

THE MANAGEMENT OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS IN THE ROMANIAN INFRASTRUCTURE AND ITS ROLE IN THE CONTEXT OF THE ECONOMIC CRISIS

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ABSTRACT

The infrastructure projects in Public-Private Partnerships have a great potential in the Romanian economy, as the need of investments in this sector, motivated by the poor quality of the infrastructure, is extremely high. In the context of limited and insufficient budget resources, the private financing of these projects by the mechanism of Public Private Partnership is a real opportunity and a challenge for the involved organizations.

In this context, the correct understanding of the PPP concept, both in the public and private sector, becomes a key factor for the successful implementation of this solution on the market. Switching the approach from « input » to « output » represents the switch from the traditional public procurement to project development with complete solutions.

The success of these projects of high complexity depends on understanding the concept and different organizational models, as the optimization of the development process under economic performance is conditioned by the implementation of a model that fits the project's needs.

KEYWORDS: *Public-Private Partnership, stakeholder, economic performance, private finance, infrastructure*

Introduction

The infrastructure projects in Public-Private Partnerships (PPP) system have a great potential in the Romanian economy, as the need of investments in this sector, motivated by the poor quality of the infrastructure, is extremely high. In the context of developing budget pressures and as the fulfillment of the Maastricht criteria regarding the public indebtedness becomes very difficult to be accomplished, the private financing of these projects by the mechanism of PPP is a real opportunity and a challenge for the involved organizations. Furthermore, under the current circumstances of the global economic crisis, the PPP projects can be a valid and realistic solution to overrun the difficult situation of the public infrastructure: poor state and lacking financial resources.

In this context, the correct understanding of the PPP concept both in the public sector and in the private sector of organizations becomes a priority for a successful implementation of this solution on the market. The success of these projects of high complexity depends on the knowledge of the concepts and different organizational models and the optimization of the development process under economic performance is conditioned by the implementation of a model which best fits the project's needs.

This article aims to give in a short manner a general overview of the PPP concept, to help the correct understanding of its mechanism and of its advantages and explains why

this concept represents a solution for continuing the infrastructure development process under the current financial crisis.

The characteristics of the PPP projects

The cooperation between the public and the private sector towards the realization of the major infrastructure projects has a lot to gain within the PPP system. An important reason for the rise of the PPP projects number is represented by the expectations linked to this system, regarding the superior efficiency and acceleration of the development, execution and finalization of these projects. Despite the growing importance and popularity of such projects model, there is still a high lack of confidence and uncertainty among the public decision factors, due to the lacking knowledge and correct understanding of the PPP initiation and implementation mechanisms.

There are many forms and definitions of the PPP concept. The PPP system is defined in the most general meaning, by the fact that it presumes a specific form of cooperation between the public and the private sector, usually on the long term. It is, though, a mistake, to put PPP and privatization at the same level. The privatization is only a form of PPP. This system- the PPP- doesn't aim the privatization of specific public interest objects, facilities or projects, but much more, it aims to realize these projects with private sector specific Know-How, with private finance and under conditions of superior economic efficiency (*Vickermann, 2008*).

A typical characteristic of this projects type is the fact that the sharing of resources, of the risks and of the different areas of responsibilities can vary a lot. This we owe to the fact that the sharing of the tasks and duties within the PPP, is made according to the principle that each partner takes over those tasks he is able to fulfill the best and the most efficient way. The partnership philosophy requires a correct sharing of the risks. The PPP aims at the optimization of risk sharing and not to the total risk bearing by one single partner (*Nilson 2008*).

Typical for PPP is also the fact that the partnership is structured on a contractual or on an institutional basis, by founding a project-based company with both public and private sharing. The PPP is, nevertheless, also an alternative public procurement method of construction or other kind of services. The efficient allocation of the resources, risks and areas of responsibilities leads usually to the attainment of the public objectives under superior conditions of efficiency. (*Iossa, Martimort 2008*).

By means of PPP the specific knowledge and competencies of the private sector, as well as the management and technical Know-How, can be exploited to the benefit of the public sector and especially to bring private capital. In this way a win-win situation can be created for both parties. The public partner is taking advantage of the economical efficient performance, as the private partner is benefiting of the payments received for his performance.

The PPP projects require, due to their high complexity of the preparation and implementation of legal, economic and technical expertise. From the legal point of view, several aspects regarding the procurement procedures, taxation, subsidies can play an important role. From the business and commercial point of view, the relevant aspects and components of the PPP are to be compared with the traditional procurement regarding its efficiency.

Considering the limited budget resources as well as the high need for investment in the public infrastructure, the PPP represents a modern and efficient alternative for administrative optimization. (*Maskin & Tirole 2006*)

According to a study of the German institute for urban development, the PPP projects lead to average project cost reductions of 10%, calculated with a realistic method by taking into consideration interests rates and compounded interest rates. Other studies and institutes of statistics estimate realistic efficiency advantages of PPP projects of up to 20% versus traditional projects.

The projects suitable for Public Private Partnership

The PPP is suitable, according to its concept, for all procurement schemes. A core theme would be the investment and provisions in construction of public goods. The areas of public interest, where PPP has an important influence:

- administration e.g. the Plan, : Design, Build, Maintenance and Operation of a town hall
 - education: e.g. rehabilitation, maintenance and management of educational buildings (schools etc)
 - sports and free-time: e.g. construction, operation and management of a multifunctional arena or zoo-garden
 - supply and waste management: e.g. construction and operation of sewage plants and water utility and water supply works
 - urban development and economic stimulation: e.g. rehabilitation, operation and management of a city hall or exhibition and fairs sites.
 - Child care: build, operation and management of kindergartens
 - Health: e.g. operation and management of city hospitals or city foster homes
 - Culture: e.g. rehabilitation, operation and management of theaters, museums or public libraries
 - Information Technology: Plan and Operation of computer networks
- (Roedl&Partner, 2006)

The PPP models

When it comes to involving the private sector for fulfilling tasks of the public sector there are different possible contractual and organizational models that have to be taken into consideration. The background for the development of different models of the PPP lies in the permanent search for appropriate possibilities of involving the private partner in public projects, without transferring the public responsibility assigned by law to the respective public authority to a private third party and without breaking the laws. For unlike the normal privatizations, the public sector usually remains the beneficiary within the PPP's (Roedl&Partner 2006)

There are, basically, two categories of PPP models, contractual PPP and organizational PPP. The first type applies especially to projects, that have a time limit and that are performed on the basis of a contractual relationship. The second type describes schemes of public-private cooperation within an organizational structure, especially within a legal separate entity (e.g. limited liability company).

a. The contractual PPP's

The contractual PPP models have several basic models. In practice there are operation-, management- and concessions models of particular importance. These are not standard legal contract models, but special contracts tailored to the specific needs of the public sector. In the construction field there are several variation of such contracts, that I want to explain in the next part.

Operation model Basically the public authority assigns a private partner – the operator- - to fulfill a public task by planning, financing, building and operating the facility/investment, in order to achieve, by involving the private sector, a complete concept as efficient as possible. Between the public sector and the private operator is a contractual commitment that is long-term life cycle oriented with regard to the facility/investment (up to 30 years). The legal basis is a contract for operation that is completed with additional contracts regarding building lease transfer rights, financing, commercial, employment etc.

The public sector still holds the responsibility, so that the private partner doesn't appear as independent legal entity involved, but performs a service in the name and for the public sector. The owner of the facility to be built will be the private operator. The remuneration for the private operator represents a cost position of external services for the public sector.

Management model

Management models are very usual in the practice of the local authorities. Besides the traditional supply and waste management fields (water, electricity, gas, heating, wastewater, waste) these service models are also in the health sector (e.g. management of public hospitals and clinics). Unlike the operator model, the public responsible party is, in this case, owner and operator of the facility to be built as well. Actually the management is being transferred by the local authority, in its name and on its behalf, for a management remuneration, to the private partner.

The manager performs his services in external relationship for the local authority. The services to be performed by the private party comprise usually commercial and technical services including service and maintenance of the facilities.

owner or transfer model

In this case the private partner plans, builds, finances and operates a real estate object, which will remain either in the possession of the local authority (owner model) or will stay in the possession of the private operator during the contractual period and will be transferred to the public authority at the end of the contract. The private partner receives a fee for his services, covering his investment and operation costs. Mainly the private partner bears the risk, as the public partner has to bear the depreciation risk.

the concession model

Unlike the operator or the management model, the private partner within the concession model, the concessionaire, builds or develops a specific facility or service on his own economic risk. Concessions can be structured, according to their object of concession, into construction- or service concession. The exploitation risk is usually borne by the concessionaire. As counterpart, he receives the right, to refinance his costs with exploitation taxes paid by third party for using the built facility. The concessionaire doesn't receive a fix payment from the public partner.

Mix models

Starting from the previous basic models, there are several mixed contract models possible that were structured especially in the area of the public superstructure work. These mixed concepts have in common the life-cycle orientation of the buildings.

Within a *rent-model*, the private partner plans, builds, finances and operates a building and delivers during the operation phase facility-management services. The public partner rents the building from the private partner and pays a rent interest, which is usually calculated at the market price level. At the end of the contract period, the public partner can use the rent extension option or exceptionally even the buy option.

In case of the *leasing models*, the private partner takes over for the public partner, the plan, build, finance and operation of a specific building. For his services he receives

monthly leasing-rates. At the end of the contract the local authority/ the public partner has the option to acquire the built facility/ building.

b. Organizational PPP

The organizational PPP represents the common sharing of public and private within a project based company (named also special purpose vehicle) as an independent legal entity (e.g. limited liability company). In this case we talk about a mixed economic company. Basing on the contractual commercial agreement between the public and the private partners, the cooperation is long-term oriented. Regarding the organizational structure, there is the possibility of splitting the partnership into a owning company, that owns the facilities, and a operation company, that rents or leases the facility from the owning company in order to manage it properly.

The practical implementation of the PPP

The implementation of the PPP models can succeed generally in five typical project stages, which characterize the normal process of a PPP procurement scheme: the demand assessment, the PPP test, preparing the procurement process and contract awarding, the procurement process and the final contract awarding.

1. The demand assessment

The starting point of a PPP is the idea, that a specific task or a project of the public local authority can be implemented more efficient and more effective when a private partner is involved in the project. First, the public authority has to assess whether there is a need for action or for investment in a specific area. Several factors can be important within this context. For example some legal regulations can or decisions could trigger a specific action demand, but also to stimulate some public political investments.

In order to determine the eligibility of such PPP projects, the public authority has to analyze its future prospects regarding its investment activity and development goals. Priorities should be set regarding the needed projects and the finance resources are to be evaluated, in order to define the investment and developments prospects. This definition should comprise besides the projects description also the targets, the content and the scope of the investment, as well as the possibilities to finance and refinance the works. Ideally this definition is designed with the participation of the political and administrative environment, in order to ensure the acceptance and feasibility of the PPP within the economic, political and legal framework.

2. The PPP test

The demand assessment should be followed by a PPP test. Accordingly, the applicability of a specific project by PPP is to be verified. This test should answer the question, whether the PPP is an appropriate alternative for the conventional procurement and whether a private partner can or should be involved within a specific project. Basically this test should comprise the analysis of the needed project characteristics, the estimation of the PPP – financing costs and the forecast the project efficiency.

3. The preparation of the contract awarding process

If the PPP test shows the superior efficiency of the PPP – model versus the traditional procurement, then the public authority has to prepare the awarding procedure. An important role is played here by the clarification of the legal framework applicable to the project. Within the PPP models the private partner performs usually several activities, e.g. Design, Build, Plan, Build, Finance or Operation. It is therefore important, whether the PPP contract shall be awarded as service contract or construction contract.

Choosing the awarding procedure is of great importance. Europe – wide there are several typical procedures within the public procurement system: open tender, restricted

tender, negotiation based procurement and the competitive dialogue. Due to its high complexity, the PPP structure fulfills the requirements for being awarded with the negotiated procedure with prior contract notice. This procedure was used extensively Europe-wide. However, the recent developments of the community Law regarding the public procurement allow the negotiated procedure for PPP awarding only in exceptional cases. The most popular procedure is the open tender process with prequalification. In some cases where the open or restricted procedures do not offer sufficient flexibility due to financial or legal complexity, the competitive dialogue is the innovative solution introduced in 2004 by the

European Commission not only to preserve the competition between the economic operators but also take into account the public authorities' need to discuss all aspects of the contract with each candidate. Finally, the authority has to publish the announcement for the tender after deciding the participation requirements and awarding criteria (similar experience, economic performance and reliability, as well as preparing the complete tender documentation comprising also the contract description.

4. The procurement process

This phase starts with the prior information notice regarding the tender. The tender usually starts in case of PPP projects with the prequalification phase. In this phase, only the most suitable candidates regarding the similar experience, technical and economical capacity and reliability are selected for the final offer stage of the tender.

5. The contract awarding

Conclusions

The alternative finance methods were underestimated for a long time in Romania, but having the example of its success stories in the Western Europe, this method should be taken seriously into consideration as a real opportunity for the development of the Romanian infrastructure.

The PPP represents, without any doubts, an important alternative to finance the large infrastructure projects in Romania, especially under the current economic crisis. That is a fact that has to be intensively debated on the Romanian construction market, both in the private and public sectors.

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