a way form a de-facto PPP policy in the government real-estate policy. Secondly, state-owned Port of Tallinn extensively uses various PPP-type arrangements. Being the owner of the main trade ports in Estonia, Port of Tallinn is a typical landlord-type of port, which by definition assumes heavy reliance on cooperation with private operators. Accordingly, the port's business model foresees continuous use of PPP-type arrangements in the future, as well.⁴ However, Port of Tallinn represents an exceptional case as the focus of its PPP arrangements is purely on market transactions with no public services involved. Therefore, the port sector will be treated separately from general trends in PPP in Estonia in the remainder of this paper.

There is also some strategic policy-making going on at the local level, yet to a very limited extent. For example, in 2002 the capital city of Tallinn acknowledged PPP as important investment mechanism for road construction in its investment and budget strategy (Tallinn City Council, 2002). Also, for many years the city of Tallinn had a plan to build an entire new tram-link via a PPP arrangement, a plan that has been postponed by today, though (Reimer & Jõgis-Laats, 2011; Tallinn City Council, 2012).

Estonia has been acknowledged as one of the most diligent students of the neo-liberal economic paradigm in Central and Eastern Europe (Lember, 2004). Privatization, marketization of public services, a balanced state budget and an almost negligible public-sector debt level have been among the key policy principles followed ever since the country became re-independent in 1991. At the same time, the country inherited poorly developed transport infrastructure with heavy needs for investment from the Soviet period. However, and somewhat contrary to one's expectations, all this has not led to an

³ There are potentially at least five PPP projects in the pipeline, see <http://rkas.ee/hanked-ja-pakkumised/paringud/arhiiv> (04.03.2013).

⁴ For future developments see <http://www.portoftallinn.com/port-of-tallinn> (04.03.2013).

intensive uptake and implementation of PPPs in the country. As already stated in the introductory section, this can be explained partially by the availability and importance of the EU structural funds in Estonia (amounting to up to 15-20 % of the state budget during the past few years) (Ministry of Finance, 2013), which has served as a major source for infrastructure investments during the last decade. This may have prevented PPPs from emerging as a potential financial or managerial tool for infrastructure development and public-service provision. Thus, there is a lack of internal pressures to go for PPPs in Estonia, as more traditional funding mechanisms are easily accessible. On the other hand, access to EU funding alone falls short in explaining the skeptic position of the national government towards PPPs. Here one can identify the political-ideological reasons as primary in explaining the low uptake of PPPs in Estonia. It can be argued that emphasizing on and following the macro-economic stability principles described above for the past two decades has made the main policy-makers suspicious toward introducing PPPs in Estonia. As noted in a report analyzing the Estonian transport sector in 2006:

There is a widely accepted opinion that PPP financing is in essence a differently labeled loan agreement and there is [sic] no substantial benefits compared to borrowing. This opinion is stated also in comments to “National Transport Development Plan 2006-2010”. (ECORYS Nederland, 2006, 49)

The ongoing financial and economic crisis has only reinforced this position. The leading coalition party, the right-wing Reform Party, considers PPPs a hidden debt burden for the country, which should be avoided if cheaper finance is available (Postimees Online, 2011). The key PPP policy player, the Ministry of Finance, is also of the opinion (2012) that the fiscal aspect is the most important one when considering the viability of PPP projects.

Based on the limited experience with PPP in Estonia, one can see that the primary reasons for establishing PPP projects are financial-budgetary reasons. These have played a central role in all five

projects identified in table 1 (Ministry of Defense, 2012; Laasik, 2011). Moreover, these have been clearly the most important, if not the only, reasons for the local government to engage with PPP projects; PPPs are widely perceived as a tool to remove long-term investment liabilities off balance sheets and therefore a way to cope with public-debt ceilings imposed on local governments by the central government (State Audit Office, 2012a; Ministry of Finance, 2012; Ministry of Defense, 2012; PWC Estonia, 2012, Postimees Online, 2011). Compared to the national level, local governments have been more positive towards using PPPs in Estonia. A number of different PPPs were initiated at the beginning of the 2000s on the local level in Estonia (Mäeltsemees, 2009)⁵, but this interest has decreased substantially since 2009 (e.g. the city of Tallinn has acknowledged this in its budget strategy for 2013-2016, see Tallinn City Council, 2012). In 2009 changes were incorporated into the national public-sector financial-accounting rules (Estonian Accounting Standards Board, 2008/2011), which made it very difficult for local governments to place PPPs off the public-sector balance sheet.

2.3 Previous and current PPP experience

As stated above, apart from the port sector, Estonia has historically been a rather reluctant adopter of PPP, and this is especially the case on the national level. The total number of initiated PPP projects on the national level can be estimated to be five (see table 1).⁶ All the

⁵ There is no official data available on the exact figure of how many PPPs local governments have implemented in Estonia. According to the State Audit Office (2012a), the number is at least above 20, but it must be noted that the definition of PPP of the Audit Office is much wider than the one that is used in this paper.

⁶ The number should be treated as an approximate figure as no official data exists. The State Audit Office has also claimed that there is a lack of reliable data on PPPs in Estonia (State Audit Office, 2012b). Accordingly, no data is available reflecting the total lending volume via PPP projects in Estonia.

implemented projects can be regarded as small-scale projects related to public-sector support services. No significant transport-related PPPs outside the port sector have been implemented in Estonia (see also ECORYS Nederland, 2006).

Table 1: National level PPP projects outside port sector in Estonia (1991-2012). (Source: author, based on various public documents and web sources).

Project	Form of PPP	Public-sector partner	Private-sector partner
Baltic Defence College's hostel in Tartu	DBFM	Ministry of Defence	Consortium (Vallikraavi Kinnisvara; Rand&Tuulberg; C.H.P. Ltd)
Court House in Jõhvi	BFM	Ministry of Justice/State Real Estate Ltd	Fund Ehitus
Police and Rescue Board building in Rakvere	BFM	Ministry of Internal Affairs/State Real Estate Ltd	Oma Ehitaja/OÜ Superficarius
Police and Justice building in Jõgeva	BFM	Ministry of Internal Affairs/Ministry of Justice/State Real Estate Ltd	Merko Elamu
Police and Rescue Board building in Kuressaare	BFM	Ministry of Internal Affairs/State Real Estate Ltd	Fund Ehitus

As explained earlier the port sector represents a deviant case when it comes to the Estonian PPP landscape. Port of Tallinn – a government-owned private legal body and owner of the most important seaports in Estonia – has by 2013 formed various partnership schemes with some 30 different private terminal

operators.⁷ These partnership contracts are based mostly on competitive tendering of concessions and lease-contract agreements (Ojala and Koskinen, 2004). When it comes to the port sector in general, and especially Port of Tallinn, one can see a clear influence from international best practices that were introduced in the Estonian port sector in the early 1990s, which foresaw the main trade ports in Estonia to be administered as landlord-type ports. Hence, partnership schemes quickly became the main business model for the most important government controlled trade ports, and this has remained so up until today.

It is interesting to note that although there are no other transport-specific PPP projects introduced in Estonia outside the port sector, there have been some notable attempts to introduce the PPP tool to other transport fields. A PPP solution was considered by the city of Tallinn to finance the construction and maintenance of the Haabersti intersection project, but as the Ministry of Finance – contrary to the city – regarded the plan as a loan obligation of the city, the plan was eventually postponed (ECORYS Nederland, 2006). The Ministry of Economic Affairs and Communications has analyzed the viability of a bridge connection between the island of Saaremaa and the mainland of Estonia for many years (Saaremaa Fixed-Link) (*ibid.*), but no decision has been made in that direction. For some years the Ministry of Economic Affairs and Communications considered PPP to be one of the most probable alternatives for enlarging the main transport link between the two largest cities in Estonia (Tallinn and Tartu), but this plan was eventually withdrawn because of the resistance from the Ministry of Finance (Postimees Online, 2011). The same happened to the plan of the Ministry of Defence to introduce PPPs in military infrastructure-development projects. In 2011, the Ministry of Defence announced that it was planning to analyze the suitability of PPP schemes for various military infrastructure development projects. Similar to the road PPP plans, this faced strong resistance from the Ministry of Finance and the plan was withdrawn (Ministry of Defence, 2012).

⁷ See <http://www.portoftallinn.com/terminal-operators> (24.04.2013).

2.4 Political stability

Estonia's national governments, which have been mostly led by right-wing parties during the past two decades, have never developed a strong PPP agenda. PPPs have been mentioned occasionally in party programs (e.g. Pro Patria and Res Publica Union in 2011), coalition agreements (e.g. Reform Party, Central Party and People's Union coalition agreement in 2005), and, as demonstrated above, in some strategic plans, but no concrete steps in terms of action plans or policy support structures have been developed. Interestingly, the two right-wing parties currently forming the coalition cabinet – the liberal Reform Party and the conservative Pro Patria and Res Publica Union – are divided in this question. The latter is a strong supporter of the PPP idea and sponsored the recent PPP plans in defense and transport sectors, yet the former is opposing the idea on the grounds of the hidden debt burden that comes with PPP. The main opposition parties, however, support the idea either strongly (Central Party) or to some extent (Social Democrats). The former has actually introduced a number of PPP projects in the capital city of Tallinn concerning social housing and reconstruction of municipal schools, while the latter has mentioned PPPs as a viable investment tool in its party program in 2011 (Social Democratic Party, 2011). Overall, the rather stable political situation in Estonia during the last decade seems to have contributed to the continuous skeptic view on PPP in Estonia.

2.5 Effects of financial crisis on PPPs

The recent financial crisis has had no significant effect on ongoing PPPs. This mainly has to do with the limited number of PPPs in operation. Moreover, as the PPPs in operation are of a small scale and simply concern the provision of support services to the public sector (the public sector being the sole consumer of the provided

infrastructure), private providers have remained sheltered from the crisis to a great extent. However, as was indicated above, the financial and economic crisis has reinforced the skeptic positions of some of the main policy players (e.g. Ministry of Finance, Reform Party) towards PPP. This has led to the withdrawal of several major PPP plans in the transport and defense sectors lately. The Ministry of Finance regards PPP as an unsuitable financial tool for infrastructure development under the current macroeconomic and fiscal conditions (Ministry of Finance, 2012), a position that summarizes well the prevalent preferences on the PPP landscape in Estonia.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

There is no specific law regulating PPPs or concessions in Estonia. In 2006, the Ministry of Finance carried out an analysis on the viability of dedicated PPP regulation, but it was decided that there is no need for specific regulation (State Audit Office, 2012b). The main legal acts that directly regulate PPPs and concessions are the guidelines of the Estonian Accounting Standards Board and the Public Procurement Act. The Public Procurement Act (*Riigihangete seadus*) was issued for the first time in 1995, and it has been significantly amended in 2000 and 2007. The Public Procurement Act is fully in line with EU directives, but with some modifications (e.g. national thresholds are 3,5-20 times lower than stipulated in the EU directives) (see Lember and Vaske, 2009, for a more detailed overview). In 2011, the notion of PPP appeared in the Estonian Public Procurement Act for the first time, but it only defined the concept without providing any further guidelines for its implementation. The main reason for defining PPP in the law was to provide legal basis for provider replacement in long-term partnerships. The Ministry of Finance acknowledges that from a public-law perspective the concept of PPP is still an underexplored

territory that needs further discussion (Ministry of Finance, 2012). Thus, in most cases the process of PPP follows general public procurement and concession rules provided in the Public Procurement Act.

It was not until 2005 that the notion of PPP was addressed through a special regulation in Estonia. The Estonian Accounting Standards Board issued rules on how the public sector should account for liabilities stemming from PPP contracts. These guidelines were amended in 2008, which, as noted above, radically limited the available PPP policy space for local governments. If prior to 2009 the Estonian public-sector financial reporting followed a risk-based approach in accounting for PPPs, which enabled considerable room for maneuver for public entities to put PPPs off the balance sheet, then after 2009 a control-based approach was chosen, meaning that PPPs (i.e. service concessions) almost automatically must be reported on the balance sheet. This, however, affects only internal policy-making, as international public sector debt comparisons (including those of Eurostat) still follow a risk-based approach in which liabilities are calculated differently compared to a control-based approach (see also Heald & Georgiou, 2010).

3.2 Elements provided in legal framework

The Public Procurement Act provides clear procedures for selecting a private partner through competitive procedures as well as non-competitive procedures in exceptional circumstances. This goes for public procurement as well as concessions. The procedures are outlined further in the Public Procurement Guidelines, a compendium of recommendations developed by the Ministry of Finance. There are no clear rules for dealing with procedures for unsolicited proposals. Review procedures provided in the Public Procurement Act do not directly address PPPs, but can be applied as far as public-procurement procedures are concerned. In addition, there are specific guidelines of the Estonian Accounting Standards Board regulating financial reporting of service concessions.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

Estonia has no dedicated support structures responsible for PPP policy-making or monitoring. Neither are there specific support institutions that offer assistance for setting up and implementing PPP projects. The public procurement policy unit of the Ministry of Finance provides some counselling on PPPs, but solely on an ad hoc basis. In fact, many PPP stakeholders (e.g. State Audit Office, ministries, local governments, private consultancies) would expect the Ministry of Finance to take a proactive role and set up a specific support unit to provide the public sector with clear instructions on if, when and how to go about PPPs (see e.g. State Audit Office, 2012a). Still, the Ministry of Finance has remained skeptic on the viability of these support institutions.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

When a PPP is undertaken in Estonia, the procuring agency has the main role to play in all PPP stages, from project initiation to contract management and payment oversight. However, since PPPs are subject to fiscal regulation, the Ministry of Finance, the Cabinet and the Parliament have veto rights in the pre-tender process. This means that if PPP assumes acquiring long-term liabilities (e.g. capital lease), it is eventually the Parliament that has to give the green light to the financial scheme. As has been demonstrated many times in the recent years, the Ministry of Finance indeed acts as a strong veto-player here.

4.3 Standardized process and documents for PPPs

Reflecting the under-institutionalized PPP landscape, the existing PPP practice has yielded to the low level of standardization in the field. This is equally so when it comes to the use of ex-ante evaluation instruments as well as contracts and project models. Moreover, the State Audit Office (2012a) has found that in the majority of municipal PPP cases local governments do not apply proper ex-ante evaluation tools in the first place. One can, however, notice some moderate level of standardization within specific policy fields. For example, State Real Estate Ltd uses mostly BFM models in which the private sector builds, finances and maintains infrastructure (i.e. office buildings) and the government rents the office space for a certain period of time. Although no clear pattern of tendering procedures can be outlined in Estonia due to the limited number of projects, tendering procedures initially must follow procedures as stipulated in the Public Procurement Act. There exists evidence, however, indicating that this is not always the case. For example, local authorities systematically tend to bypass the Public Procurement Act as well as fiscal regulation (State Audit Office, 2012a). At the same time, State Real Estate Ltd employs contract models that allow the company not to follow the Public Procurement Act.

5 Conclusion

Overall, Estonia, with the notable exception of the port sector, has been a rather skeptic country towards adopting PPPs in general, as well as in the transport sector. At least three core groups of factors can be outlined that have influenced the PPP evolution in Estonia. First, access to alternative investment opportunities – Estonia has had access to alternative financial sources, most notably to the EU Structural Funds, which may have kept the demand for PPPs modest.

Second, the prevalent political preferences have been in conflict with the idea of PPP. In Estonia the right-wing coalitions have been dominating the national government throughout the past two decades, but the governments have been either hesitant or straightforwardly opposed to the idea of PPP, mostly for macro-economic stability reasons. Third, and related to the first two factors, there is a lack of clear PPP policy and support structures, which has left the PPP concept ambiguous and underdeveloped for most PPP stakeholders and potential users.

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Finland

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Abstract

Technical infrastructure networks are typically owned, administered and managed by the public sector as they are considered public goods and critical assets by the state and the municipalities. The first Design-Build-Finance-Operate (DBFO) motorway project between Helsinki and Lahti on Europe 4 was launched in 1996. The Finnish approach to PPPs can, after a period of minor hype around 1995 and 2005, be described as pragmatic. PPPs are considered as one viable procurement method for capital projects and lifecycle management of major facilities. There has been a distinguishable shift from state projects to local projects of cities and municipalities. In most cases, these projects are outside the transport sector.

1 Introduction

As the first public-private partnership [PPP] projects were put forward in Finland in the 1990s, there were great expectations that a medicine for the capital investment gap was found. The capital gap was found to be increasing as day-to-day maintenance was requiring an increasing share of the State's infrastructure budget. In particular, this was the case for road and railway networks. Both road and rail administrations had gone through some major restructuring processes which resulted in an increasing outsourcing of infrastructure maintenance. The procurement of these services was in the focus of the administrations for quite some time.

The first Design-Build-Finance-Operate (DBFO) motorway project between Helsinki and Lahti on Europe 4 was launched in 1996. Much of the discussion around this first project, followed by contestation of a few other projects, was concentrating on finding the best way of organizing the capital supply and operating model—i.e. who and in what terms should finance such projects, and who and in what terms should assume operating responsibility for the concession period.

Another mainstream line of discussion was to a large extent terminological. BOTs (Build-Own-Transfer), DBFOs, lifecycle models and PPPs were sweetly mixed in the pot but regarded by experts as distinguishable and idiosyncratic models. Little attention was paid to actual costs and benefits of PPP arrangements, but as this was a subject little researched and studied in a formal manner, this was no surprise. Furthermore, the number of national level PPP projects in Finland can be counted on the fingers of one hand as of today. Therefore, little empirical material is available in Finland and few formal studies using projects as empirical cases have been published.

Institutional investors, such as pension funds and investment banks, were eager to promote new projects as they foresaw a novel investment opportunity through which relatively low risk and

exceptionally high returns could materialize. Infrastructure authorities were keen on PPPs since it provided them access to capital that was not available via annually negotiated public budgets, at least not as quickly as they saw their investment needs accumulating.

In recent years, there has been considerable political debate of building up a national infrastructure fund that would in particular invest in major PPP projects and hence close the gap between public commitments to long-range infrastructure development and investors' willingness to invest in infrastructure projects. The fund was envisaged to bring in state funds and funds from institutional investors, such as front-row banks and national pension funds. Particularly pension funds have expressed their interest towards PPPs, but the inevitable threshold has always been (and is likely to remain) the payback mechanism in order to amortize investors' capital input. Implicitly, the pension funds have stated that their preference is in individual projects rather than in dedicated infrastructure funds. This is a natural preference, as the investors like to assess risks of projects rather than of funds that comprise an unforeseen future project portfolio.

Until the end of year 2012, the majority of PPPs has taken place in the municipality sector, although the first projects were carried out as national transport infrastructure projects. There has been a slight shift from national PPPs towards local PPPs, and furthermore, from transport infrastructure PPPs towards schools, hospitals, and other types of municipality services. There is no national database available regarding local projects, so any definite numbers are practically impossible to give out. The national 10-year capital investment program (2012-2022) of the Finnish Transport Agency contains 21 capital projects, out of which only one is specifically planned to be executed as a PPP project. This is a strategic project between Finland and Russia, being the E18 road which has been developed as a series of PPPs for most of its parts. (Finnish Transport Agency 2012)

By and large, and during the last two decades, the procurement of infrastructure projects has been less of an ideological issue than one

would have expected. The debate was not completely absent, but across political frontlines, infrastructure development needs were considered to override ideological aspects when deciding PPPs.

2 Political commitment of PPP and PPP policies

2.1 Decision-making levels

Most of the infrastructure networks in Finland are owned and managed by local municipal governments or the State. Finland has not experienced liberalization and privatization comparable to Anglo-Saxon countries.

Technical infrastructure networks are typically owned, administered and managed by the public sector as they are considered public goods and critical assets by the State and the municipalities. Although the privatization movement has not advanced at the same pace in Finland as in several other countries, the public sector is beginning to adopt business-like, entrepreneurial practices in the form of Municipality-Owned Enterprises [MOEs] and Companies [MOCs]. Private ownership models that have been observed are for the private road and waterworks cooperatives, and for (two) private ports.

Most of the municipal infrastructure networks are administered and managed through public agencies, departments or technical centers, which are termed the client organization (this excludes cooperatives). The physical works, services (e.g. design), and operations can be performed by direct labor force (the traditional model), by the aforementioned MOEs and MOCs, by State-Owned Enterprises [SOEs] and State-Owned Companies [SOCs], by private companies, or combination of these. The tasks performed by the client and supplier units vary between governance models and the level of expertise available in the municipality. If the direct labor force has competence, the services are provided with own labor force up to its capacity. In the case where private markets do not exist

within the municipality, services are procured from surrounding municipalities or directly from private market.

Table 1: Ownership and governance of infrastructures (Source: *Leviäkangas et al. 2011*).

Network or node	Ownership	Governance model	
Transport	Public roads	State	Mandated infrastructure administrator and manager; prior to 2010: Finnish Road Administration; 2010-onwards: Finnish Transport Agency [FTA]
	Streets, communal roads	Municipality / city / private road association	Mandated dept. of municipal government or private road association or MOE
	Rail network	State	Mandated infrastructure administrator; prior to 2010: Finnish Rail Administration; 2010-onwards: FTA
	Ports	Municipality / city/ private	MOE or MOC or dept. in municipality administration / PLC [Public Limited Company]
	Airports	State	State-owned company
Municipal infrastructure networks	Water, sewage	Municipality / city	MOE or MOC or dept. in municipality administration, or a cooperative
	Local electricity	Municipality / city / private	MOE or MOC or PLC
	Local telecom	Private	PLC or cooperative
	Heating	Municipality / city or private	MOE or MOC or PLC
National transmission grids / networks	National electricity gridlines	Private (state has minority share)	PLC
	Telecom	Private (state has minority share in some)	PLC

Governance correlates with ownership and includes a hierarchal structure, which has a systematic approval process in which issues, budgets, management and administration, and other pressing concerns are decided upon. Various types of boards and committees

are the mainline structure, while the technical network agencies and departments run the day-to-day operations and management of the infrastructure networks. The governance structures between the state and municipalities are quite similar, but do change when different models are used (see figure 1 and table 1 below for an overview).

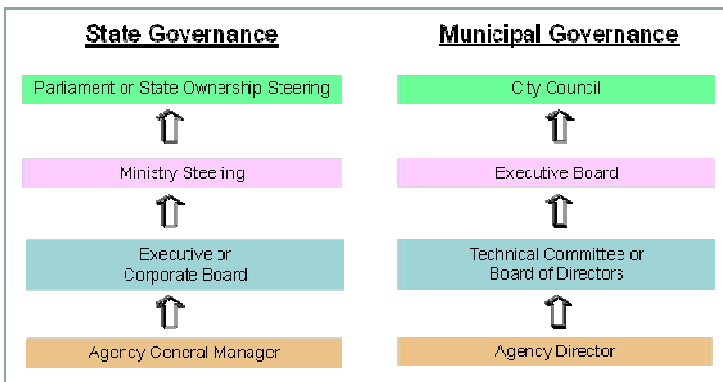


Figure 1: Typical governance and decision making structures (Source: Leviäkangas et al. 2011).

2.2 PPP policy framework and PPP experiences

There is no dedicated PPP policy in Finland. However, most governmental programs have stated that PPPs are to be considered as an alternative when making capital investments in infrastructures. The most recent government of Prime Minister Jyrki Katainen does not take any firmer standing on behalf or against PPPs than the previous governments. It simply keeps all options open (The Government Office 2011). The current government program does, however, take a step forward by prioritizing more holistic views to the transport sector and emphasizing sustainability in an economic and financial sense, apart from environmental issues. The whole networks' challenges are discussed much more than individual PPPs

(which are not discussed at all, in fact) or any particular views on which the financing mode should be favored.

The PPP experience of past projects is controversial, but first it should be reminded that most public information and analysis on PPPs regard only state-initiated PPPs—municipal and local PPPs are not publicly debated to a larger extent.

On the benefit side of the few PPPs carried out are the usual items that are generally considered as strengths of PPP projects: the projects are usually ahead of planned schedule and hence serving the public earlier than with traditional procurement, the projects are carried out efficiently, and as to end user satisfaction, the completed PPPs have performed well. On the downside, some general features can be identified as well. First of all, apart from faster completion, the projects usually do not result in immediately measurable economic benefits compared to traditional procurement, or at least this has been difficult to prove. Second, the procurement of PPPs still suffers from a lack of adequate expertise and tends to create numerous “grey area” problems and conflicts. Third, the revenue logic still relies on state payments for availability and service levels rather than on the user-pays-principle.

2.3 Political stability and effects of financial crisis on PPPs

Political stability has not been an issue in Finland. It seems that the political climate in itself towards PPPs is neutral: if PPPs demonstrate a case of better service, the political machinery as well as the general public will most likely adopt a favorable view on PPPs, and vice versa. There are the natural political frontlines that have ideological preferences, but these are hidden under or overridden by pragmatic attitudes towards PPPs. Both the public and political system seem to have taken an economist’s view to PPPs: financing is irrelevant, only good projects matter.

The financial crisis did not affect the attitudes towards PPPs except in the way that it perhaps slightly raised the interests towards transport infrastructure PPPs. For example, pension funds were

considering lower-risk investments for their portfolio. The meltdown of stock markets and fears that this meltdown would be a long-term phenomenon motivated the discussion on the liquid investments of pension funds, the State, and even municipalities. After all, these investors were using tax payers' and citizens' money. Infrastructure investments were, once again, considered as safer bets for long-term investments, and moreover, as investments that stayed inside domestic economy and would enhance the long-term growth prospects of the country and communities. This was one of the reasons why the debate on the aforementioned issue on state- or municipality-owned infrastructure funds was started—a discussion that probably has not been closed yet.

3 Legal and regulatory framework for PPP

3.1 Legislation associated with PPPs and concessions

There are no PPP-dedicated laws or official regulations in Finland. However, since the first PPP took place, some legislative fine-tuning has taken place. Rather than restricting or regulating the use or adoption of PPPs, the legislative changes have been of a technical nature in order to facilitate PPPs and make them a level-playing alternative for both investors and procuring bodies.

3.2 Renewal of tax law after first PPPs

The Finnish value added tax [VAT] and business and industry regulating laws presented a problem at the beginning of the first PPP project, the E4 motorway between Helsinki and Lahti. The Central Board of Taxation (Keskusverolautakunta) gave out a resolution stating that the project consisted of two parts: the construction service part and the maintenance service part (Resolution 273/1996, dated October 21st, 1996).

The Board decided that for the construction service the concessionaire would have to pay VAT and income tax for the whole project when the road was completed, i.e. opened for traffic. This would have meant a severe front-end loading of tax burden for the concessionaire. Furthermore, the Board regarded that the concessionaire would have to deduct interest on debt concerning the construction phase in those particular years that the interest was paid. This might lead to a situation in which the concessionaire would not be able to fully enjoy the tax shield provided by debt.

Depreciating the project was also problematic. Tax laws made it possible to have a depreciation period of maximum ten years, whereas the concession period was fifteen years at the minimum, and this also meant that there was a chance of not benefiting depreciation tax shields to a full extent—the project could well result in loss over several subsequent years. The Central Board of Taxation adopted this view too. Both the VAT regulations and business and industry tax regulations (Laws 1256 and 1257) were altered so that (i) value added taxes were paid at the end of each year's traffic counting period, (ii) income corporate taxes were also paid according to the aforementioned principle, and (iii) depreciation could be done according to a straight-line principle during the concession contract period. After the aforementioned revisions, tax regulations have not been a prohibiting factor for PPPs anymore.

3.3 Public procurement regulations

The laws on public procurement have a long tradition in Finland, and they have been evolving to their present form through a learning process of several decades. Naturally, the related EU regulations have brought new, but mainly geographical aspects to them in 1994 when Finland entered the European Economic Area. All public bodies, including both state and local agencies, governments and other public entities are subject to public procurement rules nowadays.

The analysis of the Government Institute for Economic Research (Mälkönen 2006) proposed that rather than engaging government entities into complex contractual arrangements with PPP investors, the government should remove the inefficiencies of its own actions that could prohibit PPPs to work efficiently and as a natural alternative to traditional public procurement. In other words, the procurement system should be developed so that no specific legislation would be necessary.

In essence, the current public procurement rules state that a holistic view to the economy and lifecycle of the procurement should be considered. Especially the lifecycle total costs, including the externalities, are to be assessed by the procurer. However, the technicalities are left outside these rules.

The most relevant topic in public procurement is currently the innovation-enhancing aspect of the procurement method and process. PPPs are seen as a natural, but not the only way of procuring assets or services in a manner that enables suppliers to make the most of their innovativeness.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units, standardization

Dedicated PPP support units were never built in Finland, nor has there been any serious discussion on the need of such units. However, there is a joint unit of the Ministry of Trade and Industry (www.tem.fi) and the Association of Finnish Local and Regional Authorities (www.localfinland.net) which advises in public procurement matters. The Public Procurement Advisory Unit provides advice on public procurement for both businesses and public administration. The consulting and services of the unit are free of charge for all.

The Ministry is the highest authority in regulating public procurement and is responsible for the establishment and development of national legislation. The Ministry is also a member of the European Public Procurement Network (PPN; www.publicprocurementnetwork.org) that develops pan-European procurement practices and benchmarks the activities of member states. The European Commission is an observing member of PPN.

A specialized state-owned procurement company, Hansel Ltd. (www.hansel.fi), has been established for taking care of some public purchases. Usually this is done by negotiating framework contracts with selected suppliers. These procurements are, however, minor in nature and as such do not cover major capital project procurements. Yet, in minor procurements that might be associated with larger PPPs, Hansel can offer its clients a substantial service package.

Finally, there is an abundance of law firms, consultancies and investment banks that offer services when PPPs are considered by public clients or prospective investors.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

The project selection process, especially in transport projects, is very thoroughly defined. The underlying principle for any transport infrastructure development project is the socio-economic return of the project. Operationally the return is expressed as the ratio between discounted costs and benefits, i.e. benefit-cost ratio. The same principles in the valuation of financial items (such as construction costs and maintenance costs) and externalities (such as accidents and emissions) are applied across different modes. This ensures that each mode is given an equal treatment and the transport system is considered as a whole.

The new project appraisal guidelines for transport projects issued by the Finnish Transport Agency (2011) have extended the appraisal framework beyond the usual cost-benefit ratio so that the appraisal

now involves a substantial qualitative part as well. However, the benefit-cost ratio still is of major importance in the evaluation.

As to PPPs and project appraisal methods, the standard practice applied in Finland is entirely neutral towards the financing of projects. It merely considers the socio-economic outputs instead of the inputs needed for the project.

Environmental impact assessments (EIAs) are also carried out as a rule in the preparation of large projects. EIAs comprise a separate process that will ultimately dictate which project alternatives are accepted for further processing. EIAs override quite a few other criteria in project appraisal. A good benefit-cost ratio does not guarantee project realization if environmental criteria fail to meet the acceptable thresholds.

For transport projects, the planning is done in three main phases: (i) feasibility study, (ii) general planning (pathway), and (iii) technical planning. The second phase is legally and politically the most demanding, as it involves the EIA process, land acquisition, and relevant administrative decisions. This being the case, PPPs come into the picture only after this stage. Altering the process would require substantial legal and administrative effort, since many other sections of legislation and administrative processes are tied to these planning steps. In other words, the entire architecture of the planning process would need to be revised.

5 Conclusion

The Finnish approach to PPPs can, after a period of minor hype around 1995 and 2005, be described as pragmatic. PPPs are considered as one viable procurement method for capital projects and lifecycle management of major facilities. Lately, much more attention has been focused on financing entire networks and strategic nodes, rather than individual projects. This has led the discussion towards ownership and governance issues regarding infrastructures and the division between private and public sectors in general. Of

course, these discussions are not without political and ideological loadings which are understandable and inevitable.

There has been a distinguishable shift from state projects to local projects of cities and municipalities. In most cases, these projects are located outside the transport sector. The reason for this development is somewhat unclear and should be investigated. A possible explanation is that local projects are smaller in scale and therefore require less risk taking from the side of investors. The smaller scale also reduces the number of stakeholders involved and hence lowers the risks of potential conflicts.

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1 Introduction

Sweden has limited experience of using PPP as a procurement scheme or as a collaboration model. There are probably many reasons as to why this lack of interest in PPP is prevailing. Swedish politics has during the twentieth century been characterized by long sprints of social democratic governments. This has created a notion of the government as provider of public good, and a safeguard for the quality of delivering this public good. The neo-liberal movement in Europe which started during the 1980s did affect Sweden as well, leading to Sweden employing policies of contracting out many public services, as well as privatization, and corporation, of public company's and in some case, public authorities. This development may be seen as contradictory when considering the little experience of PPP. One possible explanation may come from tension between the ideology of the government as provider of public good, and the neo-liberal ideology of the market as more efficient producer of services (cf. Eriksson, 1994, 1996). That is, while it may be beneficial to purchase services from the market, and private firms, it is the government who is responsible for providing the public good, and for quality of the products being delivered. From this, the government may purchase services providing public good, but these services are procured as regular services contracts, which arguably give the government larger control over the delivery of the services, due to shorter contract life-spans, and more complete contracts, than would be possible in most PPP projects. This view is in coherence with statements from the current Minister of Finance: if the analysis of suitability of PPP is based on capital costs only, then the conclusion becomes that capital can be provided by the government cheaper, than private actors can, hence PPP is not a suitable form of procurement (cf. Dalen and Holm, 1965, for a similar view regarding mid 50s policies).

On a local level, there are some tendencies for employing PPP-like contracts in construction of buildings. However, those projects cannot truly be viewed as traditional PPP projects, because the

generally lack any significant risk transfer from the local government to the contractor, rather they are straightforward build-operate-transfer projects, or as in some cases, build-lease-transfer project. The projects are more characterized as property lease contracts, than PPP projects. Again, this is in line with the tendency of viewing the government, or local government, as a provider of, and responsible for, public goods, and the market actors as providers of specific services.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

In Sweden, the responsibility for the Swedish road network is split between the national and local level. The national road network is operated by the Swedish Transportation Authority (STA), upon instructions from the government and with funding from the national parliament. The national road network typically covers intercity roads and highways. Investment plans are usually developed by STA, which include prioritization, investigation of possible co-financing with local or regional levels, and investigation of benefits for the public interest. These lists are the basis for actual investments through the annual investment budget included in the state budget. Political influence on investments in this network is predominantly based on the state budget, and it is not unusual for projects being funded through earmarked allocation in the budget. In Sweden, public authorities are rather independent, and are governed by the government through instructions through ordinances and by so-called regulation letters issued once a year. From this fact follows that the government, and even less so the parliament, has little control over the operation of the STA. The government cannot explicitly prescribe one project form over another. However, the government and the parliament does have control over the allocation of funds to the authority, hence it can indirectly control commitment

to PPPs through decisions to not fund PPP projects, or to require a project to be funded through PPP. Local roads are funded and controlled by the local elected council in each municipality, and cover most of the urban road system which are not defined as a part of the national road system. In relation to this it should be noted that smaller roads within urban and rural areas are defined as private roads, where maintenance are put upon the land owner, or a group of land owners, by law or contract. If the private road does fulfill a public interest, the owner can apply for public grant for maintenance, usually covering up to 60% of maintenance costs. There is very little influence from national institutions on the local level; by law municipalities are independent from the parliament, hence the parliament can only influence the local level by enacting laws.

Railways are, almost, exclusively controlled on a national level, with the same allocation of responsibility as with the national road network. Exceptions are small stretches of connections to major factories, which arguably nonetheless are under the influence of the STA. However, regions are usually responsible for operating regional traffic. The government is providing the infrastructure, and the regions rolling stock and/or operators on the tracks. Thus, policy can to some extent be issued both on a regional and a national level, with policy on a national level having precedence. It is common that railway projects are co-funded by regions or local municipalities. This is typically the case where there is a local interest to expand a railway, add a new train station, or when an alternative, more expensive, stretch would be more suitable taking the local urban planning into account. Nevertheless, the infrastructure projects are managed and implemented by the STA, and are dominantly financed by national funding.

Buses and trams are influenced by the regional and local levels. Historically, it has been the responsibility of municipalities to provide mass transport solutions within the municipality. However, the development since the 1990s has been to delegate this responsibility to a regional level in order to create a regional interconnected transport system. The national level does not typically influence decisions regarding buses and trams, but may

provide some funding for larger investment projects. If so, the government or parliament usually does not interfere with the structure of the contract, and as such does not obstruct or promote PPP.

Major airports (11 airports are considered to be national) in Sweden is influenced by policy on a national level, through a government owned and self-financed enterprise (Swedavia). As such, the government can only issue policy through its stockholder majority, or by the regulatory authority. The regulatory power would typically not cover any decisions of using PPPs. But it should be noted, if a major investment was necessary for e.g. the construction of a new international airport, it is possible for the government and parliament to earmark money for a specific project and execution (as with railroad investments). Smaller airports are most often controlled on a regional or local level, often in form of public enterprises. The trend has been to switch from a national level to a regional/local level for smaller airports. During this switch public companies are usually created in order to operate the airport. There are cases where the airport company has private investors (Volvo AB does own some stock in S ave Airport, Gothenburg, for example). However these joint ventures have not, to this date, included any major investments into the airport, but they have rather been used to secure the everyday operation after the incorporation+ of the airport.

Seaports are influenced on a local level only. Though there may be some economical support from a regional or national level, this support does not typically affect decisions on PPP. It is common for Seaports to be operated by private parties, or by local/regional undertakings. Further, there are examples of different forms of service concessions to be awarded to private parties. However, while the award of these service concessions may include conditions of investment into the operation of the seaport, it does not typically involve investments into the seaport itself, and thus cannot be qualified as PPPs. There are also a few private seaports in Sweden, but while some of those has received public subsidies they are established for shipping industrial goods from a specific factory or

mine (paper, steel, iron ore), and are not used for general transport needs.

2.2 PPP policy framework

There is no specific PPP policy framework available in Sweden. While there have been public inquiries which have been investigating the use of PPP in a wide array of topics (eg. promoting innovation, high speed rail links) no policy suggestions has been issued along PPP lines as a result of the inquiries (SOU, 1968, 1971, 2009, 2011, 2012). Some efforts has been made by, for example VTI (Swedish National Road and Transport Research Institute) to create solutions for issuing policies on PPP (Arnek et al., 2007), nonetheless those initiatives has not been adopted on a national level. Currently there is no significant activity regarding PPP on a national level at all. However, the older proposals are used as an argument on a local and regional level, when promoting PPP. However, these discussions have not resulted in any projects being procured or started. This is particularly the case for projects with major national influence, where the government only funds “traditional” projects and is reluctant to fund PPP projects. Consequently Sweden has to be considered as not having any program or policy to promote PPP at all.

2.3 Previous and current PPP experience

There has not been any significant PPP experience in Sweden to date. One project, Arlandabanan (Arlanda Airport - Stockholm rail link) is in the operating state since 1999 (Centre for Mega Projects in Transport and Development, Enberg et al., 2004). Two construction projects are currently being constructed: NKS in Stockholm (Hospital) and Max Lab IV (Research facility) (Ågren and Landin, 2012), NKS has a projected construction cost of 16 bn SEK and Max Lab IV is projected to have a construction cost of 1.4 bn SEK.

Moreover, one local PPP project, a public bathhouse, is in operation, Tyresö Aquarena, with a construction cost of 165 M SEK. However, there is a practice on local levels which may be considered to be a borderline kind of PPPs. This form is generally used for construction of buildings, either for a public authority's intrinsic need, or for production of public owned housing. In the former case, this would typically entail a public authority signing a letter of intent with a contractor/developer regarding the lease of a facility being constructed. The developer constructs the facility according to the letter-of-intent, and at handover, a formal lease is signed between the parties. The second case, common in public housing, ownership of the facilities is transferred at handoff. The level of risk sharing in these projects is low, as they are structured as ordinary lease agreements or a property development contracts, and hence cannot be considered to qualify as PPP projects. Another set of borderline PPPs are different variations on service concessions, e.g. giving exclusive rights to operate a cafeteria in a public bathhouse. However, those contracts typically do not involve any investments and thus is not qualified as PPPs either.

2.4 Political stability

The current government took office 2006, was reelected in 2010, and has had a lukewarm approach to PPP. This approach has been taken due to a belief that strict control of public finances should be applied to all government spending. Thus, costs incurred in PPP projects should be accounted for in the same manner as the national debt, and in the same column. This approach has resulted in a view that since the government can lend money on more beneficial terms than any private undertaking can, PPPs are a more expensive investment than if a government investment would be. The debate has not to any significant extent included other aspects of efficiency such as quality or specialization benefits (L. Redtzer, personal communication, January 9, 2013). These latter benefits are predominantly discussed decoupled from the investment decision,

i.e. market specialization may be beneficial, and thus we procure a private operator. This difference is important to note; while Sweden can be seen to have had a leading role during the last decades in contracting out former public services or responsibilities to private undertakings, these processes have predominantly manifested themselves in public procurement in the form of services and supply contracts, not PPPs or infrastructure investment projects in general (with a saving clause for some healthcare contracts).

2.5 Effects of financial crisis on PPPs

The financial crisis has not explicitly have had any significant impact on the view of PPP. If any, the financial crisis has reinforced the current view of fiscal stringency. Furthermore, since there is no PPP policy in general or in sectors, there have not been any policy changes. The effect of the financial crisis has affected national finances negatively. This impact on the economy, together with the policy of fiscal stringency, has postponed some transport infrastructure projects, mainly rail and road projects, due to lack of funding. No tendency can be seen regarding the impact of the financial crisis upon regional or local levels either.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

There are no specific PPP or general concession law in Sweden. However, there is a couple of sector specific concession laws with regard to healthcare and social works, regulating concession-like agreements in so-called systems of choice. Nonetheless, Sweden does have a Public Procurement Law which may (potentially) cover some PPP projects. The regulation currently in place is based upon the current EU directives on public procurement (Konkurrensverket,

2008). The Swedish law follows the wording of the directives rather close, though there may be some elements in the case law which has not been codified. It should be noted that procurement below the EU thresholds are explicitly regulated by a simplified procedure, modeled on the directive rules, but with some flexibility on advertisement, time limits and procedural choice.

3.2 Elements provided in legal framework

The only elements regulated in Swedish law are PPPs which are covered by the public procurement legislative package. As such, the rules for selection and review procedures are regulated by the directives through the national implementation. There is no legislation on non-competitive procedures other than what follows from the directives, i.e. article 31 in the classical directive and article 40 in the utilities directive, rules which, arguably, would not be actualized during procurement of PPPs. Step-in rights and substitutions are also regulated by the PP legislation only, and are heavily based on the fundamental principles with in EU, i.e. the principles of equal treatment and transparency. There are no regulatory provisions regarding unsolicited proposals. The acceptance of unsolicited proposal has to comply with the general PP legislation and, or, if this is not applicable, with EU primary law. Some regions and municipalities have employed non-legislative policies allowing private entities to challenge the public entity. If the challenge is accepted by the local council, the service challenged is publicly procured using the public procurement regulations. The authority responsible for the challenged service would then submit a bid on the same terms as the private party.

As in the directives, the Swedish legislation on PP does not state any mandatory contract provisions, rules on contract termination, contract provisions or any specific rules for collection of fees or payments collection. This is purely dealt with as contractual issues. This being said, it is worth to note that any condition has to comply with EU primary law. Discriminatory conditions are thus forbidden.

Furthermore, actions during contract performance may put such actions under the scope of PP law. For example, an extension of compensation provisions may constitute a new award, and thus has to comply with PP law.

Provisions for public authorities to support and provide guarantees follow the EU state aid rules in general, even though the remedies available are, if not unclear, somewhat restricted. If provisions for support or guarantees are part of a public procurement process these are seen as a part of the reimbursement scheme in the contract. As with the EU directives, reimbursement schemes are not explicitly regulated in PP law.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

There are no PPP supporting institutions in Sweden, nor are there any procedures to evaluate PPP projects. One evaluation of the case Arlandabanan (Arlanda Airport - Stockholm rail link) has been carried out by the Swedish National Audit Office (Riksrevisionsverket, 1995), upon request from the government at the time. However, there are no standardized ex ante, or ex post, evaluation instruments used. Furthermore, there is no mandatory screening or approval process, not for PPP nor for PP in general. The distributed nature of the Swedish administrative setup precludes any such practices. Each government authority or agency, local municipality or regional county council, may on its own initiative setup screening or green lighting functions. It is for example common for larger investment projects being screened by a central procurement unit within a municipality. Gate keeping may occur on a funding level, where the responsible level can chose to fund a suggested project or not to fund the project. If a PPP project were to be funded, the responsible authority would be the active actor on

every level of the matrix in figure 1. Whilst standard agreements are widely used in infrastructure construction, and in procurement of transport operators, these agreements are not designed for PPP. Arguably, most of those contracts easily could be adapted to PPPs by including a PPP mechanism.

5 Conclusion

In conclusion, Sweden does not have any developed policy framework regarding initiating, operating or promoting PPPs. There seem to be political unity to make a division between funding, which the state are assumed to arrange on more beneficial terms than private undertakings, and operation of assets. The traditional focus in Sweden has thus instead been that the state funds investments and then procures services and supply for maintaining and, in some cases, operating those assets. This is shown by the low number of fully qualified PPPs present being in construction or in operation. However, it should be noted that there are some borderline PPPs, which exhibit some, but not all, features normally included in a PPP. Maybe because of this situation the legislative framework regarding PPP has not been developed in any significant sense. The legislation which is available rests heavily upon the EU directives on public procurement, and follows the wording of those directives rather close. Following this, procedural rules for conclusion of contracts or other requirements on contract content are virtually non-existent in Swedish legislation. Furthermore, due to the distributed administrative nature of Sweden, no central rules or bodies have the legal competence to control efficiency or suitability of projects being procured. Given those circumstances, it is not surprising that there are no supporting institutions promoting or administrating PPPs. Furthermore there are no provisions put in place in order to secure performance or feasibility of PPP projects. This also entails that the threshold for engaging into a PPP project is rather high for public

authorities in Sweden, something evident when viewing the PPP projects actually carried out.

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Abstract

The United Kingdom is considered an absolute frontrunner in the field of public-private partnerships [PPP] due to its early and ever continuing activities in facilitating private financing of infrastructure. However, the UK is also likely to be one of those countries that take a rather critical stance against PPP at the same time. In this paper, insights are presented into the institutional landscape that surrounds public-private activities, thereby illuminating a number of aspects that have been important in conducting the development and implementation of a PPP strategy in the UK. Without any doubt, the role of national politics, be it driven by ideologies or by economic circumstances, has been crucial.

1 Introduction

“The mix of public-private endeavors for the provision of public infrastructure is not a recent social movement without antecedent, but rather a topic with a long history of development” (Dewulf et al., 2012, p. 12; see also Wettenhall, 2005). Public-private partnerships have been around in the United Kingdom [UK] for many decades and in many different forms. Today’s main concession model in the UK, which is the Private Finance Initiative [PFI], was drafted in the late 1980s and implemented in the early 1990s. Under the ruling Thatcherist approach in the British Government—and predominantly the desire to considerably cut back public expenses—a political agenda for more and better involvement of private parties in the development of public services and works was drafted and put into practice (Pollitt, 2005; Savas, 2000; Yescombe, 2011). According to Jooste et al. (2011), PFI is widely regarded as the birth date for systemic programs aimed at encouraging public-private partnerships [PPPs].

The Private Finance Initiative got off to an unexpected slow start in the UK, as it came at a time when the finances incurred from the privatization of companies was coming to an end. The government resorted to drastic action in forcing the hand of the private sector by insisting that all capital projects would not be approved unless the PFI option was explored. Nevertheless, as this PFI-testing requirement cost valuable time and money, it did not induce a swifter implementation of PFI either. The PFI model was re-launched in the mid-1990s, connected to which was a 9,4 billion GBP list and which proposed potential private finance deals leading to an influx of PFI projects procured within 1997 of just under 100. However, private sector skepticism and resistance remained, as market actors did not believe deeply enough in the abilities of the model.

Despite its slow start, PFI has developed into a procurement model of significant importance in the UK. It has existed for over twenty years now, and hundreds of PFI projects have been closed. Sharp criticism among UK politicians and citizens has never ceased. One

could say that it is this continuing suspicion that helps PFI to move forward, but there are many other contextual factors that have played an important part in this process. In this paper, the UK context for PPP policies and projects is addressed, starting with an account on the country's political commitment to PPP. Secondly, the legal and regulatory framework for PPP is discussed, and third and finally we address the PPP-supporting institutions as they are or were present in the UK. The conclusion summarizes our findings and aims to answer the following question: to what extent does the UK provide for a PPP-conducive environment?

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

The institutional design of the UK political system indicates that the lion's share of decision-making powers is either based at central government level or delegated to local governments. Investment decisions with regard to railways and sea ports are predominantly taken in the central government, which operates at the level that oversees England, Wales, Scotland, and Northern Ireland. Airports infrastructure investments are decided upon at either central government level (in the case of (inter)national airports) or regional/local government level (in the case of other airports). Then, central and local government share responsibilities when it comes to road infrastructure development. Finally, decisions regarding bus and tram services are predominantly taken at the local and regional level. Two decision-making levels have significantly less power than the central government and local government: governments at the country level (i.e., England, Wales, Scotland, and Northern Ireland) and regional governments. In fact, local governments will only increase their voice in infrastructure decision-making regarding transport, as was announced in a number of government documents lately (UK Department for Transport, 2012).

2.2 PPP policy framework

As this paper advances, it will become clear that PFI practice in the UK has developed quite well since the procurement method was officially introduced in the late twentieth century. An official policy document which explains an explicit PFI strategy seems to be lacking—although a PFI strategy has evidently been exercised for several decades. This makes it interesting to take a closer look at the initial phase of the PFI.

It was in 1992 that the UK Private Finance Initiative was officially introduced:

The PFI was introduced by John Major’s Conservative Government in the autumn budget statement of 1992. This began a five-year process of legal and bureaucratic reforms intended to promote the use, by the public sector, of the design, build, finance, operate (DBFO) model for the delivery of capital investment projects. (Hellowell, 2010)

PFI practice has become a well-established, common phenomenon in the UK nowadays. Moreover, UK service providers, legal consultants, and investors are advising government across the globe: the UK experience has had a “tremendous impact on the global emergence of concessions” (Dewulf, et al., 2012).

Since its establishment in the early 1990s, PFI has experienced a few substantial changes. The first change has been a major update of the entire PFI policy scheme and took place in 1997—indeed, just after the New Labour Government had entered office (Ball et al., 2007).

The second major change to the PFI policy scheme is actually occurring at this very moment (mid 2013) and is related to the global financial crisis. A fundamental reassessment of PFI was conducted in 2012, and a beta version of PFI has been launched by Her Majesty’s Treasury (HM Treasury, the British Ministry of Finance): Private Finance 2 [PF2] (HM Treasury, 2011b). One of the most important changes includes the strengthening of the partnership between the public and private actor by making the government act as a public

equity provider, i.e. a co-investor in infrastructure projects (HM Treasury, 2013).

The two aforementioned policy changes are not only related to the global financial crisis and changes of government. Regardless of these events, UK PFI policy has proved controversial from the very beginning. Private sector interests have always been subject to suspiciousness, mainly on the public side, since they are perceived as phenomena that would undermine the public service ethos (Monbiot, 2007).

An overarching PPP program, including a significant pipeline and timetable of projects to which the Government is committed to procure, does not exist in the UK—neither has it existed. However, on another level, being that of departments, several sector-specific programs, including timelines, exist or existed. PFI has been mentioned as an element of policy frameworks in several sectors. In transport, the Highways Agency launched its strategy for DBFO projects in the road sector in 1994, and it has since then built upon this strategy (Highways Agency, 2013). Respective road PFIs are, e.g., the A1 from Darrington to Dishforth, the A30 from Exeter to Bere Regis, and the M25—the key strategic orbital route around London. With regard to these major road PFIs, however, it also needs to be said that these have predominantly been developed on a case by case basis—rather than on the basis of a clear, comprehensive program and timeline.

PFI has also been strategized in other sectors: policy framework documents have been published by the Department for Environment, Food and Rural Affairs, the Department for Education, the Department of Health, and the Ministry of Defense (HM Treasury, 2012a).

Now that we have discussed how PFI developed in the UK, and how it was laid down in policy documents, a main issue regarding the PFI policy remains: why was it actually developed? Hellowell (2010) refers to three different political motivations for PFI. First of all, he mentions a philosophical motivation for PFI. A public-private procurement method was assumed to suit the neoliberal agenda, “providing a means of growing the private sector’s role in parts of

the public sector where outright privatization was regarded as unachievable” (Hellowell, 2010, p. 307). The second motivation for PFI was of a rather financial origin, as PFI allowed public capital spending to bypass the public sector borrowing requirement, which was a main issue in the wake of the Maastricht Treaty of 1992. Additionally, PFI was generally considered to allow for tighter control of public expenditure, which in turn would help to control inflation rates (see also Terry, 1996), and PFI was expected to trigger an increase in value for money (HM Treasury, 2006). As a matter of fact, value for money remains to be one of the most important issues related to PFI nowadays, if it has not increased in importance compared to the other motives (HM Treasury, 2013). Finally, PFI is said to be motivated by sheer political interests: voters are provided with new infrastructure without immediate budgetary consequences (Hellowell, 2010). It goes without saying that the latter motivation illustrates short-term thinking, whereas PFI should ideally be approached as a long-term issue *par excellence*.

2.3 Previous and current PPP experience

A clear and probably exhaustive overview of UK PFI projects is available on the web and indicates the realization of a considerable number of PFI projects since the policy strategy was launched in 1992 (HM Treasury, 2012a). According to information provided by Partnerships UK [PUK], which used to be the central PFI unit of the UK, some 847 projects have been closed as of 2013. However, since PUK ceased activity in 2010, doubt is casted about the extent to which its database is up to date. Moreover, PUK might have used a rather wide definition of PFI: HM Treasury lists just over 700 (717) closed PFI projects (HM Treasury, 2012a). The total capital value of these 717 closed contracts is 54,7 billion GBP; the ultimate cost, i.e. the cost by the time these contracts have been paid off, is 301 billion

GBP.¹ Regardless of the exact number of PFI projects, the figures indicate a wide application of the PFI strategy in the UK, and this is confirmed by publications of private companies in their endeavor to create an international overview of PPP/PFI (Davies & Eustice, 2005; DLA Piper, 2007, 2009). There is certainly no doubt that a substantial number of PFI projects is in operation.

Compared to the quite impressive total number of PFI projects in the UK, the number of PFI transport projects is relatively small. The HM Treasury inventory (HM Treasury, 2012a) shows 38 closed projects in the transport sector—if we include street lighting projects as well, this number would increase with 32, resulting in 70 projects in total. Altogether these 70 projects have a capital value of 8,4 billion GBP, and an ultimate cost of 41 billion GBP. This indicates that the volume of PFI projects in transport is relatively large compared to PFI projects in other sectors.

Finally, we briefly discuss the share of private sector investment in public services through PFI. Flinders (2005) noticed a constant percentage of infrastructure investment through PFI from 1998 to 2004 of between 10 and 13,5 per cent of total investment, whereas Hellowell (2010) speaks of a considerably smaller share of between 1 and to 5 per cent of total capital expenditure. In 2012, the share was almost 8 per cent of total investment: against a total infrastructure capital expenditure of 26,7 billion GBP, 2,1 billion GBP was invested through private finance (HM Treasury, 2012b). Hellowell notices a privately financed share of round and about 10 per cent of total capital investment between 2004 and 2009. So in general, the actual share of PFI in capital investment has been relatively small.

¹ These data include England, Wales, Scotland, and Northern Ireland, so the overview is quite comprehensive. However, these figures do not include PFI projects that are yet to be closed.

2.4 Political stability

Political conditions in the UK have been relatively stable over the past decades in a sense that single-party governments have always been able to finish their periods of duty. Nonetheless, the political will to support PFI has been seriously affected by several national elections and subsequent governmental shifts. As we touched upon earlier in this paper, PFI was launched by the Conservative Government, which was in office in 1992. The coming-to-power of the Labour Party, in 1997, considerably changed the UK's political landscape as well as the context for PFI. Contrary to its skeptical stance towards PFI when it was launched, Labour had taken a rather positive position as PFI advanced throughout the 1990s. As a matter of fact, when Labour entered office in 1997, a more favorable environment for PFI was created. As a result, a major increase in the number and volume of PFI projects evolved. This meant a major change, since prior to this period, PFI took off very slow and never came close to actually reaching the targets set for it (Ball et al., 2003).

When the Conservatives and the Liberal Democrats took over office in 2010, PFI had already become much less economically attractive. Of course, this had to do with the global financial crisis. By all means, the popularity of PFI has faced a major drop over the last couple of years.

2.5 Effects of financial crisis on PPPs

Prior to the financial turmoil, investors were usually willing to lend money to a diverse range of infrastructure projects such as toll roads, airports, schools, hospitals, water supply systems and waste water treatment plants. The global economic turbulence and financial crisis have generated major challenges to PFI projects—mainly due to difficulties in financing. As the demand for PFI schemes appears to depend on the availability of low-cost credit and a cast of advisors, lead arrangers, syndicated banks, rating agencies and mono-line insurers, deals rely on mutual trust and a good level of liquidity. Both are notorious by their absence in this credit crunch. Moreover,

the PFI market has experienced a significant setback due to the demise of a number of banking players and mono-line insurers.

Other, probably rather indirect effects of the financial crisis on PFI projects in the UK have been increased difficulties in obtaining and securing financing. Part of these difficulties is caused by the increase in financing costs (PWC & Dealogic Loan Analytics, 2012), which in turn traces back to the imposition of stricter banking regulations—apart from the imminent threat of regulations that are yet to come (BCBS, 2010; Masters, 2013; Vestergaard & Højland, 2011). Logically, a decrease in the number of planned and closed projects can be noticed as well. This seems to occur all over Europe (EPEC, 2012).

Once we look a bit further into the PFI lifecycle, a few other problematic issues become apparent. PFI projects are often said to face increasing difficulties in the operation phase—financial problems in particular. HM Treasury's record of closed PFI projects indicates many cases of refinancing (HM Treasury, 2012a). However, it remains unclear whether these cases are directly related to the financial crisis: most of these PFIs were closed around 2000. Nevertheless, although most of the existing and planned PFI programs have been affected through various means as a result of the global economic crisis (e.g., demand below forecasts and unforeseen exchange rate movements), there are still PFI projects in pipeline in the UK.

Changes in PFI policy can also be indicated as indirect consequences of the financial crisis. A very clear policy measure that has been taken is the increased government funding of PFI projects. The “UK Guarantees Programme” was launched mid-2012 in order to enable Government to increase capital contributions to PFI projects (HM Treasury, 2012b; Sparrow, 2011). This indicates that increased government guarantees for project funding, as well as increased government involvement in financing vehicles, occurred quite simultaneously. Probably, this has also led to an increased volume of commercial risks borne by the Government.

It does not seem to be the case that the financial crisis has stimulated the UK Government to increase its emphasis on traditional

procurement instead of PFI. As a matter of fact, traditional procurement has always retained its status as the most common procurement method, and it is not expected that PFI will ever rule out traditional procurement in terms of number or volume of projects.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

A specific PPP law has never been adopted in the UK, nor has a concession law. A public procurement act is existent and was signed in 2006: the “Public Contracts Regulations 2006” (UK Government, 2006). The establishment of these regulations was instigated by the 2004 EU Procurement Directive, and indeed, the regulations are fully in line with the EU guidelines (European Parliament & Council of the European Union, 2004).

However, alignment with EU guidelines clearly does not guarantee an implementation or use of the rules as they are intended. There is no doubt that the UK has a relatively difficult relationship with the EU, if only for their different legal systems. Whereas the UK legal system is based on common law, jurisdiction in basically every other European country is based on civil law, and it is likely that these differences cause friction every now and then.

3.2 Elements provided in legal framework

The Public Contracts Regulations 2006 provide clear procedures and recommendations for the selection of private partners through competitive procedures, as well as for review procedures in general. On top of that, the Regulations give recommendations for public authorities to provide private actors with guarantees, such as equal treatment throughout the tendering procedure.

The Regulations do account for information and rules on how to deal with non-competitive procedures in exceptional circumstances (UK Government, 2006, pp. 20-21). Procedures for unsolicited proposals are not mentioned in the document. Finally, issues such as contract termination, compensation, and payment collection are not accounted for in the Private Contracts Regulations 2006. These issues are discussed in documents without legal status (see HM Treasury, 2007, 2012c).

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

A number of PFI support units have existed in the UK since PFI was launched. They show quite some diversity when it comes to their organizational structure, public-private composition, responsibilities, and size. By and large, three PPP support units are considered sufficiently relevant to be discussed: Partnerships UK [PUK], Infrastructure UK [IUK], and Local Partnerships.

A well-known PFI support unit has been PUK, which was the product of several earlier initiatives that were established to put PFI on the agenda. In 1992, the Private Finance Panel was established under the auspices of HM Treasury. This unit was transformed into the Treasury Taskforce in 1997. This Taskforce existed for three years, and was then reformed and considerably strengthened in terms of staff numbers and financial means: PUK was born.

PUK was a limited company and actually comprised a proper public-private partnership, as 49 per cent of its shares was owned by HM Treasury against 51 per cent which was owned by private actors. These private actors were active in different disciplines, ranging from contractors to legal companies. Examples of former private shareholders are Barclays Industrial Investments Ltd, the Royal Bank of Scotland plc., and Serco Ltd (Partnerships UK, 2013).

Additional to the public and private funding, PUK received fees from the services it provided to the public sector. It served as a useful PFI advisor that provided policy guidance and technical support, but it could also be considered an important promoter of PFI. Moreover, it built up an impressive central repository of knowledge over the course of years. This repository is still available on the web, yet it is managed by HM Treasury these days (HM Treasury, 2012a). When PUK ceased activity in 2011, it had grown from a taskforce of five civil servants into a professionally driven organization of 75 employees (Farrugia et al., 2008).

In the years right before PUK was closed down, two governmental units were established in the UK that were to take over PUK's activities in a later stage. Firstly, Local Partnerships was established in 2009. This organization provides PFI-related policy guidance and technical support to local governments in the UK. Organizationally speaking, Local Partnerships is a limited liability partnership between the Treasury and the Local Government Association. Close to fifty civil servants are involved in this organization, which is financially aided by both central and local government. Additionally, it receives a fee income from chargeable service. Second, IUK was established in 2010. IUK falls under the auspices of the Treasury, is fully financially aided by central Government, and does not allow any private sector participation, nor local government involvement. As an organization consisting of sixty professionals, its task is to act as a technical support center. Moreover, it has taken over PUK's function as a central repository of knowledge.

Apart from the three former PFI support units, many central government departments have their own private finance unit. Examples can be found at the Ministry of Defense and the Department of Health.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

On ex-ante evaluation instruments, such as the Public Private Comparator [PPC], the Public Sector Comparator [PSC], the UK shows quite a strong record in a sense that they are widely used—i.e. in the majority of PFI projects. Still, as is also the case in many other countries, both instruments have proven to be quite controversial as well: they can be used as a means to justify project-related decisions that have already been made behind closed doors. Part of this controversy is illustrated by quoting former deputy director Coleman of the UK National Audit Office, who criticized the PSC for being “pseudo-scientific mumbo jumbo” (Dewulf, et al., 2012, p. 45). Efforts are made to improve the quality (if not the neutrality) of these evaluation instruments. For example, program level assessment, project level assessment, and procurement level assessment have been drafted in order to guide PFI projects through pre-tender, tender, and post-tender phases (UK Parliament, 2008).

Ex-ante evaluation instruments are not the only way in which PFI projects are appraised in the UK. HM treasury fulfills a very important role in the process of project awarding as well: as a third party, the Treasury scrutinizes and approves PFI projects in quite a number of cases. When a proposed PFI project is considered a “Major Project”, the Treasury’s approval is required before projects are put on the market and before the final contract is signed (HM Treasury, 2011a). As such, HM Treasury plays an important part as gate keeper.

The institutional setting for PPPs is partially formed by the allocation of roles and responsibilities to the public actors or agents in the PPP project cycle. Apart from the usual direct responsibilities of contracting authorities, a few things are particularly interesting in the UK. First of all, we have noticed that the Treasury is quite often assigned direct responsibility throughout the development of a PFI—both in pre-tender, tender, and post-award phase. The other to public organizations that are involved, being IUK and Local Partnerships, do not have any such responsibilities during PFI development. Still, some indirect responsibilities lie with these those organizations. IUK does have a certain role in project initiation and in the assessment of value for money, whereas Local Partnerships tends to get indirectly

involved in the tender phase, as some sort of consultant during bid evaluation and negotiation.

4.3 Standardized process and documents for PPPs

A final product of institutionalization of PFI that we address here is standardization, and it can be said that the UK does have considerable experience with this issue. For example, standardized contracts are used quite often—both in general and in the transport sector—so as to contribute to a swift procurement phase. These standardized contracts are not only developed by the government; initially it was the private sector that came up with standardized contracts, since this measure was assumed to induce a considerable decrease in transaction costs—for example in the law practice sector. Other standards that have been developed concern PPP models. Actually PFI is equal to a DBFO model, since the initial form of PFI consisted of Design, Build, Finance, and Operate. A wide application of these models can be noticed.

Finally, we address standardized tendering procedures. These are becoming increasingly apparent due to the EU Procurement Directive. The competitive dialogue procedure, for instance, was officially implemented in 2006, and has since then been utilized in many projects (HM Treasury, 2010).

5 Conclusion

There are not many European countries that can present such a wide and institutionalized practice of privately financed infrastructure projects as the UK. Twenty years ago, this would have been difficult to imagine: PFI took off very slow. The model evolved over time, it survived a number of serious amendments, and despite several governmental changes and a severe financial crisis, it is still there

today. PFI projects are still being closed on a considerably large scale.

This paper has discussed political commitment, legislation, and PPP-supporting institutions as enabling contextual factors for the development and implementation of policies on public-private partnerships. PFI has gained popularity as a procurement route in delivering public infrastructure projects, and it has served as an exemplar for many countries. The UK's previous and ongoing experience with PFI projects, the institutionalization of highly proactive supporting units at government level, standardization of PFI contracts, and a wide use of appraisal instruments have certainly benefited the systematization of PFI in practice.

Yet, PFI has also had its fair share of criticism. Whereas these critical remarks often used to be instigated by party-political interests, and consensus on the "if" and "how" aspects of PFI seemed hard to achieve, the financial crisis has at least created consensus in a sense that political decision-makers admit the need for a serious revision of the PFI strategy nowadays. However, as stronger government involvement in PFI is required and foreseen, the complexity of the topic might become even greater than it is today.

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SECTION IV

EASTERN EUROPEAN COUNTRIES

Czech Republic

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Abstract

Public Private Partnership on the national level in the Czech Republic is a story of never ending discussions and several failed and expensive attempts. Although politicians of most parties have publicly expressed their support for the PPP concept, the reality of Czech politics is not favourable to PPPs. Prevailing short-termism with a frequent fluctuation of ministers poses a major hurdle to long-term contractual arrangements with the private sector. At the same time, PPP faces opposition from conservative circles of the civil service. In addition to that, there is a strong competition from traditional EU funded projects that are the first priority for the government and the State Fund for Transport Infrastructure. Thus, a few local level projects remain the only examples of PPP in the country.

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1 Introduction

Political and administrative systems to a large extent determine the way PPPs are implemented. The Czech Republic is a multi-party parliamentary democracy where the executive power rests with the president and the government, which is answerable to the Chamber of Deputies for its actions. As the role of the president of the republic is rather representative and ceremonial, it is the government headed by the prime minister that in fact exercises the sovereign power. There is a proportional representation of the political parties in the Chamber of Deputies while the electoral system for the upper-house –the Senate – tends to create majorities although multiple parties and also popular individuals are also elected. The elections for the Chamber of Deputies often result in minority or coalition governments that have so far proved to be unstable and prone to political crises. It is not unusual that ministers leave for various, mostly political reasons after just a few months or even days in office. This implies that any strategic conception, vision or a long term plan tend to be rather short-lived. The governments are forced to focus on those issues and problems that have the potential of producing immediate benefits and immediate popularity. In this light it is clear that PPP cannot be an overtly attractive tool as it would usually take too long in the Czech Republic for any politician concerned to benefit from the particular project.

In economic terms, the Czech Republic belongs to the best performing countries in the region of Central and Eastern Europe in the long run. It has been a favorite place for foreign investors due to relatively low labour costs and highly skilled labour force. Its position in the heart of Europe has made it a natural transit area with several TEN-T projects of strategic importance.

Initially, the Czech Republic proved to be largely immune from the financial crisis that broke out in 2008 as it has its own currency and a robust banking sector which had been consolidated in the pre-crisis period. Nevertheless, the protracted period of negative or zero

growth in the world economy and particularly in the EU caused the Czech economy to shrink. In the end, it contracted by 4.5 % in 2009 (CSU, 2013). After a relatively short period of recession, the Czech Republic returned to growth which, however, has not matched the pre-crisis levels so far (OECD, 2012). In the last two years, the economy has been suffering from its overreliance on exports to Germany and other Eurozone countries. In 2012, the Czech GDP fell again as the country experienced the longest period of recession in 16 years. This was in sharp contrast with comparable economies in the region, all of which, with the exception of Hungary, have shown good signs of recovery. Weak domestic demand was to blame this time together with the fall in the industrial output as people turned out to be less willing to spend their money and invest in businesses. More recently, the Czech central bank has cut its forecast of growth for 2013 to -0.2 (CNB, 2013). This, in part, is the result of a government debt reduction strategy that favours austerity measures to prevent the ratio of government debt to GDP from rising. Although the level of debt is not high in comparison with the EU average, the speed with which it has been growing in the last couple of years has caused some concerns. Overall the economic situation is rather stable, but a stronger impetus for growth is needed in the future.

Although programs of government investments have to some extent been shielded from radical cuts, a number of projects have been postponed. In spite of that, PPP has not come in the spotlight of politicians and the civil service as the best alternative solution. Rather, on the contrary, for the reasons discussed below, the economic crisis has seen the idea of PPPs for infrastructure development in the Czech Republic to bog down.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

Decisions regarding the majority of large infrastructure projects in Czech Republic are taken directly by the central government as all major roads, railways and airports are state-owned. Deals on provision of services in public transport as well as minor and municipal roads fall under the jurisdiction of provincial and municipal authorities. The Ministry of Finance acts as a supervisor monitoring municipal budgets and their deficits, but it has no formal competence to interfere with the individual decisions on various projects except for assessing projects procured under the concession law.

2.2 PPP policy framework

PPP as a tool to intensify investments in infrastructure was welcomed by the social democratic government in 2004 when it received ministers' blessings. The government decision declared adoption of a PPP model as one of its strategic goals and assigned the respective ministries with elaboration of appropriate methodology and guidelines. The Ministry of Finance was entrusted with the coordination role and budgetary/fiscal aspects of the policy implementation while the Ministry of Regional Development was responsible for the legislation.

Following this, a series of pilot projects was outlined with no firm timetable given. PPP Centrum – the main dedicated central unit owned by the Ministry of Finance – played a major role in this process originally, but due to a combination of factors it was neutralized and sentenced to a gradual decline. Similarly, the main coordination unit for PPPs was created within the Ministry of Finance with a substantial budget at the outset but after it completed its tasks in preparing the guidelines it was reduced in size and exists

now in a minimalist form staffed with two employees and a budget of about 100,000 Czech crowns (€3900).

No major update of the government policy towards PPPs has followed since 2004 as most of the pilot projects were scrapped or postponed indefinitely. The idea of PPPs was once revived by the Ministry of Transport at the end of the first decade of the 21st century. It forms an important part of the recent document called *Strategie dopravy jako nevyhnutelna soucast rozvoje Ceske republiky do roku 2025* (“Strategy for transport as an indispensable part of the development of the Czech Republic till 2025 – Superstrategy green paper”). PPP was to be considered as an option in several major infrastructure projects. So far, however, it seems there was just one project where PPP might have found use – a part (18.8 km) of the TEN-T listed D3 motorway project from Prague to the south Bohemia region. However, the idea was abandoned by the new transport minister in early 2013 in spite of the fact that the ministry previously received €728,000 for legal, technical and financial studies as a support from the TEN-T programme. This EU contribution will now have to be returned and the whole motorway will be procured in a traditional way with co-financing from the EU funds which, it is argued, will be easier to secure for a non-PPP project (CTK Finančni noviny, 2013).

Therefore we cannot really speak about a PPP programme as such, let alone any timetable or pipeline in the case of the Czech Republic. Although the Superstrategy for the transport area indicates a possible time schedule for various PPP projects this should not be viewed as a binding timetable.

2.3 Previous and current PPP experience

Officially, there are several reasons for introducing PPPs in the Czech context. There is a long record of notoriously overpriced infrastructure projects and expensive maintenance that is repeatedly criticized by the media and some politicians. One of the motivations, thus, is to achieve substantial savings through better private management of the construction and maintenance phases. The main reason for adoption of PPP Policy as put by senior civil servants in private conversation but also admitted for example in the official Transport strategy document is the off-balance sheet treatment of payments.

Despite this advantage perceived by the politicians and the civil service, no PPP has been realized on the national level in the Czech Republic in the last 8 years since the initialization of the PPP Policy. There have been several attempts. However, none of them reached a successful conclusion, although hundreds of millions Czech crowns were spent on various studies and business cases by private consultants and the PPP Centrum. In 2009, Transparency International calculated that preparation of only 9 pilot PPP projects, none of which have ever materialized, have cost a total of 243 million Czech crowns (about €9.5 million) (Transparency International, 9, 2009). Some of the projects like motorway D47 or enlargement and re-development of the Central military hospital in Prague suffered from a poor management and political perplexities. This combination caused a major embarrassment when the government decided to pull out of the already signed contracts incurring penalties of 626 million and 217 million Czech crowns (about €24.5 million and €8.5 million), respectively (Menzelova, 2011). As a result of that, PPP received particularly bad publicity. Yet, all the democratic political parties repeatedly expressed their support for the model before and after the general elections. This, however, never translated into the real political will and action to push the projects through.

There are several explanations for that, one of them being the resistance of the conservative structures within the civil service that

have sufficient power to block the whole concept. Another explanation blames the politicians for their short-termism. That says, the government publicly backs the PPP Policy but privately the procurement procedure is seen as being too long to bear fruit soon enough for the ministers to benefit from it. That has to do with the political system which is infamous for the fluctuation of ministers and their closest collaborators and frequent changes in policies.

However, there are also objective reasons behind the slow and problematic implementation of PPPs in the Czech Republic. Perhaps most importantly, PPPs face a competition from projects co-financed from the EU funds. The managing director of the State Fund for Transport Infrastructure Tomas Cocek for example emphasizes the need for money being available for the EU funded projects in the first place. He warns against PPPs as a potential threat as they may drain the finance away. He sees a possible solution in enabling the combination of PPPs with EU funds – i.e. making use of the EU funds for PPP projects (Cocek, 2012).

Leaving the national level aside there have been dozens of concessions (about 60 as of late 2011) mainly for the operation of local water supply and sewage water plants on the municipal level. These are transferred to the private contractor together with the right to charge customers in return for a regular rent. Besides, multi-storey-car parks that can also be classified as PPPs are now found in several Czech cities. Transfer of demand risk to the private sector and duration of the contract for 10 and more years have been a common feature of these projects. More recently a contract was signed for construction and operation of the public transport depot in the city of Plzen (Pilsen) for 29 years - a project that has caused some controversy as the minister of finance described the deal as “a robbery” (Petr, 2012) and the official report by the ministry assessed the whole PPP project as risky for the city budget. The PPP is feared to consume as much as $\frac{1}{4}$ of the total public transport budget over

the next period. Despite this fact, it received a go-ahead from the city council.

2.4 Political stability

As indicated above, the Czech political environment is stable in its hesitant if not reluctant approach to PPPs. After the rather enthusiastic beginning, a little has been done by the politicians to set up a proper programme of PPP projects for the reasons already mentioned above. No change in the political landscape or in government has impacted the PPP Policy as there has been no significant difference in parties' attitude and determination. The minister of transport Vit Barta, who was in favour of PPPs and revived the idea as a preferred solution for major infrastructure projects in the Superstrategy document (Ministry of Transport, 2011), spent just a couple of months in office and the process of PPP implementation somewhat slowed down again after his resignation following a corruption charge in 2011.

2.5 Effects of financial crisis on PPPs

The financial crisis has brought the issue of PPP Policy implementation to a standstill with the exception of the D3 project, which by now has also been abandoned. It is highly unlikely there will be any progress whatsoever in the near future. There is a lack of interest in seeing any further projects through at the moment and the financial crisis made the situation even more difficult for PPPs. Moreover, the position of the minister of finance regarding PPPs has been rather hostile as can be judged from his reaction to the municipal PPPs.

Partly in reaction to this development, the main industry body previously called Asociace PPP (PPP Association) at the end of 2012 changed its name to Association for the infrastructure development.

Representatives of the industry and government meet every year at the conference called the Czech PPP Forum. However, the event gets smaller year after year as many potential participants are put off by poor prospects of PPPs in the Czech Republic. It has been feared the 2012 PPP Forum was the last one.

2.6 Change in PPP policies because of financial budgetary crisis

Although PPPs play a significant role in the Superstrategy, it seems the Ministry of Transport has taken a rather cautious stance on the scale and speed of the PPP implementation process. No other project than the D3 had a chance to get a go-ahead in the foreseeable future.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

The Czech legislation does not recognize the term PPP and there is no specific PPP law. A concession law on the other hand was adopted back in 2006, but quite paradoxically, it does not cover large infrastructure PPPs which would be procured according to the general procurement law. PPPs based on availability payments used to be described with a special term as ‘quasi-concessions’ which in fact meant that some parts of the concession law applied to them. However, since the amendment of the public procurement law of 2010 this kind of PPPs are governed solely by this general law and the somewhat confusing institution of quasi-concession was abolished.

3.2 Scope and boundaries of specific PPP law

There is no specific PPP law.

3.3 Elements provided in legal framework

Since the update of the public procurement law in 2012 all PPPs would be procured according to this general law. The new amendment of the law with the epithet 'transparent' and according to some observers a particularly hasty piece of legislation (Helikarova, 2012) brought about various changes. As the senior civil servant put it – much more information will be published under the new conditions, but quite sadly much less reasoning and ex ante evaluation will be required (Interview II, 2013). All in all, professionals from both public and private sectors have found the new law confusing, imperfect and perhaps even counterproductive. On the one hand, it makes the project preparation and reasoning easier, but on the other hand, it abandons the idea of proper evaluation and justification of projects which may lead to inefficiencies. The new amendment is believed to provide several new anti-corruption measures, but also several pro-corruption features at the same time (Helikarova, 2012), which leads to experts envisaging a new amendment in the near future.

As for the transport legislation, there are no transport specific laws that would apply to PPPs except for the law No. 13/1997 on Surface traffic that enables private partners to finance, maintain and operate individual stretches of major motorways and trunk roads.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

As already mentioned above, the institutional framework of Czech PPPs has been weakened by the dissolution of the PPP Centre which had fulfilled the role as the main dedicated support unit. At the same time, the central coordination unit at the Ministry of Finance has been reduced in size as a result of stagnation of the PPP Policy in the Czech Republic.

PPP Centre was a 100% state owned joint-stock company. It used to be staffed with top-class experts. Entrusted with preparation of PPP guidelines, providing advice and assistance to all public sector organizations willing to undertake a PPP or similar project it had been pushing the prices of advisory and consultancy services down which was something the Big Four companies and other consultancies were not particularly happy about. A combination of various external pressures, weak marketing and poor demand for PPPs was the cause of continuous losses for the PPP Centre – a situation that proved to be unacceptable for the Ministry of Finance.

By and large, it can be said that further implementation of PPPs in the Czech Republic is now just one of the issues on the agenda of few individuals at different places (mainly within the respective ministries).

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

All projects under the concession law 139/2006 – projects of small extent - have to undergo ex ante evaluation, i.e. each municipal concession project is required by the law to apply for the official statement of the Ministry of Finance. Nevertheless, the results of the ministry's assessment are not binding and it is up to the procuring authority whether it proceeds with the project as it is or not. However, in all other cases governed by public procurement law (55/2012), which involve all big infrastructure projects, the ex ante evaluation is optional.

Value for money (vfm) has scarcely been assessed and considered in case of projects procured in the traditional way. It has rather been seen as an obstacle to the delivery of projects that are needed and therefore a simpler procurement method is preferred in most cases. As a result of that, the important elements of project ex ante appraisal have been left out from the new amendment of the public procurement law of 2012.

This conservative approach trying to avoid life-cycle thinking has been prevalent in the Czech civil service for many years and it is not easy to get rid of (Helikarova, 2012). It also has to do with the prevailing administrative and managerial culture in the Czech Republic which for a very long time ruled out any participation of the private sector on provision of public services. On the other hand, experience with the communist system of binding 5-year plans stigmatized long-term planning as such in the eyes of many in the Czech Republic, not just among politicians and the civil servants. However, it seems that the other extreme has become the new commonplace in the strategic decision making and short-termism now prevails in the Czech political and administrative practice. No major long term conception, vision or plan is safe from being replaced within months after its approval.

All important actions in the project cycle have to be initiated and managed by the procuring authority and it is its responsibility to proceed in accordance with the public interest. As was already

mentioned, the recommendations of the Ministry of Finance can only be understood as either warning or encouragement. It is always the executive body of the respective level of administration that decides on particular projects. So in most common occurrence it is either the city council on the municipal level or the Czech government on the state level that endorse individual deals.

4.3 Standardized process and documents for PPPs

There is a standardized contract which forms a part of the Ministry of Finance guidelines for PPPs. Although it was originally intended for buildings, its elements are applicable to all PPP projects including transport infrastructure. It has been used mainly by local authorities for their water and social services concession projects and there has been no major problem with its application so far.

Given the lack of practical experience with PPPs it is hardly surprising there are no project models in use in the Czech Republic. In fact there is very little to build on when it comes to project evaluation as no central repository of knowledge or database exists.

As for the procurement procedure used, it is competitive dialogue for large-scale projects. Projects of smaller scope can use the open procedure.

5 Conclusion

If PPP had not gained popularity in the years prior the crisis, the period after 2008 has not offered many opportunities to reverse the trend and change the image and status of PPPs. Even the staunchest advocates of PPPs in the Czech Republic had to admit that their efforts have not been met with much success. PPPs in this country

are burdened with past mismanagement and failures of inappropriately selected pilot projects none of which materialized in the end. Since that time the suspicion of many in the political circles and the civil service has not been overcome. The PPP opponents argue that public budgets are not stable enough to secure sufficient funding of PPPs in the long run. They say the funds should be available for co-financing of the EU projects that have been a priority for the government and regions and that PPPs may put timely realization of these projects at risk. The only way forward for PPPs and the main challenge in the view of the State Fund for Transport Infrastructure is a combination of PPP with the use of EU funding.

Nevertheless, sceptics within the community of experts and professionals blame the political representation for the lack of interest in PPPs and the civil servants for resistance to new procurement methods and approaches. They claim short-termism has taken over as a dominant paradigm determining policy and decision making in the Czech Republic. Political parties and their ministers are unable to consider a horizon longer than their time in office which can be very short indeed. Such a hurdle, obviously, is more difficult to surpass.

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Slovak Republic

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Abstract

The financing of the transportation network in Slovakia has traditionally been the responsibility of public bodies. Private investors tend to avoid investments in infrastructure projects because the high levels of risk and long term nature of return of investments. The dynamic economic developments in the past years have caused a massive pressure on public budgets to finance the Slovakia transportation system development. Because of the lack of public funding sources, public entities are forced to seek new financing models in order to finance new development projects. One possibility is to adopt the concept of PPP – public private partnership.

1 Introduction

The Slovak Republic is located in Central Europe. It is a relative new country as it was established in 1993. It took 10 years to join to the European Union and to become a member of NATO. After Slovakia having become a part of European structures the country started to be more open for foreign investors and foreign experiences/practices. Slovakia is a member of the V4 countries (Czech Republic, Poland, Slovak Republic and Hungary). The V4 countries started to adopt the PPP model of project financing in the 1990s. Among the V4 countries, Slovakia is often the last country to adopt new trends. This was also the case in regard to the launch of the PPP model of financing projects within transportation and other infrastructural projects. The legislation framework for PPP projects was created in the period 2004- 2005. The first PPP projects were implemented on the local level in this period.

The first big infrastructure project at the national level was prepared in 2008 and implemented after the financial crisis occurred. Many other PPP projects were stopped after 2010. The reason why Slovak leaders decided to implement PPP projects and why they decided to stop their implementation is narrowly connected with the issue of public debt. Nowadays, the question of PPP is still discussed but the discussions are not as intense as they were at the end of 2000s. At this moment, the most likely scenario is that a new PPP project will be implemented to finance one stage of the highway network development. But today according to the current strategy the primary sources for financing infrastructure development projects are the EU structural funds.

2 Political commitment to PPP and PPP policies

2.1 Decision-making levels and transport modes

Slovak republic has a population of 5,410,836 (at the date of 31.12.2012) and an area of 49,036 km². In 2011, the average population density of the country is 110.2¹ inhabitants per square kilometer which is close to European Union average. The territory of Slovakia is divided into 8 Higher Territorial Units/Region (NUTS III. level) with elected local governments and 79 local districts (NUTS IV. level). There is a significant difference between the most densely inhabited region (Bratislavský kraj with 295.5² inhabitants/km²) and the less densely inhabited region (Banskobystrický kraj with 69.8³ inhabitants/km²).

The Slovakian transportation system has two primary modes of transport: roads and rail. This is the result of the specifics of Slovakia, in particular its size, its geographical location and its natural conditions, but also the historical development in Central Europe. Other transportation modes like aviation and water transportation plays a marginal role. The geographical location of Slovakia in the central part of the European continent implies that major transcontinental transport routes which are a part of the pan-European multimodal transport network run across the country.

¹ Statistical office of the Slovak Republic, Common Charakteristics, [Online] 27.03.2013, <http://portal.statistics.sk/showdoc.do?docid=2213>

² Statistical office of the Slovak Republic, Common Charakteristics, [Online] 27.03.2013, <http://portal.statistics.sk/showdoc.do?docid=2213>

³ Statistical office of the Slovak Republic, Common Charakteristics, [Online] 27.03.2013, <http://portal.statistics.sk/showdoc.do?docid=2213>



Figure 1: Territorial division of Slovak Republic and pan European transportation network branches on territory of the Slovakian Republic (Source: INFOSTAT, 2009)

These routes include:

- Koridor IV (Berlin/Nürnberg – Praha – Budapest – Constanta/Thessaloniki/Istanbul),
- Koridor VA (Trieste – Ljubljana – Budapest/Bratislava – Uzgorod – Lviv),
- Koridor VI (Gdańsk – Warszawa – Žilina),
- Koridor VII (Danube river).

According to the official data from 1.1.2011, the total length of road network in Slovakia was 17,974 km including the highway network which had a total length of 416 km.⁴ The total length of railway networks was 3,622 km of which 1,578 km was electrified.⁵ The

⁴Statistical office of the Slovak Republic, Road Transport, [Online] 12.06.2012, <http://portal.statistics.sk/showdoc.do?docid=23771>

⁵Statistical office of the Slovak Republic, Road Transport, [Online] 12.06.2012, <http://portal.statistics.sk/showdoc.do?docid=23771>

length of navigable waterways is 172 km.⁶ On the territory of Slovak Republic are currently situated eight international public airports of which five serve a diversity of airlines (Bratislava, Košice, Sliach, Poprad Tatry, Piešťany, Žilina) and the other airports serve charter flights only.

Road transport:

The Act No. 135/1961 on roads (Roads Act) define construction, use and protection of road networks, rights and responsibilities of owners and administrators of road network and their users, as well as the competence of state operation bodies and the state supervision in matters concerning roads. According to this act the road network is divided by importance, uses and technical equipment:

- Highways
- Roads
- Urban roads
- Purpose-built roads

The roads are divided by importance according to the Decree no. 35/1984 implementing the Roads Act (§ 3 paragraph 1 article):

- 1st class roads with international and national importance,
- 2nd class roads which connected regions and districts, mainly regional importance,
- 3rd class roads with local importance.

Planning, preparation, construction and operation of road network:

According to § 2, article 3 of the Road Act the development planning of state owned road network (highways, motorways and first class roads, including tract inside the built up area of settlements) is done by the Ministry of Transport, Construction and Regional Development (hereinafter “Ministry”). Planning, preparation and construction of roads owned by regional municipalities (second and third class roads, including tract inside the built up area of settlements) are provided by regional municipality in compliance

⁶ Statistical office of the Slovak Republic, Inland waterway transport, [Online] 12.06.2012, <http://portal.statistics.sk/showdoc.do?docid=23772>

with the whole state concept of road network (štátna koncepcia diaľnic a ciest) and in accordance with the guidelines for road development policy and road operation. Planning, preparation and construction of urban roads owned by municipalities and purpose – built roads are done by local municipalities. Planning, preparation and construction of private owned roads are provided by their owners and other authorized persons.

According to § 3 of the Roads Act, government bodies for the road network are:

- Ministry of Transport, Construction and Regional Development,
- Regional offices for road transport and roads,
- District offices for road transport and roads.

Local governance in matters of urban roads and purpose-built roads inside a built-up area of settlements is a transferred competency of state operation. Slovak Road Operation (Slovenská správa ciest) as a budgetary organization of the Ministry performs the following tasks regarding the road network:

- transport planning,
- central technical register,
- central databank and technological development, including the related conceptual, methodological and coordination activities,
- operation, construction of state owned first class roads.

The National Highway Company JSC (Národná diaľničná spoločnosť - NDS) is 100% owned by the national government and ensures the implementation of the highway development in Slovakia. Furthermore, it is also responsible for the operation of the highway network. Implementation and operation of the highway project implemented by model public-private partnerships can advance within the agreed period (maximum 30 years) to provide other organizations such as NDS. An example of implementation is about 50 km long section of the motorway R1 Nitra – Banská Bystrica operated by Granvia Operation.

Regional Road Operations were established by regional government. The primary purpose of these organizations is the operation and maintenance of second and third class roads owned by autonomous

regions, as well as other transportation property delimitate to regional government.

Railway:

The Act No. 164/1996 on railroads regulates construction of railroads and buildings connected with railroads, operation of railways and railway transport and the rights and obligations of legal entities and individuals associated with railway as well as the role of state administration. In accordance with the mentioned Act the tracks are divided according to technical specifications (§ 3 paragraph 1 article):

- rail
- tramway
- trolley
- cable and another special track

Slovak Railway Company from 1 January 2002 was split into two separate entities – ŽSR and ZSSK. ŽSR is responsible for management and operation of infrastructure, providing services related to the operation of infrastructure, establishment and operation of railway telecommunication and radio networks, and other related activities. From 1.1.2005 ZSSK was divided into Railway Company Slovakia (Železničnú spoločnosť Slovensko, a.s.) having its core business in passenger transport, and Railway Company Cargo Slovakia (Železničnú spoločnosť Cargo Slovakia, a.s.). All three companies are state owned; in addition there is one private passenger transport company. Tramway and trolley systems are owned and operated by local municipalities.

Waterway

The most important waterway with three public harbors on the Slovakian side (Bratislava, Komárno, Štúrovo) is Danube river. The operator of the waterway is the caretaker of watercourse – the public Slovak water management company (Slovenský vodohospodársky podnik, š.p.).

Air transport

Civil Aviation Authority of the Slovak Republic provides in accordance with § 48 and 49 of the Aviation Act (143/1998 Z.z.) state administration, state supervision and other tasks in civil aviation.

2.2 PPP policy framework

The PPP policy framework in Slovakia is set in the resolution of government nr. 914/2005 on a policy proposal for implementing public-private partnerships (PPP). This document deals with PPP projects in general. It has five chapters which focus on: introduction, characteristics of PPP projects, risk of public budgetary deficit linked to the implementation of PPP projects, basic principles which PPP projects have to fulfil, and a chapter on potential PPP projects. Since 2005 when the resolution of government nr. 914/2005 was passed this document was not updated.

There is no separate policy framework for implementation of transport PPP projects. However, the PPP model is mentioned as an element in sectoral policy framework documents related to transport for example in the Transport development policy of SR by 2020. In Slovakia there is no special PPP program with a pipeline and timetable of viable projects, however it is possible to find information about potential PPP projects indirectly in other materials like in the ‘Sectorial development program of public works for the years 2013-2015 – Ministry of Transportation, construction and regional development of the Slovak Republic’.

2.3 Previous and current PPP experience

The previous and current PPP experience in Slovakia is limited. Compared to its neighbor countries from V4 Slovakia started PPP implementation late. There is no specific PPP law; act number 25/2006 on public procurement defines only concessions. PPP

projects were introduced in the second half of the past decade and were prepared and implemented mainly in transport. In 2007 the Government approved the resolution number 704/2007 proposing to speed up the construction progress of high level road infrastructure in Slovakia by using a PPP model for some sections of the planned highway and motorway network. Three tenders were prepared for the construction and operation of different sections of highway D1 and motorway R1, also known as the “three PPP packages”. Only one was implemented, the other two were stopped after the government changed in 2010. Currently the possibility of implementing a new highway/motorway development project using a PPP model is discussed.

Another implemented PPP project on the national level is the system for electronic collection of road toll which was launched in January 2010. This system allows collecting user charges on the highway and motorway network and partly network of 1st class routes for trucks according to effective network usage. The system is based on GPS technology.

In the second half of the past decade the revitalization of four railway stations (Bratislava - Nové Mesto, Prievidza, Trenčín a Žilina) in cooperation with private partners was considered; this idea is not discussed any more.

On the regional level projects on maintenance of 2nd and 3rd class routes were implemented especially in Prešov and Košice regions since 2005.

2.4 Political stability

The first two PPP projects on the national level were procured and three more projects were prepared in highway construction during the first government of Prime Minister Fico (2006-2010). The use of PPP models to finance the highway network development was a political decision; the feasibility of PPP model had not been shown convincingly

After the election in 2010 government changed and the former opposition took over and stopped PPP projects were between 2010 and 2012. From three prepared highway development projects only one was implemented because it was not possible to stop it.

When after elections for national parliament in 2012 the political party of former (and current) Prime Minister Fico returned to office it declared to use PPP for financing infrastructure development projects although PPP currently is not topical in Slovak politics. In conclusion, a clear shift in PPP policy depending on the political orientation of actual government can be noticed in Slovakia.

2.5 Effects of financial crisis on PPPs

The Slovak economy is a small export oriented economy strongly linked with the German market. The financial crisis impacted the Slovak economy in general and the freight transport as well. The negotiation of PPP projects implemented in Slovakia ended and the agreements were signed after the start of the financial and budgetary crisis. While it is not possible to clearly attribute the change in PPP policies to the financial budgetary crisis since 2010 a strong effort of public authorities to decrease the public debt can be observed. Slovakia takes an obligation to decrease the state budget debt under 3 percent. This environment is not considered favorable for implementing PPP models of financing because of future expenditures burdening future budgets. Another problem is the lack of sources and higher financing price of PPP projects.

2.6 Change in PPP policies because of financial budgetary crisis

Currently, Slovakia is facing a budgetary deficit on all governmental levels. This issue has influence on preparing new PPP projects too. PPP projects increase the future spending of the government. Act number 438/2012 on State budget 2013 prescribe the actual PPP

expenditures on 130.564.396 €/year. According to the expert estimations there is a scope to double the future expenditures on PPP. It means that for example Slovakia could finance another approximately 50 km of highway development via a PPP model. On regional and local level there are no data available.

3 Legal and regulatory framework for PPP

3.1 Existence of a specific PPP or concession law

In the Slovak legislation framework the issue of PPP and especially the selection of private partner is legally defined in Act number 25/2006 Coll. on public procurement as amended. This act regulates concession construction works too, which is one type of PPP projects. The public procurement law has been updated 19 times since 2006, and in the second quarter of 2013 extensive changes will be enacted. Construction concession contracts and its possible influence on public debt are regulated in Act number 523/2004 Coll. on budgetary rules of public government as amended and in Act number 583/2004 Coll. on budgetary rules of regional government as amended. In Slovak legislation PPP projects in transportation are not regulated specifically.

3.2 Scope and boundaries of specific PPP law

Unlike other V4 countries, Slovakia has not adopted a special law on PPP projects.

3.3 Elements provided in legal framework

The public procurement law regulates the contracting goods, contracting construction works, contracting services, bidding and

administration in public procurement. The public procurement law defines clear procedures and recommendations for:

- Selection of private partner through competitive procedures,
- Non-competitive procedure in exceptional circumstances,
- Review procedures.

Procedures set by public procurement law for selection of applicants are:

- Public tender (verejná súťaž) – public tender with an unlimited number of candidates,
- Limited tender (užšia súťaž) – limited tender with an unlimited number of candidates; the contracting authority may limit the number of candidates who will invite to provide bid,
- Negotiation procedures (rokovacie konanie), under which a contracting authority negotiates with selected candidates the conditions of contract. Negotiation will be public or limited.
- Competitive dialogue (súťažný dialog), which is organized for an unlimited number of candidates. The contracting authority may limit the number of candidates to conduct dialogue with the aim of developing one or more suitable solutions meeting the requirements of the contracting authority, where the selected candidates are invited to tender.

4 Institutional setting: PPP-supporting institutions

4.1 Acting public institutions / PPP support units

The preparation process of first projects (highway network development projects) started in 2007. The institutional environment became clearer in 2007 when a new department was established at the Ministry of Finance (Odbor partnerských projektov) and the nongovernmental organization Asociácia PPP (Association for the promotion of PPP projects) which includes the private sector too. In

2011 the department “Odbor partnerských projektov” was from 2011 abolished like a stand-alone department.

In the process of preparing and implementing PPP projects the Ministry of Finance is a key player having the following functions:

- Regulatory function (together with the Statistical Office pronounce on the draft PPP contracts in terms of their impact on the reporting of government debt in ESA 95 methodology valid for the European Union and evaluate their impact on the deficit and debt in the public sector),
- Methodological support and control function,
- Function as a knowledge and communication center.

4.2 Procedures for project appraisal and prioritization, role of main actors in project stages

The process of preparation and implementation of the PPP project, as shown in the diagram below is structured in 8 different stages. These are:

1. Identification of a potential project
2. Assessment of a potential project
3. Preparation of a PPP project
4. Public procurement
5. Contracting
6. Construction process / evaluation of investment
7. Monitoring the performance of the PPP project
8. Completion and evaluation of the PPP project

Procurement of construction works like a concession with a planned budget higher than 3,319 million EUR have to be passed by Government according to the act 583/2004 about budgetary rules of local governments. Compulsory part of the document presented to the Government is the opinion of Ministry of Finance towards draft the contract in terms of its impact on the reported government debt in a uniform methodology applicable to the EU.

In the pretender stage of PPP project the procuring government organization Grantor sets up a steering committee and a project management according to a methodology developed by the Ministry of Finance. Grantor has the organizational structure for project preparation and sets out the obligations of individuals. The project steering committee usually consists of representatives of grantor and of the private partner. Due to the possible impact of the PPP project on the public budget and public debt a representative of the Ministry of Finance takes part in the meetings of the steering committee of PPP projects at the central state-level as an observer. The steering committee recommends Grantor appointing a project manager and a public relations manager who is responsible for communication with the public and other project stakeholders.

4.3 Standardized process and documents for PPPs

Currently in Slovakia standardized processes and documents for PPPs within transport do not exist.

5 Conclusion

The issue of PPP projects appeared in Slovakia relatively late; a PPP policy framework was approved in 2005. There is no specific PPP law but the public procurement act regulates concessions. A clear shift in PPP policy depending on the political orientation of actual government can be observed in Slovakian politics.

Previous and current PPP experience in Slovakia is limited. PPP projects were prepared and implemented mainly in transport. Although currently the implementing a new highway/motorway project using PPP has been discussed. The primary sources for financing infrastructure development projects are structural funds. PPP financing has a role of additional source.

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