

**PUBLIC-PRIVATE PARTNERSHIP
PROJECTS, A VIABLE OPTION FOR THE
DEVELOPMENT OF THE EUROPEAN
CITIES**

Abstract

The aim of the article is to present how Public Private Partnership (PPP), a new collaboration between public and private sector, is implemented and is developed, in three European countries (Romania, France and United Kingdom). Although PPP is considered to be an important instrument for infrastructure development, hospital and school modernization, every country based on its legal framework and institution, developed a particular model of public-private partnership. Among the three countries there are different approaches regarding PPP, from many points of views: legislation, risks transfer, financing, methodology, type of built utility, national culture, duration, etc.

Keywords: public-private partnership, management, project, procurement, concessions.

JEL CODES: G18, H54, H57, L32, O57, P35, R42

**PROIECTELE ÎN
PARTENERIAT PUBLIC-
PRIVAT, O OPȚIUNE
VIABILĂ PENTRU
DEZVOLTAREA ORAȘELOR
EUROPENE**

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Rezumat

Obiectivul acestui articol este de a prezenta modul în care Parteneriatul Public-Privat, ca formă de colaborare între sectorul public și privat, este implementat și dezvoltat în trei țări membre ale Uniunii Europene (România, Franța și Anglia). PPP este considerat a fi un instrument important în dezvoltarea infrastructurii, modernizarea școlilor și spitalelor astfel fiecare țară a dezvoltat un model propriu privind PPP, întâlnindu-se în practică forme precum concesiunile și achizițiile publice. Între cele trei țări analizate sunt întâlnite abordări diferite privind PPP din numeroase puncte de vedere: legislativ, transfer al riscului, finanțare, metodologie, tip de proiect, specific național, durată, etc.

Cuvinte cheie: parteneriat public-privat, management, proiect, achiziție publică, concesiuni.



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1. INTRODUCTION

The modernization of public services and infrastructure is a promise every government has made to its citizens. Public Private Partnerships offer a viable alternative to traditional procurement methods and encourage the public and private sectors to do more business together.

Delivering PPPs, governments can fund new roads, improve rail services, modernize hospitals, and build new schools and social housing, quicker and more efficiently. PPP is considered an alternative to alleviate infrastructure gap that currently exists in many European countries.

Public-Private Partnerships ("PPPs") are a growing element of the public sector procurement across Europe. The use of PPPs is now spreading to most EU member countries and depending on the country and the politics of the time, the term can cover a large spectrum of models.

The key contrast between PPPs and traditional procurement is that with PPPs the private sector returns are linked to service outcomes and performance of the asset over the contract life.

The private sector service provider is responsible not just for asset delivery, but for overall project management and implementation, and successful operation for several years thereafter, (Davies and Eustice, 2005).

The Commission's 2004 Green Paper on Public-Private Partnerships described the PPP as "a form of cooperation between the public authorities and economic operators. The primary aims of this cooperation are to fund, construct, renovate or operate an infrastructure or to provide a service". PPPs are present in sectors such as transport, public health, education, national security, waste management, and water and energy distribution.

According to the Green Paper, PPPs are characterized by:

- the duration of the relationship between the partners;
- the method of funding the project;
- the role of the partners in the definition of objectives, design, completion, implementation, and funding;
- the distribution of risks.

Hodge and Greve (2007) noted five different families of such partnerships:

1. Institutional co-operation for joint production and risk sharing (such as the Netherlands Port Authority).
2. Long-term infrastructure contracts (LTICs), which emphasise tight specification of outputs in long-term legal contracts (as exemplified in UK Private Finance Initiative projects).
3. Public policy networks (in which loose stakeholder relationships are emphasised).
4. Civil society and community development.
5. Urban renewal and downtown economic development-in the USA a portfolio of local economic development and urban re-growth measures are pursued.

Governments using PPPs accept the benefits of increased flexibility in the short term in return for constraints on their capacity in the longer term, since they hand over to their private partners both authority to manage or operate the services affected and the income stream from those operations, (Teicher, Van Gramberg, Neesham and Keddle, 2008).

As mentioned by Jiroveanu and Drăjneanu, to ensure the success of public-private partnership, it is necessary to procure a high degree of decentralization. This entails increasing managerial responsibility at lower levels of public organizations, especially because of the growing importance of negotiations in the procurement process, (Jiroveanu and Drăjneanu, 2011).

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 (Coretchi, 2009).

The article is organised into three parts. This first section presents the public-private partnership concept and features. The second section presents the framework of analysis that guides the comparison and the legislation adopted by the three countries. The third section compares PPPs approaches and draws the conclusions of the study.

2. APPROACHES OF PPPS IN THE EUROPEAN COUNTRIES

As mentioned in a PricewaterhouseCoopers Report, under PPPs, the private sector finances the construction of the project and is repaid by a service charge from the authority over time or by revenues from the project, or a combination of the two. So when the public authority does not want to, or cannot increase its levels of borrowing, PPPs make projects affordable.

According to The European PPP Expertise Centre (EPEC)¹, in 2011, the value of PPP transactions reaching financial close in the European market totaled 17.9 billion euro.

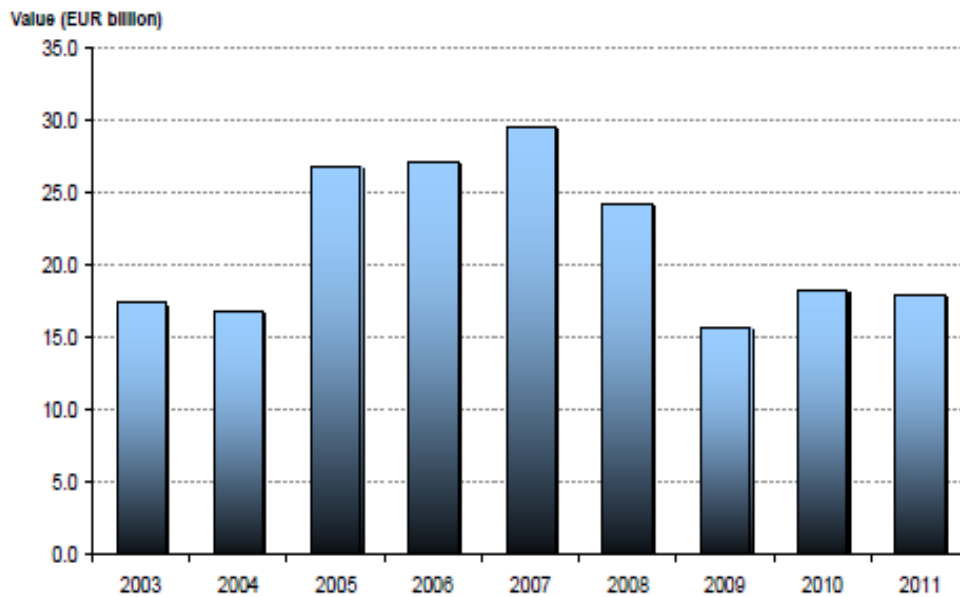


FIGURE 1: - EUROPEAN PPP MARKET 2003-2011 BY VALUES
Source: EPEC - Review of the European PPP Market in 2011

As presented above in Figure 1, 2011 was roughly in line with 2010 (18.3 billion euro). The PPP peak in Europe was reached between 2005 and 2007, when PPP value exceed 25 billion euro.

The financial crisis has had a significant impact on the entire European economy, therefore the PPP market value decreased, reaching levels in 2009, 2010 and 2011 similar to the period 2003-2004.

As Figure 2 below shows, France dominated the 2011 European PPP market in value terms, overtaking Spain, UK, Italy, Germany and Belgium.

However with 27 deals closed in 2011, the UK still remains the most active market in terms of number of transactions. France, Germany, Spain and Belgium closed 19, 16, 7 and 6 deals respectively. These 5 countries together accounted for 82% of all European PPP transactions closed in 2011.

¹ EPEC is a joint initiative of the European Investment Bank, the European Commission and European Union Member States and Candidate Countries. EPEC helps strengthen the capacity of its public sector members to enter into PPP transactions.

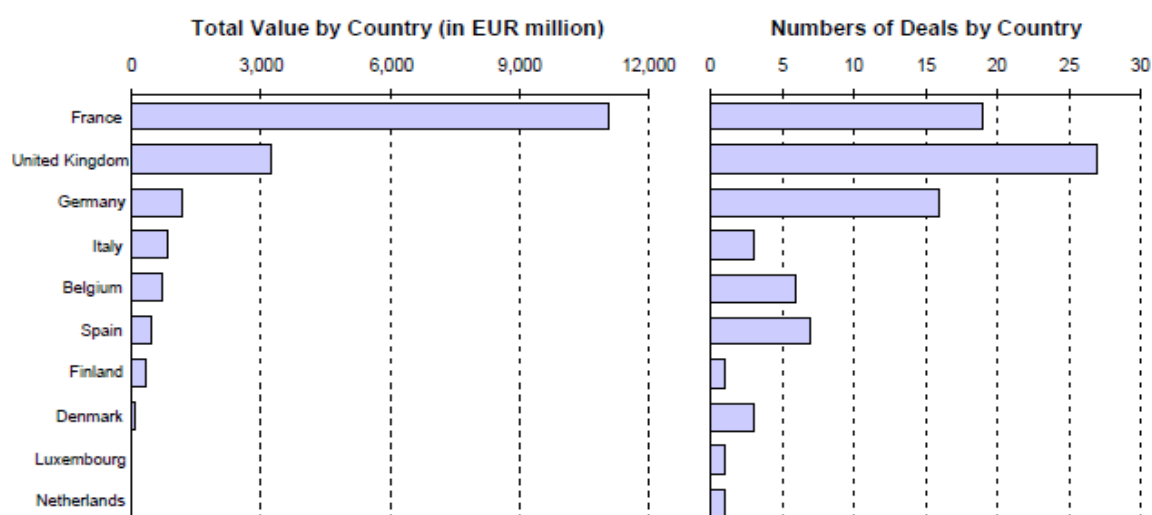


FIGURE 2: COUNTRY BREAKDOWN BY VALUE AND NUMBER OF TRANSACTIONS
 Source: EPEC - Review of the European PPP Market in 2011

Current state of public-private partnership in Romania

In Romania the first structures of public-private partnership (PPP) were hastily created nationwide since the middle of 90's in the drawing up of national or sectoral strategies (National Strategy for Sustainable Development - 1999, Medium Term Economic Development Strategy - 2000), as well as institutionalized structures such as the Tripartite Commission and Economic and Social Council. These partnerships have helped gradually to achieve an environment of cooperation between social actors and political leaders.

Romanian law provides several instruments through which the State or local authorities entrust undertaking of works, supplying of goods or services to private investors, namely by means of public procurement, public works concessions and services concessions contracts.

The relevant partnership legal framework was modified during last years, following European Commission's recommendations and with a view to comply with Romania's engagements in the field of ensuring free movement of goods in the context of Romania's accession to the EU. The main legal instrument governing public procurement, public works concession and services concession contracts is the Government Emergency Ordinance no. 34/2006 (GEO no. 34/2006), that entered into force on June 30, 2006. GEO no. 34/2006 has as purpose the harmonization of the relevant Romanian legislation with the provisions of EC Directives (Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Between 2006 and 2010, the PPP concept was replaced by public works and service concessions. In order to complete national legal framework and to clear the legislation in relation to the PPPs, the Romanian Parliament adopted a new law regarding the private-public partnerships. Therefore, the Law no. 178/2010 of public-private partnership is considered first Romania's PPP Law.

According to the PPP Law, there will be three key elements in the development of a PPP project: i) the pre-project agreement; ii) the PPP agreement; and iii) incorporation and operation of the contractor.

The PPP Law also envisages the following main types of agreements: Design – Construction – Operation Agreements; Construction – Operation – Renewal Agreements; Construction – Operation – Transfer Agreements; Lease – Development – Operation Agreements; Renovation – Operation – Transfer Agreements. Also the law established that the maximum term of a PPP (including any renewals / extensions) is 49 years.

However, less than one year after its adoption, due to the European Commission notification concerning the violation of public procurement European acquis, Law no. 178/2010 was modified by GEO no. 39/2011. These new modifications to PPP law solved only partially the problems encountered by European forums. Although international and domestic investors have expected a PPP law, the current frame law has shortcomings that make it almost unworkable at this time.

Considering the lack of a proper legal framework, in Romania, PPP was developed more as concessions projects. The Ministry of Finance provides on his website an evidence base for all projects (undertaken, abandoned or foreseen) with a public-private focus within Romania. These 40 projects that complete the database are treated as being PPPs, although the legal framework for a public-private partnership is not concluded. The 40 projects are developed in the following sectors: Waste (8 project), Touristic/recreation infrastructure (1 project), Energy (2 projects), IT (2 projects), Bridges (1 project), Airports (4 projects), Transport infrastructure/parking (10 projects), Waste Water (5 projects), Roads and Motorways (4 projects), Electricity (3 projects).²

From the total of 40 projects, 27.5% are canceled, the rest of 72.5% representing 29 project are in different stage process (on-going contract, pre-tendering phase, tendering phase). Some examples of canceled projects, according to Ministry of Finance website are: Bridge over the Danube between Tulcea and Braila Counties; Construction and operation of water treatment in Ilfov County (2 villages); Design, built, operate local ecological warehouse in Mures County; Enlarging of the NR7 Santuhalm-Hunedoara; Airport near Deva City; Sanitary landfill for domestic waste in Hunedoara County, Petrla.

² Data collected from the database of Ministry of Finance, website: www.anaf.ro

TABLE 1: - NUMBER OF PROJECTS SELECTED BY PROJECT STATUS IN ROMANIA

Project status	Number of projects
On-going Contract	14
Pre-Tendering Phase	13
Canceled Project	11
Tendering Phase	2

Source: Ministry of Finance

The institution entitled in knowledge sharing and observation of the PPP is the Central Unit for the Coordination of PPPs, institution established in 2005, and reconfirmed by the PPP Law, under the supervision of Ministry of Finance .

3. PUBLIC-PRIVATE PARTNERSHIP APPROACH IN FRANCE

Public-Private Partnership has evolved in France in the last years from traditional forms such as concessions and bail emphytéotique administratif to new forms of PPP known as contrats de partenariat (Partnership Contracts). Below is resumed the history of cooperation between French public and private sector, as mentioned on a EPEC Report (2012).

- 1988 - Introduction of the first form of government-pay PPP contract (bail emphytéotique administratif);
- 1994 - Introduction of another form of government-pay PPP contract (the Autorisation d'occupation temporaire du domaine public);
- 2002-2004 - Sectoral measures to favour the use of PPP arrangement;
- 2004 - Legislation introducing the contrat de partenariat and decision to create a central PPP unit (MAPPP);
- 2005 - MAPPP is set up and starts operating;
- 2008 - New law facilitating the use of the contrat de partenariat and of the bail emphytéotique administratif;
- 2011 - Financial close of one of the largest PPP projects in Europe (Tours-Bordeaux High Speed Rail) and France becomes the largest PPP market in Europe in value terms.

After France enacted a new PPP procedure in June 2004, "Ordonnance n° 2004-559 du 17 juin 2004 sur les contrats de partenariat", the Ministry of Finance felt that the complexity of this new procedure

required a task force that would be responsible for supporting and regulating PPP projects: "Mission d'Appui à la Réalisation des Contrats de Partenariat (MAPPP)". The body was officially set up in May of 2005 and MAPPP's primary role, as mentioned by the French Ministry of Economics, Finance and Industry, is assessing PPP projects before they receive approval from the Ministry of Budget.

According to the French Ministry of Finance, MAPPP is responsible for promoting the PPP market in France. It does this through publication of newsletters, participation in conferences, and establishment of an "Observatoire des PPP" to retain knowledge and lessons learned from past projects. It is involved in multilateral cooperation, through sharing the experience and good practices within the framework of the World Bank Institute, UNECE, OECD and the European PPP Expertise Center.

In France, according to EPEC, PPPs can be divided into two categories: concessions (public service delegations and works concessions) and partnership contracts. Concessions are financially free standing contracts under which the private sector company takes revenue risk and partnership contracts are used for services sold to the public sector.

Partnership contracts (contrats de partenariat) were implemented in 2004, since then 123 projects have been put out to consultation or tender and 22 deals signed. PPP projects have been closed in France in a number of sectors, particularly:

- urban utilities (47.5%): street lighting, refuse collection, water treatment;
- construction (15%): schools, highways, hospitals;
- cultural and sport infrastructure (15%): stadiums, swimming pools, theatres;
- information and communication technologies (12.5%): broadband, GSMs.

The duration of the contract is linked to the duration of depreciation of the investments or the conditions of financing chosen.

For a partnership contract to be used, one of the following conditions has to be fulfilled:

- a) the existence of an urgent need;
- b) the demonstration of the complexity of the project; or
- c) the demonstration in the compulsory preliminary study of a positive balance between advantages and drawbacks for the public authority.

TABLE 2: - PPP SIGNED BETWEEN 2005-2010 IN FRANCE (MILLIONS EUR)

<i>Year</i>	<i>Total</i>	<i>French State</i>	<i>Local Government</i>
2006	155	70	85
2007	200	17	183
2008	804	330	474
2009	544	260	284
2010	1952	1094	858
2006-2010	3655	1772	1884

Source: MAPPP Activity Report

The value of PPPs increased since 2005 to 2010, as mentioned in a MAPPP Activity Report published by the French Department of Economy and Finance. The economic crisis affected PPP signed in 2009, diminishing the total value with 33%.

According to the Centre d'Expertise Français pour l'Observation des Partenariats Public-Privé, in France, in 2011, 125 projects were launched and 48 projects were signed, representing 16.6 billion euro.

4. THE PUBLIC FINANCE INITIATIVE IN THE UNITED KINGDOM

The Private Finance Initiative (PFI) was launched in November 1992, a financial mechanism to obtain private finance which could satisfy the political need to increase investment in the infrastructure without affecting public borrowing, guarantee large contracts for construction companies and to create new investment opportunities for finance capital.

Financially, the PFI allowed public capital spending to bypass the public sector borrowing requirement, and provide the impression of prudent fiscal management. Politically, it meant that the citizens could be provided with new roads, prisons and hospitals without the related investment having an immediate budgetary impact (Hodge and Greve, 2010).

The Public Finance Initiative is a form of public-private partnership (PPP) that marries a public procurement program, where the public sector purchases capital items from the private sector, to an extension of contracting-out, where public services are contracted from the private sector. The PFI differs from other PPPs in that the private sector contractor also arranges finance for the project (The Private Finance Initiative, 2001).

Under the PFI, the public sector does not own an asset, such as a hospital or school, but pays the PFI contractor a stream of committed revenue payments for the use of the facilities over the contract period. Once the contract has expired, ownership of the asset either remains with the private sector contractor, or is returned to the public sector, depending on the terms of the original contract.

Under the PFI three broad types of projects can be identified: free-standing projects, joint ventures and services sold to the public sector.

PFI entails transferring the risks associated with public service projects to the private sector in part or in full. Where a private sector contractor is judged best able to deal with risk, such as construction risk, then these responsibilities should be transferred to the private sector contractor. With the PFI, as with many other types of PPPs, value for money is achieved through the transfer of risk to the private sector, which is perceived to have an advantage in handling risks. The risks that can be transferred to the private sector can be divided into two groups, general risks that are common for all types of public or private service projects and PFI's specific risks that are specific for the project itself.

PPPs are used across a wide-range of sectors in the UK, including health, education, transport, defence, leisure, waste, culture and housing sectors. According to CMS Derks Star Busmann Report (2011), the public-private partnerships in UK were mostly spread in the following sectors:

- Health sector – where there are 85 operational projects;
- Education sector – where there are 121 schools projects;
- Transport sector – where there are 50 operational projects; and
- other sectors – where there are over 300 other projects covering the defence, leisure, waste, culture and housing sectors.

The United Kingdom House of Commons consider in one of his 2011 reports, that “there has been, and continues to be, at least a small incentive to use PFI in preference to other procurement options, as it results in lower headline government borrowing and debt figures in comparison to other forms of capital investment”. So there is a major concern that in some cases PFI will encourage poor investment decisions and allow organisations and government the possibility of procuring capital assets without due consideration for their long-term budgetary obligations.

5. COMPARATIVE RESEARCH ANALYSIS

As mentioned in every country review, the PPP legislation is not unified at European level and is specific for every country. Therefore PPP methodology and types are numerous: partnership contracts in France; free-standing projects, joint venture and services sold to the public sector in U.K and public-private partnership in Romania.

The PPP projects are developed, in every country in sectors like transports, public health, education, national security, waste management, water and energy distribution. In every European country, the object of an PPP is to design, build, finance and operate social and public projects. In comparison to France and United Kingdom, Romania still needs to develop the legal framework according to European principles. In Table 3, the main elements of PPP characteristics have been summarized and compared. The comparison has shown that even if every European Union member embrace European legislation there are many differences specific to their national approach.

In the current context of the international financial markets and given the restrictions on public deficit and public debt imposed by International Monetary Fund, public-private partnership projects seem to be an important opportunity for developing Romania's infrastructure. In Romania a special law on PPP projects was adopted but no major project has been successfully signed so far. United Kingdom developed its PFI model with no PPP law but the large number of projects developed by this country confirm that an PPP can be developed without special laws. However, it is important to mention that a specific system governind PPP's can establish fundamental principles that PPP arrangements should adhere to and ensure project transparency and accountability.

TABLE 3: - COMPARISON ANALYSIS ON PUBLIC-PRIVATE PARTNERSHIP

	Romania	France	United Kingdom
Object of an PPP/PFI	Design, finance, build, rehabilitate, modernize, operate, mainten, develop and transfer of a public asset or service.	Global contract for the design, construction, operation, finance and maintenance of an asset	Design, build, finance and operate social infrastructure projects (schools, hospitals, transport, etc.)
Legal framework	Law no. 178/2010	Ordinance No. 2004-559 of 17 June 2004	No PPP Law
Procuring authority	Any state body, public authority or institution, acting at a central, regional or local level.	French State, national public bodies, local governments, local public and public hospitals.	Central government departments and their executive agencies; local government; hospital and primary care trusts; universities and colleges; passenger transport executives; and other bodies created by statute and their subsidiaries.
Types of projects under PPP/PFI	Public-private partnership project (<i>parteneriat public-privat</i>)	Partnership contracts (<i>contrat de partenariat</i>)	Free-standing projects, Joint ventures, Services sold to the public sector.
Terms	Maximum 49 years	Typically 20 to 30 years	Depends on projects type
Sectors	Wide range of sectors including: transport infrastructure/parking, motorways and roads, waste and electricity,	Almost all economic sectors (e.g. transport, health, justice, education, urban equipment, environment, energy efficiency,	Wide range of sectors including accommodation, health, education, leisure, waste, transport (road and rail), housing,

		telecommunication, culture).	defence, IT, fire and rescue services, street lighting and prisons sectors.
Bodies that oversee PPP/PFI	PPP Central Unit (<i>Unitatea Centrala pentru Coordonarea Parteneriatului Public-Privat</i> or UCCPPP)	<i>Mission d'appui à la réalisation des contrats de partenariat</i> or MAPPP	Partnerships UK (PUK)
Ownership of the assets upon termination of the contract	The public asset is transferred to the public partner, free of charge, in good condition and free of any encumbrances or obligations.	The assets are transferred to public ownership.	The asset either remains with the private sector contractor, or is returned to the public sector, depending on the terms of the original contract.

6. CONCLUSION

Every country has developed bodies that oversee partnership projects, bodies that promote public-private partnership, share experience and good practice, accelerate the delivery of infrastructure renewal and increase the public services quality. Concerning the ownership of the asset upon termination of the PPP contract, in most countries the asset is transfer to public ownership. If in a contract, other clauses are mentioned, like the case of United Kingdom partnerships, the asset either remains with the private sector, or is returned to the public sector.

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