



PROJECT: "Review of European legislation, existing experience and best practices of old and new EU member states and analysis of best European practices for Public Private Partnership (PPP) in the municipality of EU member country."

Project "Establishment and strengthening of a successful mechanism for public- private partnerships in Burgas Municipality and the Southeast Planning Region",

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LIST OF ABBREVIATIONS

SA	STATE AGENCY
GG	GOVERNMENT GAZETTE
SS	STATE SECRETARIATE FOR PUBLIC ADMINISTRATION
SPE	SPECIAL PURPOSE ENTITIES (SPV)
EC	EUROPEAN COMMISSION
EC	EUROPEAN COMMUNITY
EP	EUROPEAN PARLIAMENT
EU	EUROPEAN UNION
ESF	EUROPEAN SOCIAL FUND
AA	ADMINISTRATION ACT
FR	FINAL REPORT
CSL	CIVIL SERVICE LAW
PIU	PROJECT IMPLEMENTATION UNIT
EAMA	EXECUTIVE AGENCY” MARITIME ADMINISTRATION” OF THE MINISTRY OF TRANSPORT
IPA	INSTITUTE OF PUBLIC ADMINISTRATION
IPPP	INSTITUTIONALIZED PPP
CS	CONCESSIONS
FSC	FINANCIAL SUPERVISION COMMISSION
MID	MINISTRY OF INTERNAL DEVELOPMENT OF SPAIN
MFA	MINISTRY OF FOREIGN AFFAIRS
MI	MINISTRY OF INTERIOR
MSAAR	MINISTRY OF STATE ADMINISTRATION AND ADMINISTRATIVE REFORM
MH	MINISTRY OF HEALTH
MAF	MINISTRY OF AGRICULTURE AND FOOD
MEE	MINISTRY OF ECONOMY AND ENERGY
MES	MINISTRY OF EMERGENCY SITUATIONS

IER	INTERNATIONAL ECONOMIC RELATIONS
MD	MINISTRY OF DEFENCE
MES	MINISTRY OF EDUCATION AND SCIENCE
MEW	MINISTRY OF ENVIRONMENT AND WATER
MPAS	MINISTRY OF PUBLIC ADMINISTRATION OF SPAIN
MRD	MINISTRY OF REGIONAL DEVELOPMENT (AND PUBLIC WORKS)
CM	COUNCIL OF MINISTERS
MT	MINISTRY OF TRANSPORT
MLSP	MINISTRY OF LABOUR AND SOCIAL POLICY
MF	MINISTRY OF FINANCE
NBW	NEW BULGARIAN UNIVERSITY
IM	INITIAL MEETING
OPAC	OPERATIONAL PROGRAMME "ADMINISTRATIVE CAPACITY"
PA	PUBLIC ADMINISTRATION
SC	STANDING COMMITTEE ON PPP
PPP	PUBLIC PRIVATE PARTNERSHIP
RB	REPUBLIC OF BULGARIA
WB	WORLD BANK
CEI	COUNCIL FOR EUROPEAN INTEGRATION
SED	SOCIO ECONOMIC DEVELOPMENT
CCMRIPNI	COUNCIL FOR COORDINATION AND MONITORING THE REALIZATION OF INFRASTRUCTURE PROJECTS OF NATIONAL IMPORTANCE
SF	STRUCTURAL FUNDS
TA	TECHNICAL ASSIGNMENT
TUPFI	TECHNICAL UNIT FOR THE (PROJECT) FINANCING OF ITALY
UNWE	UNIVERSITY OF NATIONAL AND WORLD ECONOMY IN SOFIA
BD	BOARD OF DIRECTORS
PHARE	POLAND AND HUNGARY ASSISTANCE FOR THE RESTRUCTURING OF THE ECONOMY

1. INTRODUCTION TO PUBLIC PRIVATE PARTNERSHIP (PPP)

The main activity of the public sector is associated with providing a wide range of public services such as transport, telecommunications, water supply facilities and sanitation, innovation financing, general public services - education, health and others. Public sector aim is to make public investment or to produce public services at cost efficient way, which does not always happen. The public sector has limited resources available to increase capital expenditure and to improve public service as it faces several limitations, while public-private partnerships can solve this problem.

International practice shows that public-private partnership (PPP) is one of the successful financial instruments for the provision of public investment in infrastructure (transport, education, health, water sector, administrative services). It meets the objective of providing quality public services through the application of innovative methods of structuring and funding investment projects.

Partnership is a relationship based on agreements reflecting the mutual responsibilities and shared interests of the participating parties. Under this definition, even a "classical" contract between the public and private sector party, according to contract may be interpreted as a public-private partnership.

The need for investment through cooperation between private and public sector emerged as a result of deficiencies in the infrastructure of some European countries and the impossibility or difficulty of the public sector to provide the requested services. Public-Private Partnership (PPP) may be the main tool to decrease the significant social and economic disparities that exist among EU Member States, providing both economic growth and prosperity. The public sector operates with limited financial resources so it can't provide a balance between supply and demand quality of public services, while a public-private partnerships can attain economic efficiency in the public sector.

The main driving forces of PPP are:

- Investment in infrastructure - economic growth is highly dependent on the development and improvement of infrastructure, especially in public services (eg energy, water and telecommunications) as well as transport systems. Furthermore, in many countries

there is an urgent need for new social infrastructure, such as hospitals and healthcare facilities, prisons, educational establishments and residential buildings.

- Greater efficiency in the use of resources - If the activities are undertaken by the private sector ensuring cost effectiveness and good management,
- Additional value of invested assets - investment in assets of the public sector, PPP agreements usually require the parties involved (public and private sector contractor) to allocate responsibility and bear the risk of the use of assets for a long period of time, so that efficient management of the fixed assets can be achieved.

1.1. General characteristics of public-private partnership –

There are different interpretations of the meaning of the term public-private partnership.

EU law defines a PPP as cooperation between public authorities and private partner (the world of business), whose goal is to secure the financing, construction, maintenance and management of infrastructure or provision of services.¹ In a broader sense, PPPs are often interpreted as covering the whole range of cooperation and contractual relations between public and private sector partners to finance, construction, renovation, management or maintenance of infrastructure, which often leads to joint ventures.²

From the use of different terms, it becomes apparent that the PPP is implemented on the principle of cooperation, while the role and responsibilities of private and public sector may be different in various initiatives, associated with provision of services, the overall role and responsibilities of the state remain unchanged. PPP implies rights and responsibilities, which include sharing risks, costs and assets. Within PPP there is a general correlation between the strengths and advantages of each country and to achieve synergy, allowing both sides to effectively achieve common goals. PPPs can take different forms: a) Concession b) contract, c) outsourcing; d) External contract (contracting out); e) the so-called offset or compensation deals and more.

The development of PPP in Europe in recent decades is due to several factors³. *The first* is associated with *accelerated regional development*, in combination with the common European market, leading to a need for development of transport, environmental and social

¹ EC Green Paper (2004)

² Methodological guidelines for PPP(2006) Ministry of Finance

³ Methodological guidelines for PPP(2006) , MF, pg.1

infrastructure. *The second* factor is the accumulation of the increased needs of society and adaptation of European directives in the field of environment and transport. Environmental protection and construction of infrastructure are causing higher costs for environmental protection and investment in the neighborhood of large infrastructural objects and other basic infrastructure. *The third* factor is related to realising the opportunity to achieve better value for public money invested through the use of effectiveness and efficiency of private sector in providing public services. *Next*, investment in major infrastructure projects is limited by tight monetary and fiscal policies in Europe, causing difficulties in funding, that relies only on public budgets of countries. *The fifth* factor is identified with the implementation of a comprehensive approach in the design, financing, construction and operation as the public sector began focusing on its invested funds throughout the project cycle. The public sector typically retain ownership of the facility or make it available depending on the specifics of the project. The purpose of the cooperation is not only to use the private sector in order to mobilize financial resources, to manage and operate public assets, but also to minimize costs in a well calculated risk.

Historical background of public-private partnership

Even in the distant past, many of the public (or government) contracts (ports, markets) have been subject to concessions. The existence of rules for concessions, and administrative law for the authorization for the execution of state contracts, dates from the 12th century. For example, during the Middle Ages in order to build fortifications of cities and the conquest of new lands in the 12th and 13th century. Contracts for the possession of the land entitle residents of towns and villages by a collective agreement to improve the environment. In the 16th and 17th centuries, kings in Europe and especially in France, awarded state contracts to investors. Contracts often include construction of canals, dams and bridges on the rivers, construction of housing, waste collection, lighting of public places, mail, public transport, major shops and even opera. Such a system existed in several countries: Concessions of channels in the UK and Spain (the longest concession was for four centuries). PPP originates in Britain and then spreads throughout Europe, initially a way of funding transport infrastructure, and later extended to other sectors.

But the real boom of concessions is in the 19th century, when cities are grown, and appears necessity for the train transport. The first major concession is for the construction and maintenance of railways.

In the 20th century rules change. The role of the state changes to strengthen the regulation and centralism of management, state intervention is mostly due to the effects of the two world wars, inflation and financial crises.

Public procurement legislation is developed mainly through:

- establishment of specific rules
- concession rules are used in the implementation of government procurement

In the 17th century concession contracts are combined with:

- authorization management for a long time
- investment by investors in government procurement
- the right to charge fees to consumers.

In the second half of the 20th century, developed countries are tired of wars, political changes, economic crises and everything that is detrimental to their economic development. They pledged greater government involvement in the economy with the implementation of central planning, active stabilization policy, nationalization of industry, expansion of public services and other activities, thereby increasing the severity and activity of the public sector in almost all economies of the world.

Undoubtedly in the 70's and 80's of the previous century the public sector experiences a period of regression in economic activities. The inefficiency and inflexibility of the businesses and services - so-called *public errors* begin to be considered as important as the *market errors* - many countries are beginning to experiment with new models and formulas to provide services in order to avoid fiscal pressure.

Since the 90s of the last century countries has started to carry out employment policy and economic growth by investing in public sector projects. Gaining maximum utility from public services and minimizing public expenditure PPP appears suitable as an alternative funding.

**1.2. Contractual relations and forms of public-private partnerships **

Contracts and forms of PPP projects and scope of the schemes (ie patterns PPP) divided by the degree of risk transfer, financing and responsibility. Public-private partnership

does not solve all problems in investment projects in the public sector. These are complex contractual arrangements for various activities performed throughout the project life cycle.

The solution how to institutionalize PPP is determined by the object method of financing the project duration. In practice, the following forms of legal agreements are distinguished:

- o new legal entity - a special purpose vehicle (entity) (SPV) for implementing the project. The distribution of risks and responsibilities between the parties is determined by ownership/ shares.
- o implementation of the project on the basis of a contract between partners from public and private sector

Each PPP project has two main dimensions: economic and legal.

Model contract with a private partner is usually called "Design – Build". The private sector designs and builds infrastructure to meet the performance specifications for the public sector, often for a fixed price so that risk of waste is transferred to the private sector. Very rarely in these cases the private partner provides the financing, although no obstacles in this regard exist. The basic model / form that became predominant in practice for PPP is called Build Operate and Transfer (BOT) - Construction, operation and transfer. In Model Design - Build - Finance – Operate (DBFO) the public authority shall determine the services it wishes to be provided by the private sector, then the private partner designs and builds dedicated target asset finance its construction, and subsequently operates the asset and provides the services derived from it. In the traditional model of public investment (Design - Construction) the contract with the private sector for construction of an asset, but the design and funding is provided by the public sector. In most cases the public sector operates the asset after its construction. This model is suitable for projects in transportation (highways and roads, railways, ports, airports, tunnels, bridges, etc.) as well as telecommunications, water, electricity and other services.

Financing projects in various models / forms of PPP depends on the degree of participation of the private partner. According to this way of financing a PPP project are identified the following approaches:

- **the public sector finances and operates the asset**

When the public sector is involved in financing and managing the project, there are set standards that exist and are enforced in Europe. Funding can be provided from the state budget or from funds outside the budget, which are organized to finance a specific project. The private sector has a role to perform the job (mostly construction).

- the public sector finances and the private sector operates

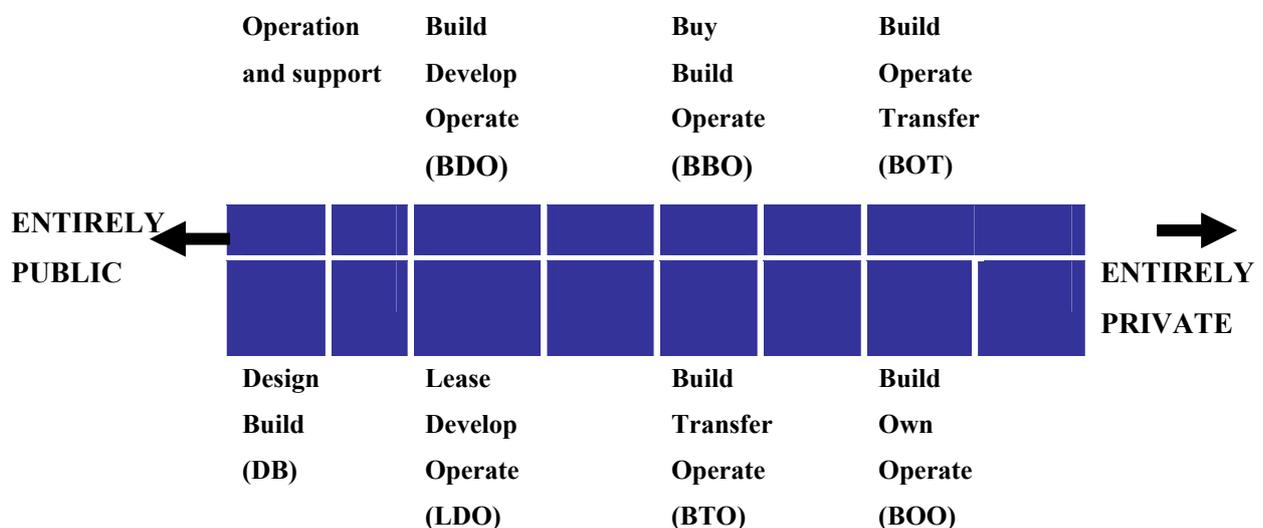
This model is very widespread. In fact, the private sector has no other role than financing the project. However, some funding may come from the state budget, public spending or borrowing from the private sector. In such cases, management, use and maintenance are carried out entirely by the state institution. The private sector finance or loans of public sector operational running costs are covered by the project budget or from future revenue it will generate.

The private sector finances and operates public asset. This model is quite modern. For it requires the state to allow private sector to manage, operate and maintain public assets. It is important to develop clear, comprehensive and consistent policy management and financing of the project.

Public / private sector financing and operation. This approach is quite suitable and acceptable, since both parties share the risk, create the general corporate structure – special purpose entity, which is responsible for attracting investment, but the actual maintenance and operation of public assets is carried out by the private partner.

Because of the specific nature of project finance PPP need the state / municipality to have a clear strategy, policy and mechanisms for mobilizing financial resources and appropriate regulations and legislative standards.

Figure 1. Responsibilities, requirements and risks for private sector



Responsibilities, requirements and risks for private sector

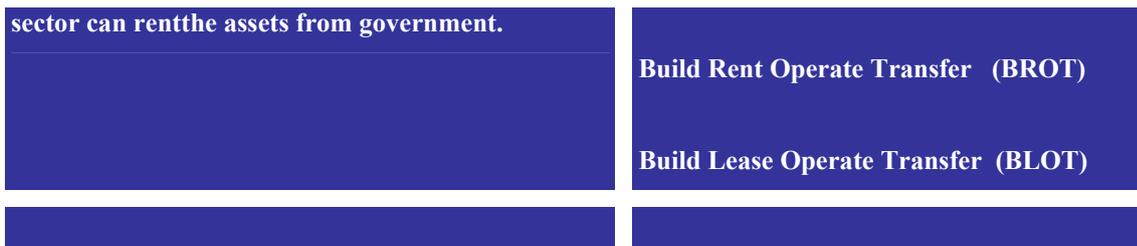
Standard practice shows the following approaches / tools for implementation of private enterprise in the public sector. The basic approach for the realization of PPP is Building - operation - transfer (Build-Operate-Transfer - BOT) or Build - property management - operate - transfer (Build-Own-Operate-Transfer - BOOT). BOT options are:

- Build-Own-Operate – BOO
- Build-Lease-Transfer – BLT
- Rehabilitate-Lease-Transfer – RLT
- Rehabilitate-Operate-Transfer – ROT
- Build-Rent-Transfer – BRT

Thus BOT best represents the basic concept and commitment to private sector involvement in the execution of tasks and activities by the public sector's role as a public limited partner - finance, build and operate the facility.

Table 1. Types of PPP projects

TYPES OF PROJECTS PPP	
Modality	ТИПОБЕ
Type I: Variations on the design-build-finance-operate while private sector designs, builds, maintains the property, develop, operate and manage the assets without any obligation to transfer the owned to Government	Built Own Operate (BOO) Build Develop Operate (BDO) Design Construct Manage Finance (DCMF)
Type II: The private sector purchases or rents the existing assets from the government. Renovates and modernizes them and / or expands them in order to exploit. The private sector has no obligation to return the assets to the government.	Buy Build Operate (BBO) Lease Develop Operate (LDO) Wrap Around Addition (WAA)
Type III: The private sector designs, builds and operates, but at a certain point it returns the assets to the government. After the transfer, the private	Build Operate Transfer (BOT) Build Own Operate Transfer (BOOT)



PPP in most countries is conducted through concession contracts and public procurement. Concession is a contract, which regulates the terms and conditions for implementation of investment projects in transport, telecommunications and energy, known and used for many years. The concession is a tool that has long been used in the implementation and financing of major infrastructure projects. It is important that public authorities and the concessionaire to have experience in this field. The contract must be stable and to offer guarantees. It should be sufficiently adaptable for future changes or unforeseen circumstances that may arise. The risks must be properly allocated between the various parties involved (public authorities, private investors, concession, those who give loans and insurance companies offering different services), so that the problems should be avoided.

Other types of PPP contracts are when the public authority assigns activities, which most often are not effective for the public sector. Under these agreements the state (public institution) pays for the service and transfers the responsibility for organization and delivery of public services (eg in health, education, urban lighting). Another type of PPP contracts are in the water sector or energy for which customers pay a fee for the service provided. Each PPP project has its own specific characteristics and there is no universal approach for the management and implementation.

The process of sub-contracting is usually done on the basis of competitive selection and has a short duration - typically several months to one year. This procedure allows public institutions to benefit from specific technical expertise of the private sector to manage staff and achieve potential cost savings. Ownership of assets and investment responsibilities remains within the public institution. While public organizations seek to realize any benefits, taking advantage of the opportunity to assign to subcontractors, this course of action can not solve basic issues related to their management costs or if they are poorly functioning structures.

Table 2: Comparison between the PPP concession and Public procurement

	PPP procurement	PPP concession
Definition	Transfer activities and public services to private sector	Concession: creation and management of assets and services by the private partner based on the strict conditions
Key Features	For specific task and activity	For many activities and tasks

	<p>Short - term</p> <p>Does not delegate management rights, public sector maintains public assets the private partner does not invest, source for funding of public resources.</p>	<p>Long - term</p> <p>Private partner / special purpose consortium drive and operate and maintain public assets</p> <p>Design, construction and financing by the private partner funding responsibility of the private sector.</p> <p>Obligations of financial institutions and banks should be particularized in the contract.</p> <p>Transfer of risk from public to private sector (the need for risk identification and assessment)</p> <p>Financial performance: normal return for the period of concession;</p>
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Different forms of PPP have common characteristics:

PPP is a **contractual agreement (legal dimension)**. Existing legislation in different countries may require application of different laws governing contracts with the private sector. Depending on the country and strategies for the period, PPP can cover a range of different legal structures that can be used for the project. These different structures can range from relatively short subcontracting with little or no capital expenditure to concession contracts, which may cover the design and the construction of major capital assets, while providing a range of services and funding all construction and operation of assets . As a result, the legal form of PPP may vary, based on the law applicable (Concession Act or the Public Procurement Act) and on the basis of the chosen organizational form joint venture as stated in previous definitions.

Better allocation of risk. The basic principle of PPP is related to the allocation of risk to the country that can manage it best. The goal is to optimize rather than maximize the transfer of risk and to guarantee the best value. With the transfer and management of optimal risk is achieved better value for money of taxpayers.

Payment bound to results - fees and public costs are predetermined in the contract

Table 3. Responsibility in the 4 models for provision of public services

RESPONSIBILITY ON PROCESSES IN THE 4 MODELS FOR DELIVERY OF PUBLIC SERVICES

	PPP	Traditional Public Procurement	Subcontractor	Privatization
Planning	Public Sector	Public Sector	Public Sector	Private Sector
Design	Private Sector	Public Sector	Private Sector / Administration	Private Sector
Build	Private Sector	Public Sector	Private Sector / Administration	Private Sector
Operation / Maintenance	Private Sector	Public Sector	Private Sector / Administration	Private Sector
Ownership	Public Sector	Public Sector	Private Sector / Public Sector	Private Sector
Payment for services	Public Sector / Consumer	Public Sector / Consumer	Public Sector / Consumer	Public Sector / Consumer
Regulations	Public Sector	Public Sector	Public Sector	Public Sector

1.3. Advantages and benefits of PPP

There is a common belief that cooperation with the private sector can provide specific and direct benefits, which are easy to follow and in some cases be measured. These benefits can be grouped into two main categories: financial and performance benefits.

➤ Financial Benefits

- **Accelerating the provision of infrastructure.** PPPs often allow the public sector to transfer capital costs in a flow of current payments for a service. This allows for the continuation of projects where there is a restriction on public funds.

- **Reduced expenditures for the whole lifecycle.** PPP projects which require the supply of operational and maintenance services give strong incentives for the private sector to minimize costs for the entire lifecycle of the project. Sometimes it is difficult to obtain this within the constraints of establishing the budget in the public sector.
 - **Creation of additional revenue.** Private ownership may be able to generate additional revenue from third parties, where it is necessary to reduce financing costs done by public sector. Additional revenue can be generated through the use of excess capacity or release of assets.
 - **Good distribution of risks:** financial, technical, business
 - **Assessment of the budget draft,** yield rate, financial sustainability.

➤ **Benefits of implementation**

- **Faster deployment** by cost effective implementation of projects. By assigning responsibility for the design and construction of the private sector, combined with payments based on the availability of a service, provides substantial incentives to the private partner to carry out in short time the construction.
- **Better allocation of risk.** The basic principle of PPP is lies in the allocation of risk to the country that can manage it best. The aim is to optimize rather than maximize the transfer of risk and to guarantee the best value. PPP entails some significant risks as inadequate design and structure of the PPP could ultimately cause bad results.
- **Greater incentives for performance.** The allocation of risk associated with the project must provide incentives to the private sector contractor to improve its management and execution for any given project. In most PPP projects, full payment to the contractor from the private sector is done only if the standards were met without any interception.

- **Improved quality of service.** International experience suggests that quality of service in the PPP is often better than that achieved with traditional supplies. This may represent the successful integration of services with assets, improved economies of scale, the introduction of innovation in the provision of services or incentives for implementation, as well as penalties, which are normally included in a PPP contract. Creating added value through synergies between public authorities and private sector, particularly through the integration and mutual transfer of skills, knowledge and experience between public and private sectors.
- **Improved public management.** Transferring responsibility for public services, civil servants act as regulators and focus on service planning and monitoring the implementation, rather than the management of service provision. Moreover, exposing public services to competition, PPPs enable public service costs to be compared to market standards to ensure that the best value is achieved. In summary, the objective is to achieve effective utilization of public assets for the benefit of all users of public services. Also, thanks to the fact that PPP projects typically include a relatively high budgeting, it is essential that orders can be effectively managed within a well defined legal procedures, which minimize the risk of legal problems arising from losing candidates. They also guarantee that public bureaucratic delays and omissions would not jeopardize the whole scheme, within the expected time and / or price.

2. Overview of legislation that deals with public-private partnerships in the five countries under survey

European expertise in terms of legislation, forms and ways of implementation of PPP is crucial. This will help the selection and introduction of the working mechanisms and procedures for the forms and methods of PPP implementation. Appropriate selection and successful application of these mechanisms will enhance public confidence and efficiency in municipal administration. In order to carry out in-depth study of the European experience five EU countries were selected based on previous experience, previous study visits in European countries, working with experts from different countries and municipalities with specific expertise in PPP applicable to the Municipality of Burgas.

The need for such a study comes from different practice of EU countries in terms of cooperation between municipalities and business. For the purposes of this study five EU countries were offered: Spain, Greece, Italy, Slovenia and the Czech Republic.

This is due to the fact that during the first years of joining the EU, Spain has become a major beneficiary of the resources from cohesion policy, in particular, to finance these scarce **capital** resources, and the whole process of convergence with Europe.

Launching investment projects through PPP proved to be effective approach for implementing projects in countries such as Spain, Greece and Portugal, which are experiencing urgent need for investments to improve the infrastructure in the public sector.

EU member states apply to the PPP different formulas, which are consistent with their national circumstances.

Spain's experience in this area is gained through the construction of roads, railway infrastructure, airports, ports, pipelines, office buildings, hospitals and others. In the sphere of road construction the sites are with period of exploitation for 20-30 years, having adopted traditional concessions or complex formulas of application. According to the European PPP Report 2005 Spain is the second among EU countries for completed projects, but compared to the percentage of GDP is located 4 place after Italy, Portugal and Ireland. The trend, according to statistics shows that this percentage is due to greater mobilization of resources from the Spanish side, owing to EU membership as co-financing by the state fluctuates within the following limits: 15-20% (Cohesion Fund) 25% (funded by the Structural Funds in Objective 1 areas) as it came to national funding of 50-55% (in the case of implementation of Structural Funds for Objective 1 areas).

2.1. European Union law and public-private partnership

EU countries can be divided into three groups: countries that use PPP for a long time (advanced): Britain, France, Germany, Italy and Ireland. The medium level is represented by countries like Spain and Portugal, where PPP is implemented successfully, but not in all sectors, and finally, countries that have adopted the practice of the PPP recently. Despite the simplification, there is still this division into three groups according to the development and dissemination of PPP.

The first group of countries use PPP in various sectors, ranging from transport (highways and railway lines) to the new and challenging fields of health, education, prisons and others. These countries have already adopted legislation on PPP, which regulates the implementation of PPP projects at national and local level and use special methods to evaluate the success and financial sustainability of projects. Some countries such as Ireland, have created a special purpose governmental structures dealing with PPP. This helps the development of better management of investment projects and the centralization of the coordination, monitoring and control of PPP. In Britain, traditional methods are adopted to evaluate the success of PPP.

The second group of countries have great success with PPPs, but in some specific sectors using PPP is not as successful. This is due to the unclear legal framework and constant changes of government or inconsistent policies in the public sector.

In the *last group* of countries is put into practice PPP is applied recently. The reasons for this can be many: some have a different understanding of the role of the state and degree of intervention in the implementation of government procurement, poor management of public resources and untapped potential advantages of the private sector. In Belgium, for example, due to the complicated system of government, of PPP results are different - for example, the Flemish Region is considered to develop the practice of PPP, but only in certain areas. For example, in Greece, there are also seen mixed results: PPP successfully applied for the construction of roads, airports, sports buildings.

When we compare the countries in the EU (member states), newly accepted countries have more problems in the use of PPP as they lack experience and human resources (people to be trained and competent in the PPP), also their market is not fully developed. In these countries, PPP projects in transport and improvement of the urban environment. It should be admitted that these countries develop the PPP practice progresses, despite the difficulties. Major problem in Central and Eastern Europe, as examples of Poland and Hungary show is overestimating the demand for a public service, with which governments take a big risk.

According to European Community law, public authorities are free to make their own business or to outsource to third parties such as specialized companies or limited liability companies organized for the purpose of the project.

The increasing role of PPP in the EU as an alternative method has led to commissioning and funding. EU bodies reviewed the legal framework and adopted a Green Paper on PPPs in order to "produce a discussion on the application of EU legislation to the PPP phenomenon. European law does not provide any specific rules covering the PPP. The Green Paper examines the phenomenon of PPPs from the perspective of European law on public contracts and concessions.

Green Paper on PPPs and EU law on public contracts and concessions (COM (2004) 327) of the European Commission of 30.04.2004 presents two basic models of PPP:

- Contractual PPP - based on contracts between public and private partners, through which one or more tasks are entrusted to the private partner. Thus, the concession contract is one of the most popular models, characterized by direct connections

between the private partner and end user – ie private partner provides a public service, under supervision, on behalf of the public partner.

- - Institutionalized PPP - setting up a business (legal entity), jointly managed by public and private partners, designed to ensure the provision of services or activities. In the EU Member States the authorities recourse to the creation of such structures for the management of public services at local level (eg water supply or waste collection). Direct interaction between public and private partners within an enterprise (as a separate legal entity) allows the public partner, through its participation in the board of shareholders and management of the joint venture to maintain relatively tight control on project development, which, of course can be adjusted over time, depending on the circumstances. Institutionalized PPP also allows the public partner to acquire its own experience in providing the services, while at the same time, relies on the support of the private partner. Institutionalized PPPs can be done either by setting up a business, run by public and private sector or the private sector to take over an existing public company.

Under the Green Paper the European Commission the clear formulations and interpretations of different concepts of public-private partnerships and Community law on public contracts and concessions is determined that "institutional PPP (IPPP) includes the establishment of the company (legal entity), owned jointly by public partner and private partner. The joint venture undertakes the task of ensuring the execution of works or services for the benefit of society.

One IPPP can be created either by establishing a company owned jointly by the public and the private sector or the private sector, which takes control over an existing public company. The rules for choosing a private partner derive from definition of contractual relationship in which the party enters together with a sponsor. According to secondary Community law, any contract for pecuniary interest concluded in writing between the contractor and operator who is subject to the execution of construction. The carrying out of job or a service is designated as a "contract for public works or public services. The concept of "concession" is defined as a contract of the same type as the social contract, except that the consideration for the construction, which will be performed or services to be offered, consists either solely in the right of exploitation of the work / services or in this right together with payment.

Following the adoption of Directive 2004/13/ES, the award of particularly complex contracts is subject to a new procedure, also known as the "dialogue". The competitive

dialogue procedure is used in cases where the contracting party is not objectively able to define the technical resources that best meet its needs and goals, or when it is not objectively able to define the legal and / or financial form completion. This new procedure allows the contracting party to enter into dialogue with the candidates to find solutions which satisfy those needs.

When creating the PPP in transport parties must comply with Regulation No 1370/2007 of the European Parliament on the state railways and public roads and repealing Regulation No 1191/69 and 1107/70, Article 16 of the Maastricht Treaty, which establishes the location of services the general economic interest. Article 86 (2) of the Treaty sets out those sectors in which services are used in the general economic interest, notably under the competition rules, these rules are used in order not to obstruct the performance of individual tasks. According to the EC White Paper on Transport, which deals with transport policy for 2010, in this manner ensuring a safe, efficient and high quality transport and transport services, in compliance with competition rules and transparency.

The European Investment Bank and European Bank for Reconstruction and Development, with decision of the Commission formed a new initiative, so as to assist the relevant national and transnational infrastructure projects- a joint collaboration to support projects in European Regions - JASPERS (Jasper). The conceptual design and purpose of the initiative is to provide technical assistance especially in the accession countries and thereby improve the quality of infrastructure projects, applying for funding from EU funds at the stage of their training, thereby encouraging and Member States themselves to effective absorption of EU budget by region. The initiative is focused on major projects supported by the EU budget - mainly infrastructure projects aimed at improving the transport network in the European regions, environmental projects and investments aimed at improving energy efficiency and renewable energy sources. For implementation of these projects the rules of the EC in respect of feasibility studies and finance are followed. Under the scope of JASPERS fall also projects whose objective is to improve inter-modal (combined) transport systems and urban transport systems, as well as large-value projects, to other sectors of the farm, who need technical support such as health , education and urban reconstruction.

Projects will be implemented on the principle of PPP, with technical assistance for the preliminary technical and financial studies from specialized units created under Jasper initiative.

Directive 2004/18/EC of the European Parliament regulates and coordinates the procedures for contracts for works, services and supplies. Legal and regulatory framework of member countries is in agreement with European legislation in this area.

Directive 2004/17/EC of the European Parliament and the Council of 31 March 2004 coordinating procedures for the procurement of entities operating in the water, energy and transport sectors as well as in the postal sector.

Up to this moment, PPP is not regulated by a comprehensive legislative framework at European level, the creation of such a framework is unlikely, as unlikely is also the creation of pan-European agency for PPPs. Two areas are likely to be affected by EU level initiatives - awarding concessions and the formation of "institutional" PPP (IPPP). As a result, on the EU level, PPP will continue to be governed by two main legislative sources - the EU rules on state aid and public procurement directives and concession.

- *Handbook of European Union government deficit and debt*, in particular Part IV: Long-term contracts between government entities and non-governmental partners.

According to the EC interpretative communication, IPPP is created by:

- Setting up a new company, whose capital is held together by the contracting entity and the private partner (in some cases - by several contracting entities and / or more private partners) and public procurement or concession of this newly formed public-private partnership or
- Participation of the private partner in an existing public company which has received in the past under the "within organization" contract for the performance of a procurement or concession.

Additional conditions for the transactions in the public sector through PPP are fiscal restraint imposed by the Maastricht Treaty for maintaining fiscal balance (3% budget deficit to GDP). Also, EU laws do not encourage the state to participate in commercial transactions. Rather, the EC rules are to choose a form of PPP and funding mechanisms - rather than borrow from the government, to use financial resources from the banking sector and capital market in order to minimize the deficit.

In the European Commission there is not a separate structure for PPPs, but in 2004 it was built a Center for expertise in PPP for achieving competition and clarity in the legislation

of the countries and to disseminate information on best practices in the EU, and encouraging members to create national programs for the PPP.

Some countries have created structures to the Ministry of Finance for methodological and technical assistance in implementation of PPP projects, as well as a centralized coordination of the implementation of PPP. For example, in Germany Competence Center for PPP is under the Ministry of Transport and Construction. Six similar units are set up for technical assistance and coordination at regional level.

Construction of centralized units ensure transparency, promote initiatives to protect the PPP and the government / public interest in the management and implementation of infrastructure projects.

Some of the advantages of such specialized units for PPP support are dissemination information on best practices, enhancing conclusions of contracts and tendering procedures, methodological guidance, setting standards for implementation of PPP transactions.

There are two types of jurisdiction in the area of PPP: a special law establishing the need for PPP and their management. A lot of countries, including many European countries have such a specific law. These countries believe that the concessionaire is only part of the contract, and other party is the state or local government. According to their understanding, the state may be part of a civil contract, the same level as individuals. Conversely, developing countries may show a desire to determine the status of public bodies and their relationships with NGOs. Also, it is important that the state and local authorities are trained on the rules of the game. PPP schemes for attracting private investors is very complicated. The knowledge of the rules at central and local level is essential for the PPP. The goal of a specific law in the field is to give information to private investors and central and local authorities. PPP activities are subject to Eurostat, in order to comply with the accounting services of the PPP.

2.2. Legislation and procedures for PPP - Greece experience

Olympic Games in Greece in 2004 were estimated between 9 and 12 billion euros, which would not be bearable for the budget of Greece, whose deficit for 2004 is over 6% and should be reduced by 3.2 points of GDP by December 2006 to fulfill European Commission requirement.

The government takes steps to transfer activities to private businesses so as to optimize of public funds: reduction of corporate taxes, encouraging regional investment, installation

and operation of plants using renewable energy sources, full liberalization of the energy market for electricity production and trade natural gas, liberalization of the banking sector and increase the use of public-private partnerships (PPP) for the construction and renewal of public infrastructure.

The Greek Parliament adopts new law on PPP (2004). The Act focuses on transport and social infrastructure. PPP is a way to accelerate and improve the quality of the construction of public facilities and to relieve government funding for social sectors: health and education.

This method of procurement is not new to Greece and successful projects such as airport Athens, Attiki Odos (Athens ring road) and the bridge of Rion-Antirion are already available. However, all these PPP projects undertaken in 2005 are applicable only after their parliamentary ratification, due to the lack of a common and coherent legal framework for PPP. The shortage of public funds, the introduction of private finance in providing public sector infrastructure and services is growing even more. This requires to pass a law 3389/2005 on public private partnership.

The new law represents a dramatic revision of the previous legislative framework and aims to facilitate PPP by creating new, supportive regulatory environment and the repeal of the requirement for parliamentary ratification of concessions within the scope of the new law, and by the formation of two new committee responsible for organization and the award of concessions and specialized institutions. One is the Special Secretariat for PPP (EGSDIT), formed in the Ministry of Economy and Finance, whose supervision is carried out by inter-ministerial committee (DESDIT). Interdepartmental Committee formulates the government's strategy to build infrastructure and provide services with the participation of private capital.

Scope of law. The law applies to concessions covering the following criteria:

- concession works and services are under the jurisdiction of a public authority, the law sets out the various authorities (ministries, local authorities, government agencies) who are entitled to enter into partnership with private companies through the formation of special purpose entity (vehicle) (SPE). All public bodies, ie state and local governments, companies controlled by the state (through a minimum of 50%), or companies, half of whose annual gross income is subsidized or funded by the government or companies that are managed by the state and affiliated

companies, can create partnerships with the private sector to provide services or construction, maintenance and operation of infrastructure projects in their field.

- Full or partial financing of infrastructure projects is provided by the business (equity or loan).
- Private partners contribute significantly to the risks associated with financing, construction and completion of infrastructure projects or providing services in advance or progressive payment by public authorities or by end-users of services;
- The maximum budget of the project can not exceed 200 million euros

Procedures for the award of PPP. According to the legislation, the principles for the award of concession contracts are:

- The award of PPP is subject to general rules of the European Union (EU) public procurement of the European Union (EU).
- If the concession is awarded on the basis of most economically advantageous tender (as opposed to lowest cost), all criteria for selection and award as well as their relative weighting or order of importance should be specified in the tender notice.

The new law defines steps to be followed in the tendering procedure according to the chosen tender formula. Project agreements and their applications are the only source of contractual rights and obligations in the PPP, in addition to the Civil Code.

The law defines the minimum content of the concession contracts, describing the rights and obligations of the parties involved including:

- Funding and participation of public authorities
- Payment Mechanisms
- Requirements for permits for planning, constructing, financing and operation and maintenance of PPP projects - authorization is considered granted if the competent authority does not reject them within 60 days

- Environmental protection
- Preservation of archaeological discoveries and sites
- Issues related to the expropriation of land, necessary for the project, which is accelerated
- how to participate in the partnership of public authorities and public corporations and bodies - companies should be limited liability companies registered in Greece, investors participate with minimum of 51% while the proportion of the country is limited to 49%.

The Act establishes a framework of terms and issues that need to be treated by any concession contract concluded. The Act expressly acknowledges that state bodies are entitled to enter into direct agreements with the financiers of the project company to facilitate the financing of the project. In respect of projects receiving revenue from end-users after completion (eg fees for highways or bridges), the new law gives DESDIT right to determine the mechanism for collecting revenue from the management of public sector projects.

As regards the regulatory framework and the distribution of risks it can be said the following:

- Companies with a special function are limited companies, registered in Greece, where private investors participate with a minimum of 51 percent while the share of government is limited to 49%.
- The government is not allowed to give private sector main functions exclusively reserved by the State Constitution relating to national defense and the judiciary.
- Issuing permits for planning, construction, financing, operation and maintenance of PPP-projects - all permits necessary for the project issued by

authority of the state / local government. If the competent public authority has refused to permit reasonable cause within 60 days of the application, the permit is considered granted.

- Conservation of archaeological discoveries and sites - if antiques are found during construction, it is required to notify the archaeological authorities. The authorities have 60 days to reply offering suitable solution for the continuation of work or for the protection of archaeological sites. If archaeological authorities did not respond within this period, the project company receives extension for completion of work and compensation for losses resulting from delay.
- Protecting the environment - all requirements for environmental protection must be declared by a public authority, which gives the concession before the binding offer from the private partner.
- expropriation of land necessary for the project - where possible, the necessary expropriations in the public interest and their implementation is a priority. In case of delay of necessary expropriations, the private partner has the right to extend the term for the completion of the work.
- Relations with bodies of state / local authorities - all public authorities, providers of utilities to solve disputes.
- Transfer of rights and claims under the contract - the new law gives the private partner the right to transfer all identified or contractual rights and receivables (both present and future) of financial institutions to secure financing and to transfer them to another KSP, with purpose of issuing the bonds.
- Securities and mediation - the new law sets up protection for securities provided to the financiers on existing and future assets, in the event of bankruptcy or creditors' collective action of the planned company. Financiers

have the right to give their representative the right to enter, register and hold such securities on their behalf.

- Transfer of owned shares - the law controls the transfer of shares in the Special Purpose Entity and the rules to improve the capital structure and increase the share capital.
- Tax deductions stipulated in the legislation. The Public partner participates in PPP capital contribution, which is considered a subsidy and is exempt from value added tax (VAT), income tax or other obligations. VAT paid shall be refunded within 90 days of the request, as any delay shall bear interest in favor of the private partner. Losses may be transferred in exchange for the taxable profits for the next 10 years. Various methods of depreciation are also offered to investors.
- Dispute Resolution - Any dispute concerning the implementation, interpretation or status of the PPP agreement or ancillary thereto shall be governed exclusively by arbitration, all the necessary information is included within the PPP contract or additional agreements without the application of rules relating with arbitration, relevant to Greece. The arbitration decision is final and irrevocable, can not be appealed and is immediately enforceable. Greek law is applicable substantive law.

The new legal framework is meant to regulate the set of privately funded projects in Greece. This law is the first step towards the revival and expansion of the Greek PPP market. In particular, the law defines a number of basic parameters in terms of allocation of risks and lays the foundation for final standardization of certain aspects of the concession contracts. Also, by taking the full responsibility for the organization of PPP on specifically established state institutions, the Government is committed to accelerate decision-making to make it more responsive to market demands and to alleviate the lengthy and costly worth negotiating concession contracts and the accompanying documentation, which hampered many previous PPP projects in Greece.

- In addition to infrastructure projects, the Ministry of Health and Ministry of Economy and Finance demonstrate interest in building hospitals with private funding. Three pilot projects are announced: for a hospital in Athens (capital worth 150 million euros), pediatric hospital with 500 beds in Thessaloniki (80 million euros) and the transplant center with 250 beds in Athens. They are expected to enter the market during the second or third quarter of 2006. According to the statement by a spokesman for the Ministry of Economy and Finance pilot projects are expected to cover several schools. Other areas where PPP is expected to find application are: concessions for roads, highways, tunnels and bridges with the expected returns for investors over 11%;
- PPP for services, traditionally offered by public sector.
- Building and maintaining schools, hospitals, buildings of the central and local government, waste management, energy projects, car parks, marinas, hotels and resorts, golf, museums and other cultural objects.
- rural tourism projects, involving the development of entire villages in traditional resorts. Such projects are expected to be announced by the Agri-tourism (State Regional Development Department) in Rethymno / Crete and Tsumerka;
- operation of oil and gas fields.

2.3. Legislation and procedures for PPP – Spain Experience

Spain is a country enjoying the benefits of PPP in some traditional areas of public sector. Except for, obtaining numerous classical benefits from PPP, using high value quality, efficiency, efficient management and transfer of risks to the private sector, in a particular moment in history, began losing the Cohesion Fund in increased demand for public services of high quality. Therefore PPP formula is the most suitable for solving such problems and shortages in the country. Spain's experience in this area is formed in the construction of roads, railway infrastructure, airports, ports, pipelines, office buildings, hospitals and others. In the area of road construction Spain moved forward with building sites with concession period of use for 20-30 years, having implemented concessions from traditional to more complex formulas of application. According to European PPP report to DLA PIPER RUDNICK

GRAY CARY 2005 Spain is second among EU countries for completed projects, but compared to the percentage of GDP is located 4 place after Italy, Portugal and Ireland. The trend after this report and statistical data reveals that the percentage has increased 2 times, which displays Spain as one of the first member countries of EU, which have implemented PPP projects and concessions. The reason for this can be found in the following key features:

- Operational Spanish scheme of concessions and PPP for infrastructure projects since the mid-60's
- A favorable legal framework for the negotiation of PPP and concessions
- Solid cooperation between public and private sectors, adapting laws to the requirements of financial market
- Fast and efficient mechanism of expropriation of state / public sites
- Realistic and efficient accounting / financial system for the concessions
- Reliable construction industry from financial and technical perspective

Moreover, the prospects are determined in a timely manner, given that everything starts in 90 years when concession formula stands with all its potential and thus satisfy the growing demand for infrastructure projects. Foreign financial institutions and organizations actively advising states to proceed with this system in order to meet their own needs. Developed countries carry out a comparative analysis of the needs of construction sites and the dispute over the government deficit. The financial market is willing to invest funds in a number of projects and Spanish companies concessionaires, contractors currently in several continents, are prepared for this new challenge. Spain thus adapting the system of public-private partnership on three levels of government in the most rapid and intense way: central, regional (Autonomous Communities) and local authorities. It should be pointed out, that the advantages in Spain for PPP are:

- New Law for public sector contracts

- New accounting regulations and taxation for concessions
- Regulation of expropriation
- Preparation of tender documents and the severity of the procedures
- Different administrative rulemaking under the territorial division of the country.

PPP type of concessions, especially in the construction of roads is governed by the 1972 Act tolls. Act on contracts with public administration, established in 1965 has undergone numerous additions and corrections, as the most significant change in the PPP is from 2003 on (by the Law on Concessions). With this change, enforcing the law of the EU for allocation of risk and implementation Eurostat requirements. Furthermore, the Concessions Law of 2003 adds financially oriented approach favorable to creditors to the existing system of concessions.

Since the nineties of last century, Spain experienced primarily with the construction of road infrastructure, where projects are funded by the private sector. Spain is one of the main beneficiaries of EU cohesion policy for the periods 1994-1999 and 2000-2006, and continues to be among the main beneficiaries from 2007-2013. It is easy to imagine the volume of financial resources that the central authorities, authorities of the autonomous community level and local level had to mobilize in order to finance these projects. Therefore, it is clear that not all possible co-financing is only at the expense of the state budget. And although this is the original formula in the beginning, most of the projects to be co-financed with funds directly from state funds, are gradually being introduced formulas to allow private participation and funding for such projects to enable Spain to address the challenge of co-financing. This becomes more imperative over the years and with increasing demands for measures to monitor public accounts (levels of deficit and debt according to the criteria of the Maastricht Treaty), which reduces the resource to the state budget and debt, as will be seen below.

The vast amount of EU funds is one reason for the increasing use of formulas for PPP in Spain (to qualify for co-financing) and is a paradox that today the use of a PPP remains thanks to completely opposite reason: the dramatic decline in European funding, which is explained by the new member states from Central and Eastern Europe, which to date are the main beneficiaries.

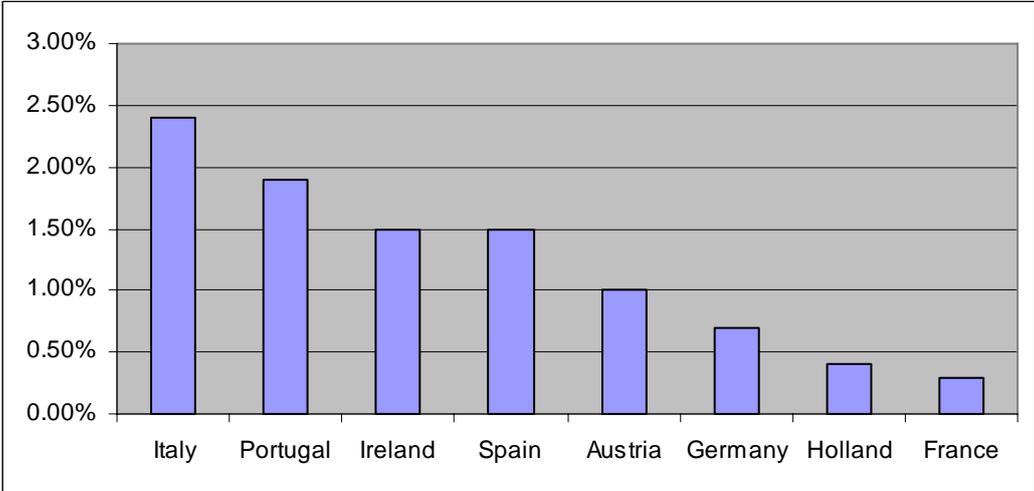
That is why in recent years all levels of administration in Spain reported their reduced investment capacity and they had to turn to private capital for PPP mechanisms to maintain both the level of investment and public services, but without the financial support of European funds .

In order to properly understand the process of growing partnership with the private sector, the dynamics imposed in Spain in the years preceding the introduction of the euro with the imposition of criteria of the Treaty of Maastricht must be taken into account.

Business and Administration in Spain managed to find in the PPP solution of a difficult and crucial historical situation - improving infrastructure and quality of public services. Spain has become one of the EU members, which most often use public-private partnerships, adjuste management of PPP to different levels of administration, where applicable, and sectors respectively.

As it can be seen from Figure 2, Spain is among the leaders in the EU indicator - share of PPP projects in GDP.

Figure 2. PPP projects as% of GDP in selected EU countries 2003 – 2004



For example, in the government plan to build the infrastructure for a period until 2020, the Spanish government contemplates funding from the private sector to cover up to 40% of the total investment in road infrastructure projects (roads, highways, high-speed ports or airports), which corresponds to 0.5% of Spanish GDP per year until that date in 2020, making Spain Europe's leading country in this area.

However, experts found that there were risks, sometimes too serious, from the specialization of Spanish administration in PPP projects.

Experts point out two main risks:

- A. Abuse of PPP. The needed estimates on whether it is more effective with or without PPP are not made.
- B. Risk assessment and evaluation of alternatives are part of the preliminary study and a prerequisite on which competitive companies are selected. Sometimes the selected company offers low quality of public services, which requires the administration to reconsider the contract.

In parallel with the process of specialization in the field of public-private partnership related to the Spanish Government, in Spain emerges a process of leadership internationally. For example, Spanish companies in the construction industry and services sectors which are characterized by the presence of small, less competitive companies that are not present on international markets at the beginning of 90 years, later became multinational companies operating in different parts of the world in various sectors and from the position of a leader in projects of public-private cooperation in particular in the field of concessions. For example, multinational companies in Spain owned 42 percent of the global market in infrastructure concessions, followed with a share of 13% by Chinese companies and 10% of French firms.

All this can be seen very clearly on Table 4 - ranking, published in the journal "Public Works Financing" which ranks private companies, according to the current number of projects under implementation in the field of concessions.

As shown by this ranking, the first 4 of the 5 companies (or first seven among the 12) are Spanish companies, mostly based in Madrid.

Table 4: Ranking of companies that manage infrastructure projects (number of licenses)

Companies	Countries	Projects in implementation	Proposed projects
ACS Dragados	Spain	46	21
Macquarie Bank	Australia	36	8
Ferrovital/ Cintra	Spain	26	29
FCC	Spain	21	16
Abertis	Spain	21	3
Laing	Great Britain	20	5
Secyr Vallehermoso	Spain	19	11
Cheung Kong Infrastructure	China	17	5
OHL	Spain	17	15
Vinci	France	15	22
Accuiona/Nesco	Spain	15	18
Alstom	France	13	6
Hochtief	Germany	12	15
EGIS Projects	France	12	12
Balfour Beatty	Great Britain	12	1

Source: Public Works Financing

Spanish firms in this sector have become very competitive in a relatively short period, primarily because of experience in national and large-scale application of technology

in these processes (eg, a Spanish company introduced a charging system with remote control, without any physical barriers).

Multinational companies implement projects in South America, such as the concession of 135 km toll highway in Mexico, a Spanish company manages the maintenance of the Panama Canal. Stands out the participation in the management of the airport in London, as well as participation of companies in major countries of Western Europe and a growing presence in the countries of Central and Eastern Europe. Impressive is the presence of Spanish companies in North America, such as Toronto (where they won the first concession in 1999 Paid Highway 407 within 99 years), Chicago (Chicago Skyway - 12 km highway concession period of 99 years) or in Texas (Texas Trans Corridor).

This phenomenon is explained by the following factors:

- A. Huge volume of funds received from Spain over a long period of time, beginning with its accession to the European Union in 1986 under the regional development policy and cohesion policy. Because of this the country have conducted a number of infrastructure projects, which allowed the companies to gain significant experience in this field.
- B. The strong presence of Spanish companies in South America, which allowed them access to international markets and the opportunity to apply their experience.
- C. The fact that the Spanish financial sector very quickly realized benefits from this system of public-private partnership and introduced financing to many of these operations.
- D. Ongoing process of concentration and internationalization of the sector. This led to a very large and wealthy groups with international participation, which helps these firms to become highly competitive.
- E. Professional development of this sector through managerial and highly skilled technicians with vast experience in this field. These professionals participate in

the preliminary financial assessment and evaluation of the benefits of each project. This results in the preparation of competitive bids and good project management.

Spain has little regulation in terms of negotiation processes and contracting of projects under PPP model. In 2003, the law for the implementation of PPP enters into force. It is called Act regulating concession contracts in urbanization (Law 13/2003 of 23 May). This law is directed primarily to transport infrastructures, which were major PPP projects in Spain in the past and is a stable legal framework for carrying out this type of concessions. This law opens the possibility of the popular "shade tax" on new highways and the "German model", which allows the state to pay once, when construction is completed. The law also deals with joint financing of projects, such as chain concession and cross financing. Moreover, the law assists the partnership between different levels of administration for a single public facility.

Undoubtedly, the law does not establish common criteria for the use of the approval process for contractor or examine various aspects of the contract that may become important in complex projects, such as hospitals, where the private partner is compensated. Therefore, the process of negotiation of PPP projects in Spain continues to develop a unified criterion to guide the majority of projects, but has a large range of criteria and processes.

There are aspects of the approval of PPP projects that are sufficient grounds for concern. As the approval process of implementation in Spain seems pretty competitive with a large number of offers submitted to the contests, in some contests practices "reckless cutting" appear, which consists of aggressive lowering of prices of offers - in some cases up to 35% - to win the bid. Once won the competition, the company has the power to renegotiate raising some important values. This practice, if generalized, would put at risk the basic objective of the PPP, which is to put apply competitiveness and transparency in negotiations, so that greater value for money is achieved.

The state took some measures to limit such practices and to oppose much of this line of negotiation. This is done by law 13/2003 of 23 May, which regulates the concession contracts for public works by adapting Spanish law to certain European directives in the field of infrastructure and funding, and sets deadlines for various phases which are explained in the table below.

Таблица 5. Фази на процеса за проекти ПЧП в Испания

Chronology and duration of the phases of the process	Public partner	Private partner
Preparation of contract phase		
Publish within one month	Study the feasibility of the project or study of financial economic opportunities	
	Approval of feasibility study for the project	
	Publication of preliminary draft	Preparation of tenders and project-related studies
	Approval of the preliminary draft	Preparation of tenders and project-related studies
	Preparing, monitoring, approval and re-offering, in this case, the project	Preparation of tenders and project-related studies
	Publication of tender documents	Preparation of tenders and project-related studies Candidates may request further clarification
	Approval of tender documents	
Selection of contractor phase		
	Publication of tenders	Candidates demonstrate that they meet capacity requirements as well as economic, financial and technical consistency. They give arbitrary guarantee equivalent to 2% of the submitted budget. Offer presentation
Not less than 52 days and not more than six months after publication of the notice, in no case more than nine months	Selection of a contractor for the project	
Presentation of administrative documents within 30 days and	Signing a contract	Formalities affecting financial matters and company formation

signed within three months, from the date of selection of contractor		
Execution phase		
Under the terms established in the TOR	Construction works	Implementation and operation of the project under the law and the contract

2.4. Legislation and procedures for the PPP - the experience of the Italian Republic

The development of PPP in Italy began in the early 90's. As a state with civil law in force, during the last 15 years, several new laws were introduced to implement PPP scheme. This was done in order to align and harmonize national legislation with a comprehensive framework to manage public services and planning new infrastructures. In particular, in this process three key stages can be highlighted:

- At the end of 1998 a law was passed - after an amendment to Public Law 109/94, known as Merloni Law. This is the second formulation of the Law and was called *Merloni Ter*. It establishes a scheme for IEP concessions and a number of measures to reduce the risk of a project, and how it can become attractive for banks. A new procedure for granting concession was introduced: Operator (promoter). In 2002 Law 166/2002 was voted, which introduced several amendments to the Merloni Law governing public actions. Amendments were designed to launch private sector participation in the construction and operation of public infrastructure. In particular the restrictions over a maximum period of concession 30 years and maximum participation of 50% for grants and subsidies in the public sector were removed.
- New laws were introduced, so-called targeted law (Legge Obiettivo) during December 2001, Law 443/01 - August 2002, Decree 190/02 to promote the development of PPP in strategic infrastructure projects, accelerating procurement procedure, reducing red tape, adding more flexibility in contractual schemes and facilitating private sector participation.
- Code for public sector contracts (Code of Public Contracts), adopted in April 2006 in response to Directives 2004/17 and 2004/18 in the EU and Italy to create a single

approved text, including the various laws associated with the Target Law and Merloni law.

Italian law allows for both contractual and institutionalized PPP.

The main forms of PPP contract are:

- Concession for operations
- Concession for services
- Sponsorship
- Financial Leasing

Subsequently, other schemes may provide a PPP contract on implementation of specific mediation, namely:

- Operators (Promoters) of activities in urban planning
- Operators (Promoters) of tourist resorts
- Concession of public assets to increase their economic value.

Institutionalized forms of PPP are:

- Public limited companies with prevailing public capital
- A public company with a predominantly private capital
- Joint venture established in accordance with Civil Code
- Companies dealing with urban development

The legal basis for PPP is set mainly in the Decree № 163 of 12.04.2006, and subsequent repairs (the Code of public contracts for activities, services and supplies) on the subject of the contract. Decree № 267 of 18.08.2000, the (order of local authorities) provides the general structure of institutionalized forms of PPP.

The Code of public contracts for operations, services and concessions gives legal definition of "contracts for public-private partnership". They administer the design, construction, operation or maintenance of public works or the provision of services, including cases of complete / partial private funding of such activities or services, in which the assessment of risk is performed in accordance with EU guidelines.

Procedures for implementation of PPP projects

The implementation of infrastructure projects requires the public administrative bodies (acting as principals) to determine their own needs, based on analysis of social activities demand, thereby draw officially approved projects and preliminary feasibility studies, within three-year programs for public activities and services and their respective updating.

Programming is a stage of decision-making in which the administration puts its own objectives and models for implementation, so as to correspond to a maximum of efficiency and economy criteria. In the programming documents it is stated that public activities should be carried out by private capital.

In order to begin work on PPP project and this project to be included in the annual Administrative program, the feasibility study and / or the preliminary draft have to be approved. Code for public contracts governing the implementation of public projects larger than 100,000 euros to be conducted, in accordance with the three-year program and the updates which should become available to the public, being declared a period of not less than 60 calendar days in the administrative structure, contracting party and the media.

Three-year program should be oriented towards public work activities, from which the most essential are maintenance, rehabilitation of existing public facilities, the completion of already initiated public projects, projects approved for implementation and supported by the mobilization of private capital. Inclusion of an activity in the annual list is subject to the approval of the feasibility study of the activities whose value is less than 1,000,000 euros, and prior approval of project plans for those of more than 1,000,000 euros.

The annual list published by the Administration - party of the contract, must be approved in combination with the relevant budget and should include indicators of predicted results, and / or financial resources allocated. The Code for public contracts regulates the role of the private sector at the programming stage.

Administrative authorities are required to evaluate proposals submitted within six months and may approve preliminary studies with proven public interest. Approval of the preliminary study and its inclusion in the three-year program does not require from Operator to pay in return.

According to the legal procedure administration - contractor can provide the concession by open or closed proceeding in accordance with the criteria of MEAT. On the basis of preliminary draft, final project or project implementation, together with economic or financial business plan and draft, the Administration announces or publishes a tender.

Contractual PPP

a) Concession for activities

Concessions for activities are defined as "lucrative written contracts", aimed at finalizing or implementing the project and carrying out public activities and structural or directly related activities as well as associated structures and economic governance.

They have the same characteristics as contracts for public activities, with the difference that the compensation for the work consists of either only the right to exploit the sites or with combination of payment (Article 3, paragraph 11 of the Code of public contracts).

The current law provides five basic models (schemes) for concession:

- A. Open or closed procedure. Under the provisions Administration - contracting authority can provide the concession by open or closed procedure in accordance with the criteria of most economically advantageous tender (EAT).
- B. One-stage procedure - selection of an operator and providing a concession contract.
- C. Two-step procedure in which the operator reserves the right to be preferred.
- D. Private initiative undertaken by so called Operator, where the Administration has not announced a tender within 6 months after approval of the annual program of public activities for projects, included in the program for implementation with private capital.
- E. Competitive dialogue

At one-step procedure (B) in order to provide a concession contract, the administration conducts public selection for concessionaire, according to the criteria of most economically advantageous tender and announces tender on the basis of a feasibility study.

Tender bids, which have to be submitted to the administration should include a preliminary draft, draft, business plans and specifications for the operational phase of the initiative (project management and specification of services).

The following step is when the administration selects Operator - an entity with the most economically advantageous offer and approves its preliminary draft. At this stage the Operator must take the necessary design changes to obtain approval and to fulfill requirements, related to environmental assessment without the right for compensation or additional cost.

There are three cases:

- The project does not require any changes of the selected operators and a concession contract is signed
- The operator agrees to make changes in the project as required by the Administration and a concession contract is provided.
- The operator does not accept the required changes by the administration. In this case Administration may propose to the following candidates on the list to make the same changes, under the same conditions. The concession is granted to the first who makes the necessary changes.

If the concession is not available to the operator, the latter is entitled to receive compensation for costs of preparing the bid.

The granting of the concession is only possible after a positive assessment of the preliminary approval and any necessary design changes either from the operator or from other entity which is the final concession.

In a two-stage procedure (C) administration - contracting authority conducts public selection of concessionaires, indicating that the result will not be appointed Operator, but would choose the candidate with the best offer.\

Administration approves the project by requiring operators to make necessary changes in order to obtain project approval.

As a next step, the Administration conducts a new procedure of choice, based on the preliminary draft of the operator, approved by the administration itself and economic and contractual conditions set out in the proposal of the Operator. Evaluation criterion is the most economically advantageous tender. There are three cases:

- Contract is awarded to the Operator, if there is not more economically advantageous tender
- Contract is awarded to the Operator, although there is more economically advantageous tender, if the operator agrees to adjust his offer (within 45 days) with the best offer from another candidate. The latter receives compensation from the Operator for the costs of preparing the bid.
- The operator does not accept to coordinate its offer with the best competitive bid within 45 days, the concession is granted to the best proposal.

In the projects, included by administration on the annual program, for which there is not an open tender procedure (D) within 6 months after approval, the Code for public contracts allows private initiative up to four months after the aforementioned six-month period. It is expected to comply with the necessary prerequisites for tender.

These offers must include the same elements mentioned in the description of the previous procedures.

The administration is obliged to announce tender up to 60 days after the deadline of the four months mentioned above. This is meant to encourage the entry of new bids, at the same time the evaluation criteria are clearly stated.

90 days after the announcement of the preliminary tender, new offers, as well as the ones that are already submitted, but changed according to the criteria for selecting, can be submitted. The Administration must evaluate these offers within 6 months to choose the one that is beneficial to society.

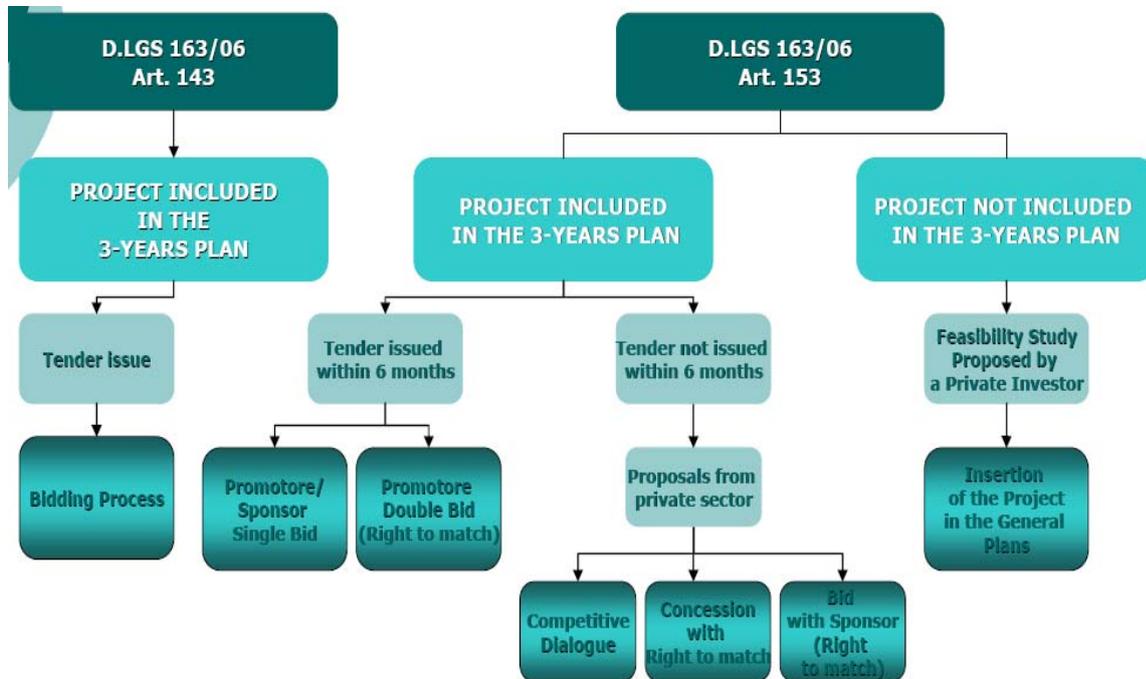
Thus, a public selection procedure is carried out by the administration based on the selected offer, and one of the following alternative procedures takes place :

- a) competitive dialogue: the Operator is invited, if changes to the preliminary agreement are necessary
- b) Open or closed procedure for granting concession
- c) The procedure described by (C)

Competitive dialogue shall apply in case of complex contracts, concession or general agreement, the assessment presented in the Supreme Council for public operations and, where applicable, the Supreme Council for Cultural Heritage. Categorization by the administration of a project as complex, due to technical, legal or financial performance, should precede the announcement of the tender, which will provide the sole criterion for evaluation of concession the most economically advantageous tender.

In the first stage the state / local administration starts negotiations with candidates (competitive dialogue) to satisfy the necessary preconditions in order to find the optimum solution to administrative needs. After negotiations, the state / local administration announces tender for submission of final offers, which will be evaluated according to criteria specified in the notice. The administration is obliged to observe the principles of equity and non-discrimination and prevent any breach of competition or confidential information leakage.

Figure 4



Source : Astaldi 2008

Concessions may be terminated due to default by the contracting authority attributable to the concessionaires or canceled by the contracting authority in the public interest.

In case of termination of the concession due to default by the contracting authority or if the latter cancels the concession in the public interest, the Concessionaire shall be indemnified for the following actions:

- the value of the activities plus net additional depreciation, in activities which have not passed the test phase - the actual costs incurred
- Fines and other losses that incurred or are forthcoming as a result of the termination of the concession
- Compensation for loss of earnings (ie 10% of the activities that should be carried out or part of the service), calculated according to business plan.

Upon termination of the concession, because of the concessionaire's fault, the sponsor of the project can prevent termination, in accordance with the deadline set in the contract or if deadline is not set, within the term set by the administration – contracting authority. This is done by written notice of intent directed to the party funding the project, as nominates the Company to absorb the concession by the contracting authority for the expressed intentions to terminate the relationship.

b) Concession for service

Code for public contracts:

- Defines the provision of a service concession contract by the same characteristics as contracts for public services, with the difference that the provision of services is offered in exchange of either solely the right of exploitation or with a combination of payment
- Sets / approves the general structure of service concessions, which is not subject to regulations in the Code and regulates the concessionaire to be selected on the principles of transparency, publicity, non-discrimination, equality, mutual respect and proportionality in the informal selection invited from at least five candidates - in a sufficient number of participants relevant to the concession - and according to predetermined criteria.
- Regulates that in the stage of bidding payment may be granted to the concessionaire if the latter offers prices lower than cost of services plus ordinary income, or where the

concessionaire is rewarded with a successful business plan for investment management and consistent quality services will be provided.

c) Sponsorship

Sponsorship is a contract whereby the government provides a third party (Sponsor) the ability to publish the name, logo and reserved sign and deliver products in special marked places on payment of assets or other public service activities. Sponsorship agreement is aimed at carrying out public activities, services and supplies.

d) Financial Leasing

A finance lease is a contract whose object is the provision of financial services and implementation of operations.

Entities can rely on finance leases for the implementation, acquisition and completion of public infrastructure. In this case the lease should be deemed as a contract for carrying out activities unless they are incidental to the main purpose of the contract. A finance lease provides the administration possession of an asset, generated by private capital, on payment of periodic fees and provides for the purchase of assets at the end of the contractual period.

The code for public contracts determines the following: the notice of award of lease must contain requirements for entities, financial, economic, operational, technical and organizational conditions for participation; costs related to the project, deadlines and guarantees, economic and technical parameters for assessment of the most advantageous tender, together with other provisions of the Code.

Institutionalization of PPP

In public limited companies as a form of institutionalized PPP the legal framework includes:

- Stock companies with mixed public private capital to ensure adequate local public economic services. As regards the conditions and procedures of granting and management of local public services, Article 113 of Decree 267/2000 includes organization of the sector respectively Decree № 112/2008, Law № 133/2008.
- Limited companies with minimal involvement of local authorities (Article 116 of Decree № 267/2006) for the performance of local public services of various kinds and realization of actions to provide accurate / implementation services.

- Joint stock companies established under the current civil law in Italy, ie. Special-purpose vehicle (SPV) for construction of public infrastructure and management of related activities established in accordance with the provisions of the Code of corporations.

The private partner is selected by public tender.

Urban Development Companies administered by Article 120 of Decree № 267/2000 are mixed companies, institutionalized in the cities and municipalities and also participate through relevant province or region in project preparation and implementation of activities under the cultivation of existing urban environment through mechanisms for urban planning and through acquisition, transformation and give commercial outlook of these areas.

Zoning corresponds to their public purpose, even when they are not connected to public activities. Territories which belong to the local legal entities may be transferred to the companies for cultivation of urban environment through concession. Private shareholders are selected through public process and relations between local authorities and public limited companies for the cultivation of the urban environment are determined by contracts in which the rights and obligations of the parties are stated.

2.5. Legislation and procedures for PPPs - Czech Republic

PPP projects have been adopted in the Republic for many years. Before 2006 there was no specific legal framework and projects were prepared, processed and implemented in accordance with existing legislation: the Commercial Code, Civil Code and Law on Budget. Consequently, the agencies engaged in PPP were not obliged to produce specific documentation to make the financial analysis (better return on investment) or to undergo an approval procedure (except for the signature of the Chief Representative of the Agency - Mayor of City, Minister,, the local governor, director of the municipal agency, etc.) and there was no public or central government database for future budgetary impact of contracts for public-private partnership. Even it was possible for representatives of the municipalities not to know that the mayor has signed a contract that would affect the municipal budget or would deprive the municipality of property for many years.

There are several useful and successful PPP projects prepared under these conditions, but also some negative examples. These projects end with payment of enormous sums to the private partner from the state or municipality and the private partner does not perform

any public service. There are other cases - very inefficient projects, ie paying large sums for poor public services.

In addition, there was no central strategy for what will be future payments from the budget for PPP that are already launched. This lack of information causes uncertainty among private investors on future payments to PPP projects. And that in return causes the Republic to be unable to fulfill its obligation to include the PPP in the National chart, which is the task of the Czech Statistical Office and Ministry of Finance.

At the present moment, it is still possible to apply the Commercial Code and Civil Code of PPP and some agencies do so, although special "legislation for PPP" has already been adopted. These are the Law № 139 for concession contracts and procedures for allocation of concessions from March 14, 2006 and the Act on public contracts by March 14, 2006.

The scope of law:

- The areas of activity are: petroleum industry, district heating, electricity and power production industry, water regulation, public transport and transport infrastructure, postal services, mining, construction of airports, military and civilian ports or other terminals of air, sea or inland waterway transport, for example transport company as Praga ROPID is a good practice for urban transport
- Various types of award procedures
- Legislation on public procurement and concessions. Ministry of Finance has financial control over concession contracts.
- A department for supervising public contracts was established
- PPP Center - state structure in the MF
- Ministry of Transportation – in charge of infrastructure projects
- PPP Association, with membership of 80 private companies active in the PPP and concessions
- Ministry of Regional Development - responsible for public procurement and concession sector legislation
- Czech Statistical Office - responsible for public debt and deficit

For purposes of this report we accept PPP as a form of contract between the public and private sector organizations under PPP policy of the Czech Republic for public-private partnership. This definition corresponds to the definition in the Manual of government deficit and debt (Part IV 04.02. Long-term contracts between government entities and non-governmental partners). This manual describes the standard features of the PPP:

- a) The contract is concluded as a long term partnership (for no less than 3-5 years, usually not more than 10 years).
- b) *The main purpose of the contract is to provide services in the public sector*
- c) The contract usually involves the construction of *necessary infrastructure* as a precondition for the delivery of public services sector
- d) Risks that usually the public sector bears are *passed on the private partner* (eg constructive risk, search, availability)
- e) The income of the private partner includes: payments from customers for basic public services and / or payments for basic public services by public companies and other revenue.

Once the government policy on PPP was approved in January 2004 a specific legal framework for PPP was prepared and adopted. Legislation comprises: mainly Law on Concessions, Law on public sector contracts and amendments to the Budget Law, as well as decrees relating to these laws. All these laws are in force from July 2006

The act that deals with contracts in the public sector provides a legal framework for the implementation of key infrastructure projects and public services. It sets the public sector in general. Concessions Act outlines the framework and the broader parameters of PPP. Its purpose is to regulate the structure for making key decisions on concessions and their subsequent delivery. Concessions Act can not be used without the parallel application of the Law of Treaties in the public sector, this kind of "special" law on special public contracts, described below.

PPP in accordance with the Civil and Commercial Code

Once the contracting agency decides to prepare a draft PPP framework in accordance with the Commercial and Civil Code, this means that:

- a) They prepare a simple procedure for tender called commercial public auction. This type of competition is not intended for use in the usual award of public sector services, but in special circumstances, some contracting agencies love to use it. In this case, they must notify the subject of a future treaty to determine the manner and deadlines for submission of tenders and selection of bids. This procedure allows for competitive dialogue or concession
- b) A contract is signed, according to the commercial and civil code. In both laws several options are provided:
 - Institutionalised PPPs, ie establishing a special purpose entity - public limited company or limited liability company
 -
 - Contract for the construction and leasing
 -
 - Rental agreement
 -
 - Contract for asset management / public service
 -
 - Other type of contract

PPP in accordance with the Law on public sector contracts and Concessions Act

Since July 2006, after the Law on public sector contracts and Concessions Act came into force, PPP in the Czech Republic are prepared under these laws. These two laws together with the Budget Law and related decrees formed the legal framework that fully complies with the "best" international practice in PPP.

- a) They specify clear procedures for the initial stage of project delivery and implementation stages of the contract.
- b) Procedures for granting a concession in accordance with European legislation and include all options found in similar legal systems in EU Member States.

- c) Concessions Act allows the contracting agency to sign a contract with a special purpose company and when that company is not participating in the procedure
- d) Both laws allow the use of competitive / concession dialogue.
- e) Concessions Act imposes an obligation to develop, so called "Project for the concession", ie analysis for "major" projects (projects that are expected to go beyond the specific financial limit). Compulsory part of this document is estimated greater value of investment and contractors from the public sector. According to the law on procedure for awarding concessions can not begin if the project concession has not been approved by local parliament.
- f) According to the Budget Law the municipality is required to register and publish all the financial obligations of the city as budgetary perspective. All of these liabilities should be recorded and made publicly available for the entire project cycle, year by year.
- g) In accordance with the Concession Act § 30, the municipality is required to request an opinion from the Ministry of Finance (MF) on the economic aspects of the concession contract, the opinion is not binding for the local parliament, it is more of recommendatory nature.

It is obvious that, in comparison with the aforementioned legal PPP schemes, (Section 4.3) PPP prepared in accordance with the Law on Concessions (LC) and the contracts in the public sector (LCPS) are of greater quality.

In general, contracting agencies have two options for implementation of the project:

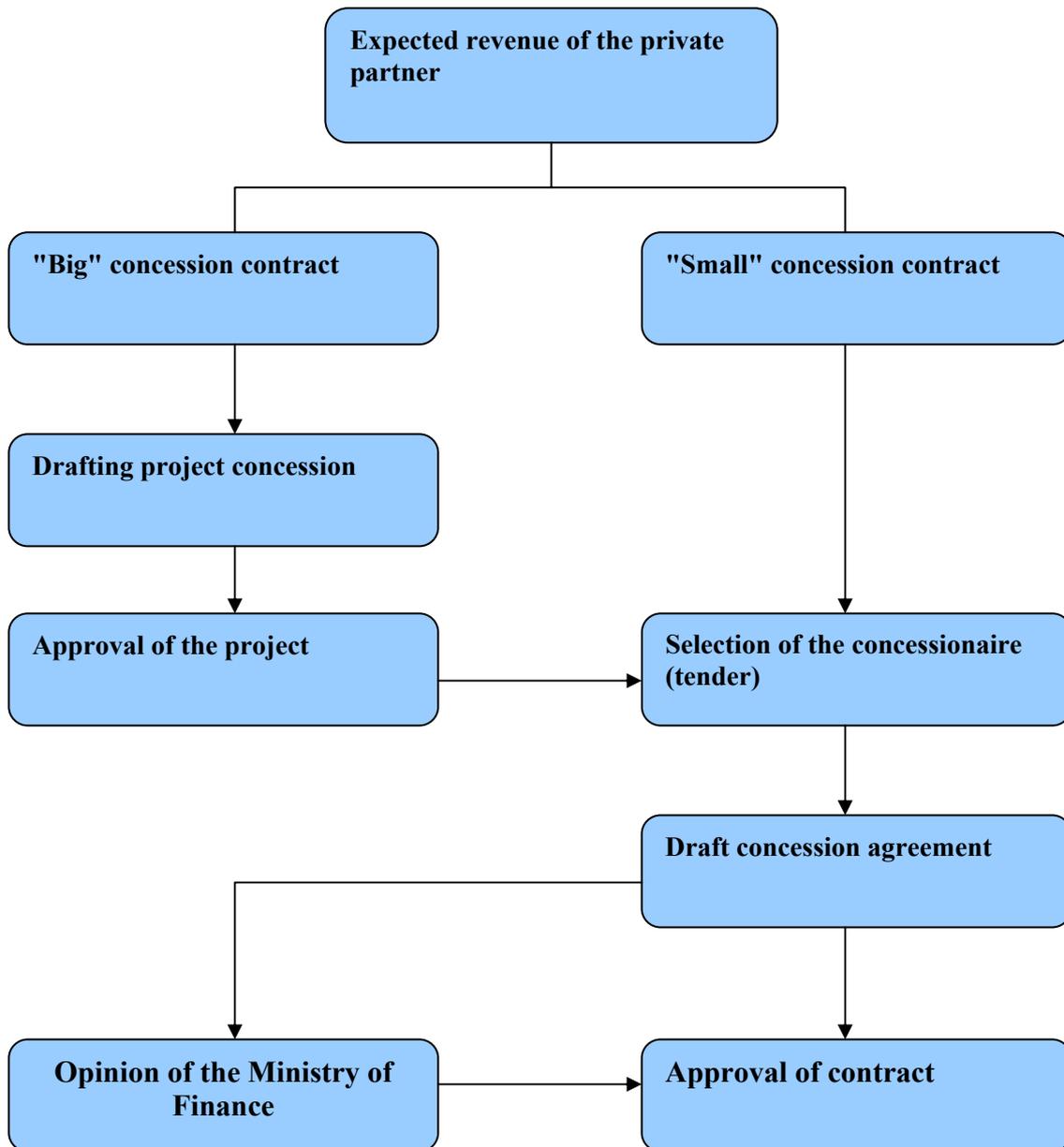
- a) Only in accordance with the Law on public sector contracts.
or
- b) In accordance with the Law on Concessions and the Law of Treaties in the public sector.

There is no clear boundary or directive, regulated by law, which often confuses municipal entities or public institutions. The "rough" rule is applied - where the majority of the revenues of a future private partner (concessioner) are customer payments Concessions Act is applied. On the contrary, when the vast majority of the revenues of the concessionaire are budget payments, from the municipal / state, the law of contracts in the public sector should be applied.

Municipalities / government agencies that stick to the transparency and use of best available practices, usually choose to proceed in accordance with the Law on public sector

contracts and to include some additional operations in accordance with the Law on Concessions (eg preparation of Draft Concession including a candidate in the public sector and public-private candidate, approval of the proposed concession and the concession contract).

Figure 5: Diagram of PPP projects from initial stage to the approval of the project, subject to the Law on Concessions of the Republic of Republic



2.6. Characteristics and legislation for PPP - Experience of the Republic of Slovenia

In Slovenia, the first attempt for private business to provide public services is creation of public assets by 1991, with the adoption of law for institutions. The law allows businesses to participate in public services such as education, culture and research. The services are provided to the private sector in the form of concession agreement in the following areas - culture, education, health. In 1993 a law was adopted for economic public services, which enables the private sector to provide services in the field of waste management, telecommunications, electricity. The law introduced two forms of contractual relationships between government and business - concession agreements and agreements on public-private partnership (investment and delivery of public services by private business). EU accession, the limitation of public finances, increased demand for

public services in Slovenia are the factors that determined in 2006 passing a law for PPP, which is in practice from 2007

Up to this moment, in Slovenia there is no law on concessions. However, the law of economic public service in 1993 contains basic and important rules for concessions (construction and maintenance of public assets, procedures for concession contracts, the parties concerned, procedure for dispute settlement).

Local Government Act 1993 allows local authorities to make concessions for the performance of government services, but does not contain the necessary conditions under which concessions are carried out. There are many laws that apply to specific sectors, for example, the law of the State Railways of 1999, Aviation Act of 2001, the law of the Navy in 2001, the law on state roads since 1997, the law of water 2001, the law on mining in 1999, special laws that coordinate education, health and social services.

Based on the foregoing, in Slovenia there are rules for concessions and the lack of common law is an important set back. The legal basis for granting concessions is not enough, especially when it relates to the signing of contracts by government support, financial guarantees and dispute resolution.

Law on Public-Private Partnership (PPP) was adopted at the end of various other items of special legislation controlling concession and contractual relations between the state and business in various sectors of the economy, public services and administrative services.

The provisions of the PPP Law are applied. They manage economic, public services or other activities in the public sector, concession contracts with partners (government, municipality or other public body) are permitted, except where concessions are also expressly covered in special laws in certain areas (eg concessions for natural resources and other public services) - education, health and other social services, utilities).

The goal of the PPP Act is to accelerate the construction of infrastructure and to reduce public expenditure to promote private initiative and to take advantage of private sector participation, especially in the form of PPP - construction, financing, operation and maintenance of infrastructure projects / services.

Legislation and common procedure conditions are in accordance with the Green Paper on PPPs and Community law on public contracts and concessions (directives).

According to the Law, contractual partnerships are divided into procurement and concession partnerships.

Concession partnership covers:

- Private investment in projects of public interest
- Public financing of private projects in the form of so-called "building" or service
- Concessions, for example, in BOT (build - operate - transfer) and similar schemes where their application depends on the distribution of risks between the partners, in accordance with regulations. Specialized PPP concession agreement on specific laws apply in some areas following the principles of transparency, competition, efficiency, protection of intellectual property rights, cooperation and non-discrimination of foreign partners and the principle of consistency in implementation of PPP.

Most common form of institutionalization of the PPP is the creation of consortia or joint ventures for specific purposes. The practice of state institutions is after passing the state budget, the public authority to publishes investment projects and private sector respectively publicly states its interest in PPP. The next step is a public body authorized should determine the contractual and business rules under the Law on PPP. More precisely, specific laws include:

Determination of concession / PPP site

Recognition of public interest in disposing of real estate

Creation of a procedure for procurement

Launch of the concession

Rights and obligations of public and private partners

Conditions and criteria for eligibility of applicants and criteria for evaluation, as well as general conditions for provided goods / services.

In compliance with the specific *concessions* and *Law on economic and public services*, the public partner may decide to provide public service or a public asset in the long term. Often an *agreement* with the concessionaire is made, which regulates, among other things:

- Subject of the concession and its purpose
- The extent of the concession and how to operate the concession (including prices and their possible corrections in the so-called *discount service*)
- Property Rights
- Private and shared resources, a plan for use of public resources, the relationship between the partners, in terms of invested on public sources and surveillance, their repatriation or pending

- The period, plan and mode of investment in civil engineering
- Terms of subcontractors
- Statutory changes in the project of this company, including step-by rights and requiring the consent of the service concession
- Accountability, audit and control
- In case of damages, penalties and other sanctions, because of late starts and / or
- Force majeure, conditions, regarding contract termination and settlement of disputes

Law on Public Private Partnership (PPP) defines:

1. The purpose and principles of private sector investment in public projects and / or public co-financing of private projects in the interest of the country (so-called PPP)'s:
2. Methods to promote the PPP and institutions involved in promoting and developing PPPs
3. Conditions, the procedure for PPP
4. The forms and methods of operation of the PPP
5. The specific characteristics of work and service concessions and PPP
6. Transformation of state companies
7. Laws that apply to the resolution of differences and the jurisdiction of the courts and arbitration system.

Special law for PPP:

- Open procedure for selecting the private partner on higher levels
- For each case, the contracting public authority establishes a PPP expert committee
- There are explicit rules for signing contracts for public-private partnership
- The partnership is terminated when:

Contractor declares bankruptcy;

There are other conditions on payment of compensation to the injured party;

Appeals shall be conducted accordingly to the competent state authority

- mayor, minister.

- Supervision on PPP is exercised by councils of representatives of different departments and / or the private sector.

Conclusions regarding the legislation for PPP

- *The legislation* in different countries is regulated by one or several laws. No clear normative model. In EU Member States and Bulgaria, was introduced by Directive 2004/18 and Directive 2004/17.
- In most countries there is a legal *definition* of a PPP. It can be summarized as long-term agreement, between the public agency and entities from the private sector, which covers the sharing of assets and risks in favor of public interest.
- *Procedures* can be: open, restricted procedures, negotiated directly with the pre-study and an unlimited number of candidates, direct negotiations without pre-study agreement, with or without publication of a framework agreement / contract, dynamic selection, competitive dialogue, direct distribution, dynamic purchasing system, design competitions, electronic auction, split the contract into parts.
- *Protection*: Disputes shall be decided by the Office division, tribunal or independent institute for public contracts (in the rare cases - the administrative courts). The European Commission also has powers of conciliation.

3. INSTITUTIONALITY, MANAGEMENT AND REGULATION OF PPP. METHODOLOGY AND TOOLS FOR MONITORING OF PPP

The countries, in the report have different forms of PPP management and institutionalization - these are different ministries, local institutions or other interagency committees.

3.1. Greece

The Act creates a conducive regulatory environment and repeals the requirement for parliamentary ratification of concessions, within the scope of the new law. Two new committees are responsible for organizing and awarding of concessions, as follows:

- Special Secretariat for PPP (EGSDIT) was formed in the Ministry of Economy and Finance. The Secretariat is responsible for selection and approval of projects carried out as a PPP, in compliance with new legislation to support implementation of the PPP and facilitate and maintain various public authorities in the selection of private

partners. The institution must consider any proposal for a PPP to ensure the accuracy of preliminary studies, effective management and implementation of such PPP projects. EGSDIT must issue approval (or disapproval) for PPP project within two months after the application. Upon approval EGSDIT takes the procedure to award the project to a private partner. EGSDIT is entitled to appoint its own staff and with the permission of DESDIT to appoint independent consultants. One of the functions of secretariat is to prepare the necessary documents for the selection of private partner.

- Interagency Committee (DESDIT), which sets out the government's strategy for investment projects in infrastructure, maintenance of public assets and provision of services with the participation of private capital. The Minister of Finance, regional development and planning participates in DESDIT. It is led by Secretary appointed by the Prime Minister and Minister of Finance. All projects with a budget of 200 million euros can be assigned as a PPP without the consent of DESDIT. Projects with higher budget need consent, but this approval can not be refused without good reasons.

3.2. Spain

In Spain the management structure has several levels. At the national level, the institution responsible is the Ministry of Public Administration (in April of 2009 the Ministry of the Presidency, due to the closure of the Ministry of Public Administration). Government approval is required for specific contracts - where the amount is above certain thresholds. Furthermore, there is a national organization, called the State Agency for transport infrastructure. Spain is divided into 17 autonomous communities which have the capacity to enter into PPP contracts. At this level, the responsible institution is either the regional government or the relevant ministerial department. Local Authorities - the responsible institution are local municipal council or the relevant management body of the province.

Today, the biggest instigators of the application of these formulas are the regions, municipalities and districts, through which investors can maintain capacity in the context of public expenditure restraint.

3.3. Italy

There is an institution for monitoring of public contracts for operations, service contracts and Control of public contracts for activities, services and supplies.

In the structure of the Council of Ministers is Department of Planning and coordination of political economy, which has the following competencies:

1. Secretariat of the Interagency Committee for Economic Planning (CIPE), which includes the implementation of operational tasks, management, coordination and support for CIPE and commissions and committees that operate in this area, achieving this goal helps other ministries;
2. Regulation of utilities, which are not mentioned in this specific area, coordination and monitoring of public investment, management and supervision of institutional relations;
3. Analysis and evaluation in the field of micro-economic trends, macro-economic intervention and related economic and financial policies of national, European and international monitoring of economic developments and current prospects of the country, as well as specific industries and markets.

3.4. Slovenia

Experience has shown that countries use the following basic forms of institutional management of PPP activities: centralized, decentralized and mixed. In Slovenia the mixed form of PPP is ongoing. PPP Central Unit (Directorate of investment, public procurement and concession) is a structure in the Ministry of Finance, responsible for horizontal coordination of all PPP policies in the country and also the implementation of PPP projects, where there are no units created in sectors. Management units, coordination and control of PPP in the sectors of transport, environment and local administration are responsible for implementation of investment projects implemented through PPP. The role and functions of the structure are set forth in the PPP. Panel consults the PPP Central Unit. The Central Unit is responsible directly to the government. PPP Central Unit performs functions to coordinate PPP projects, to form a comprehensive policy and prepares methodological rules and documents. The set up units in sectoral ministries, which are responsible for PPP projects can act only on special agreement between the Ministry and the Central Unit. This means that the central unit coordinates and monitors the implementation of PPP projects. The established management organization and coordination of investment projects PPP leads to:

- better coordination in the development and implementation of PPP policy.
- provide technical assistance to ministries, local governments and authorities in order to implement quickly the decisions taken

- creates the necessary conditions for faster and more efficient implementation of agreed policy on economic issues related to PPP.

The primary unit formed under the Ministry of Finance has the following responsibilities:

- preparation of policies and procedures, as well as practical guidelines for projects in various sectors.
- development and protection of the interests of private sector in implementation of PPP projects, the exchange of information between the various PPP units of state administration
- maintaining a database of investment projects in public sector
- preparation of documents on all aspects of PPP
- assessment, monitoring and evaluation of PPP contracts
- identification and development of new business opportunities including new models and products on international level
- providing the conditions necessary for PPP in the country
- ensuring effective and regular exchange of views of different ministries. If necessary, this requirement may be granted a separate institution - the interagency group of experts dealing exclusively with this.

Treasury controls, advises according to the law, participates in the selection, evaluation and implementation of any PPP project. Ministry may offer, under the law, a form of contractual relations and cooperation during the project. It takes part in selecting business partners. Representatives of other ministries and external experts can participate in the implementation of activities.

Ministry of Finance set up a database for all PPP projects, in order to monitor investment projects and control their financial sustainability. Also, experts from the Ministry of public support institutions at national and local level when signing the contract and the determination of financial, legal obligations and other conditions for the implementation and execution of the project, and the procedure for selecting private partners. For the selection, monitoring and evaluation of PPP, the experts will refer to best practices and existing standards and regulations.

Ministry of Finance will coordinate the plan budget, and implementation of investment projects;

Expert group of advisers (expert body for PPP) is part of the main unit and includes representatives from public and private sector and other organizations, banks, experts, citizens, etc. The PPP Council studies the key issues related to PPP as well as problems in the field. This Board can make recommendations and suggestions for different strategies, proposals and initiatives that the Government of Slovenia may vote.

Structures for management and implementation of PPP projects in different economic sectors are made in different ministries. Their functions are:

- identification of PPP projects and determination the procedure, by which private partners are chosen. These activities will be carried out in cooperation with the Central Unit.
- organization and coordination of technical expertise with these units, which are local.
- dialogue with key institutions and assistance from the Central units for the implementation of PPP projects.
- Development of a favorable environment for PPP: for the time being two important industries should be taken into consideration - projects related to transport, telecommunications, environment.

PPP structures, divided into main ministries have the following functions:

- identification of PPP projects and determination of the procedure by which private partners are chosen. These activities will be carried out in cooperation with the Central Unit.
- organizational tasks and coordination of technical expertise with these units, which are local.
- dialogue with key institutions and assistance to the Central departments.
- Development of a favorable environment for PPP: for the present moment projects in transport and communications environment are conducted. (The responsibility of the Ministry of Transport and Ministry of Environment).

3.5. Czech Republic

A model for management and coordination of projects is designed, implemented through PPP. Ministry of Finance prepares the methodology and provides consulting services to municipalities on request.

Ministry of Finance has established and periodically updates a database on the budgetary impact of the PPP, made in accordance with the Concession Act, provides information on technical and financial characteristics of projects to the public, government, and the Czech statistical agency Eurostat. If the municipal authorities invite the Minister

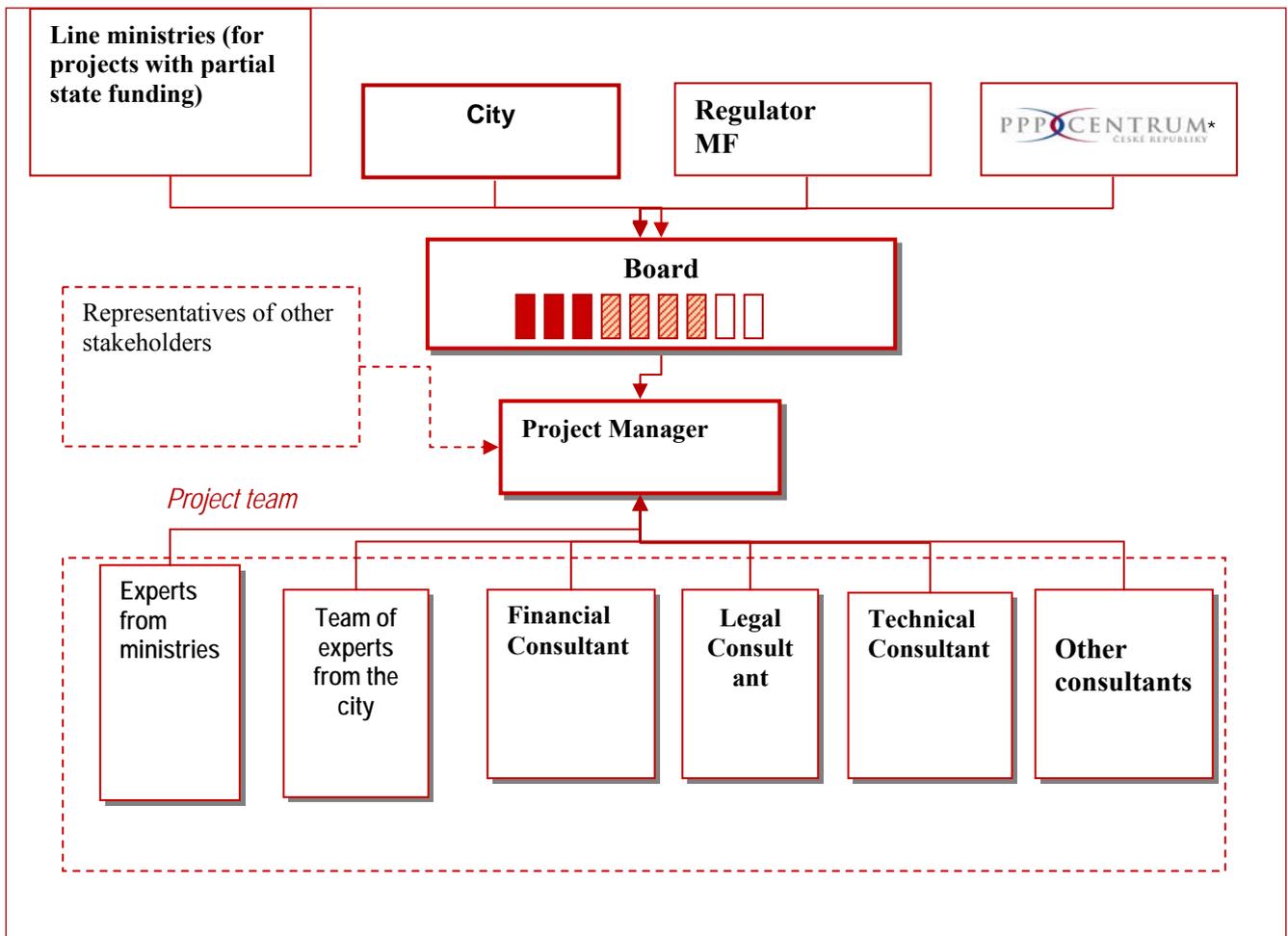
to participate, representatives of the MF may be included in the work of the Project Steering Committee, this may help the acquisition of know-how from other projects and also reduce the time required for an opinion / position from Ministry of Finance at a later stage.(Concessions Act § 30), Ministry of Finance makes the individual contracts of concession in terms of budgetary impact, potential impact on the economic sustainability of the town and potential impact on public obligations and deficit, the results of these tests are sent to local authorities who are obliged to consider the opinion of the Ministry of Finance to vote before the tender (Concessions Act, § 30).

An autonomous structure is launched in order to support feasibility studies and preparation of documentation - Centre for PPP.The Center for the PPP is a limited company 100% owned, founded in 2004 by the Ministry of Finance. Its role in the process of PPP projects as:

- prepare and launch projects
- preparation of primary documentation, including initial business studies and financial analysis
- selection and supervision of external consultants
- project management by the authorities

- assessment of bids and proposals
- preparation of tender
- Monitoring of ongoing projects

Ministry of Regional Development maintains an information system for public provision, public database, covering all the concessions granted in the Czech Republic, in compliance with the Law on public sector contracts.



In 2004 the Ministry of Finance established two institutions entrusted with the task of assessing the viability of PPP projects in order to facilitate their implementation: The Centre for PPP and team regulation and methodological guidance of the Ministry of Finance. Over the past three years, these institutions prepared and published a set of manuals and methodological guidelines. These documents were prepared with the assistance of experts from State Administration of the Netherlands, Britain and Portugal in cooperation with Czech experts to provide guidelines for the work of the Czech public administration, how to create an optimal PPP model. Methodological guidelines are provided for application of PPP in accordance with the Concession Act, but may be applied for other models. Application of these methodological guidance is not binding on the contracting agencies.

3.6. Portugal

More detailed information and a short description about Portugal is included.

In Portugal, the support of PPP comes from the fact and the will for development. So, there PPPs are used mainly in the transport sector, railways, and improvement of roads connecting Portugal and Spain.

Ministry of Finance of Portugal, together with with sectoral ministries are responsible for granting and review of projects related to PPPs, which take place according to PPP law (adopted in 2003). Projects are approved only if the transfer of risk is efficient. PPP Act is implemented by the central and regional administrative structures. "*Parública SA*" is a public company responsible for state participation in private companies and is an advisory body for PPP in central and regional administrative structures. In Portugal, the support of PPP comes from the fact and the desire and willingness to development. So, there PPPs are used mainly in the transport sector, railways, and improvement of roads connecting Portugal and Spain.

4.LOCAL AUTHORITIES AND PPP. DECENTRALIZATION AND MANAGEMENT MECHANISMS FOR PPP PROJECTS

4.1. Spain

Spain is a constitutional monarchy. The basic law of the country is Constitution from 1978. Ruling of the country is based on the principles of separation of powers. Executive power is represented by the Government of Prime Minister nominated by the King and approved by the democratically elected Congress MPs. Legislative power belongs to the National Parliament (General Cortesy), which is elected every four years. It consists of the Congress of Deputies and the Senate. The Judiciary is exercised by courts, tribunals and audiences. The country is divided into 17 autonomous communities which have their own parliament and government. This feature reflects the country's administrative structure and institutions for monitoring.

The model of public administration in Spain is based on the French model for public administration. Basic principles of operation of the administration are defined in the Constitution of 1978 Under Article 103 of the Constitution. Government serves the common interests by working objectively and in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and fully respects the law and order. The State Administration in Spain has three levels: central administration or The main public administration (ministers, state secretaries, Secretaries and subsecretaries, chief secretaries and chief technical Directors, Deputy Directors-General Inspectorate of the ministries and inspectorates); Autonomous Administration (Spain has 17 autonomous regions), local

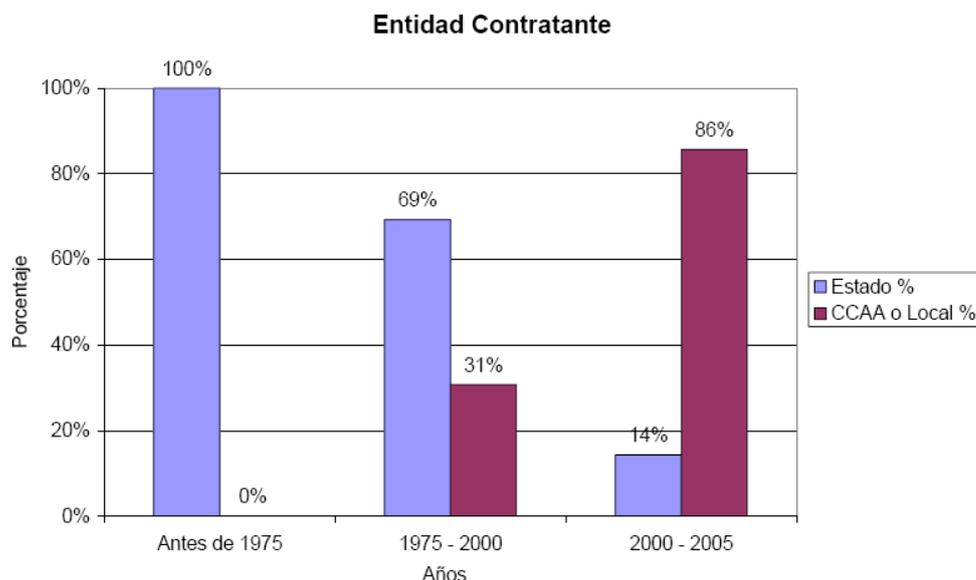
administration (in municipalities and provinces, municipal councils, municipal associations and others.). Structure and positioning of the main inspectorates in Spain should follow these administrative levels. Public administration in Spain is decentralized and is determined by the Administration Act of 1992

As already mentioned, one feature of the development of the PPP formula in Spain is the process of using them at different levels in the Spanish public administration.

Major investment project at the regional level are based on the pattern of public-private partnership. Municipalities feel encouraged to use this formula, as one of the important issues that have not been solved yet in Spain, lies in inadequate funding of local structures on the level of activities that are required to implement.

To prove this phenomenon of the growing use of this formula by the regional and local bodies we can use Figure 6, where it is measure how, in a period from 1975 to 2000 70% of the value of contracts funded under the PPP are contracts with public administration. For the period 2000-2005, the percentage distribution turned and the share of regional and local corporations is 86%, which currently remains approximately the same.

Figure 6



If the emphasis is on these regions, this is due to the growing importance of this formula. Most of them, especially the ones that are significant in terms of economic and demographic aspect, appointed structures or committed professionals specializing in this field who are required to analyze the feasibility of this formula in case of practical implementation of these projects.

Spanish regional governments, generally, have specialized teams in the field of public-private finance. They are working in the financial or budgetary departments and are making analysis of each project.

In large regional administrations, such as District Madrid, Catalonia and Valencia Region, this structure is complemented by teams of professionals, dedicated mainly to the analysis of PPP projects in certain areas that require a certain volume of major investments (eg in Health) and which are part of this sector (Ministry of Health).

As for municipalities, great differences between the major communities occur: Madrid or Barcelona on one hand, who have specialized teams for this activity, also working in the field of finance and budget, compared to medium-sized municipalities, where teams are not available, but only a specialist in that matter, who gives information about these projects.

Obviously, this topic has become so important in regions and municipalities that public-private funding is a major part in the planned financing of these units and the possibility of the implementation of major projects. And for this reason they all have teams of experts to analyze their expedience and feasibility.

One last aspect, in order to find out the significance of this formula for regions and municipalities is that they all extend the scope of these methods and today we observe that municipalities and regions resort to those formulas to finance projects of various kinds : subway, roads, sewage plants, plants for waste treatment, libraries, trams, congress and conference halls, museums, educational centers, retirement homes, social assistance centers, asylums, and even cemetery parks or arenas to fight bulls.

4.2. Slovenia

In Slovenia there are two levels of government - national and local. Regional policy has been influenced by politics at national and local level, despite the fact that there are regional authorities and their efforts over the past decade for the region to become a separate entity with its own management at regional level. At the state level, the central institution

responsible for regional development is the Ministry of Local Government and Regional Policy and is headed by minister without portfolio.

In Slovenia the number of municipalities is 210, in 12 planning regions (NUTS 4), 11 are from urban municipalities, 110 have less than 5000 inhabitants, 47 municipalities with a population of 10,000, 50 municipalities with a population of 50,000 and 3 municipalities with a population over 50,000. Administrative territorial units are 52, they perform tasks delegated by the government.

Ministry of Local Government and Regional Policy forms regional policy, provides for decentralization laws and the efficient use of financial, capital and human resources from the regional and municipality level.

Takes actions to improve the institutional structure and governance structures at regional and local levels, so as to implement national development program. In the functions of the ministry are included programs and projects under the cohesion policy, promoting collaboration between municipalities.

Council for Structural Policy and Regional Development is responsible for harmonizing the activities of various ministries; facilitates the financing of projects and participates in drafting the regulation and financing of the project.

Council of the Regions - approves regional development programs, establishes various criteria for selecting regional programs, selects and appoints representatives from local politics, draws up contracts at the regional level, as well as represents the regions;

Regional Development Council - takes decisions for the preparation of regional programs, sets up a plan for implementation of regional policy, exercise control over regional policy, cooperation with other committees; and other activities at the regional level - the election of representatives and leaders.

Municipal council and the mayor decide on projects and modalities of PPP.

Slovenia is not from the countries with experience in implementing investment projects, it has experience of PPP projects in water sector - water treatment plants.

4.3. Czech Republic

Management and regulation of PPP projects in the Czech municipalities is determined by several parties, of which the most important are: the municipality, the Ministry of Finance, Ministry of Regional Development and Center for the PPP.

Each PPP project aims to meet the public's need for specific public service. The body, which is responsible for providing this service is the contracting agency (ie city authorities,

regional authorities or ministries), the most important player in the entire life cycle of the project

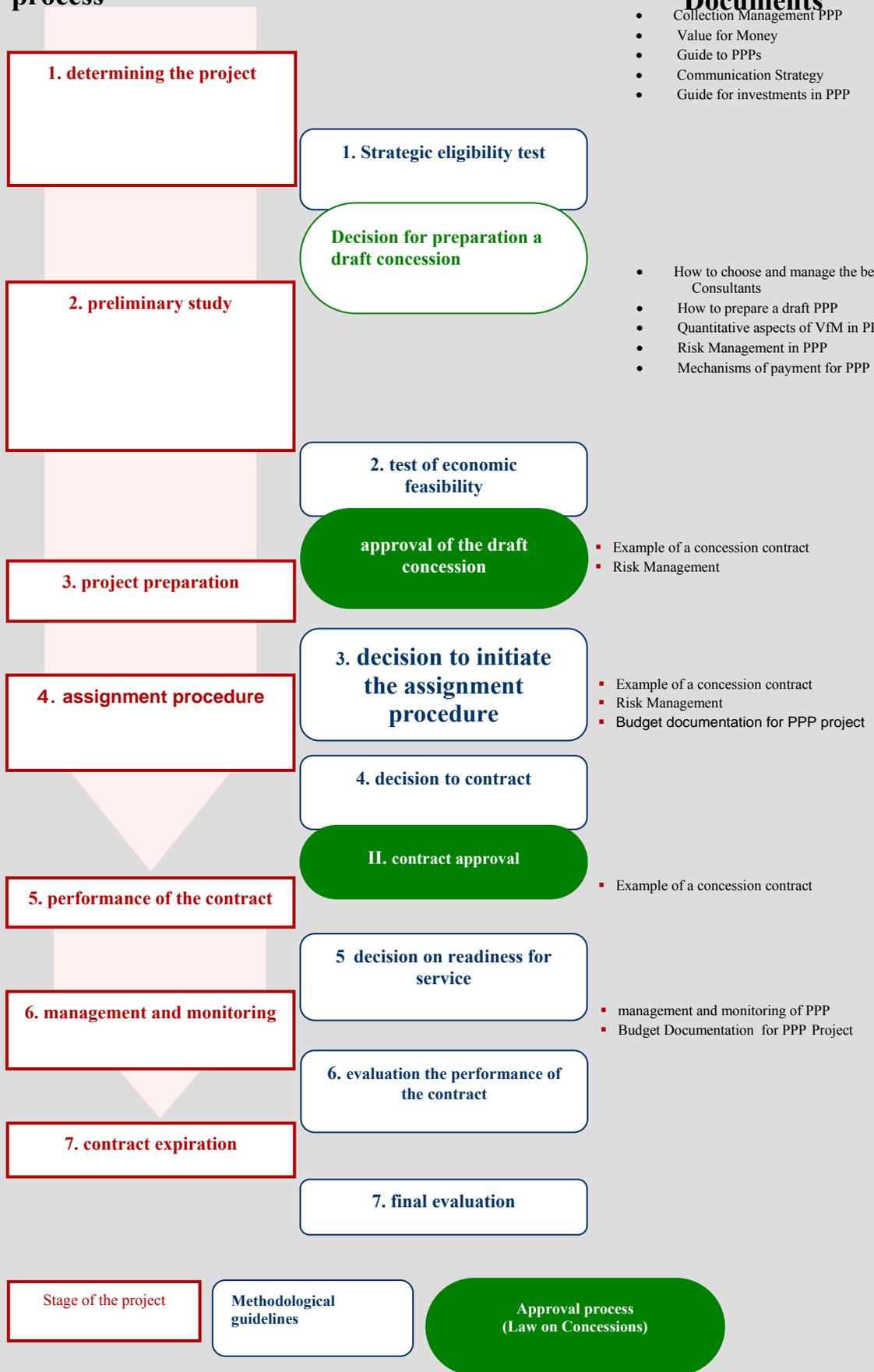
In PPP, which takes place in the municipalities of the Czech Republic, the city municipality is responsible for:

- preparation of project
- preparation of detailed business analysis (for projects that are very small, municipal authorities usually employ external consultants for this and subsequent stages of preparing and implementing the project)
- implementation a procedure for granting concession
- preparation and approval of the concession contract (if the project is drafted in accordance with the Law on Concessions, the treaty enters into force only after approval by the majority of local authorities)
- monitoring the contract

PPP Process

(ii) Stage of the process

Approval process



Czech municipalities have various options for a decision on which concession model to use, what approval procedure and what type of PPP contract to sign.

The basic laws that must be abided by are:

1. Directive 2004/17/EC of the European Parliament and the Council of 31 March 2004 for coordination of procedures for the procurement of entities, operating in the water, energy and transport sectors as well as in the postal sector.
2. 2004/18/EC of the European Parliament and the Council of 31 March 2004 coordinating procedures for awarding public works contracts, service contracts.
3. Handbook of European Union government deficit and debt, in particular Part IV: Long-term contracts between government entities and non-governmental partners.
4. Commercial Code, Law 513/1991.
5. Civil Code, Law 40/1964.
6. Budget Law 218/2000.
7. Act 250 / 2000 budget for municipalities and regions.
8. Concessions Act 139/2006.
9. Act contracts in the public sector 137/2006.
10. Amendment to the Budget Law 140/2006.
11. Decree No. 217/2006. (Contents of the concession contract and the rules for calculation of the entire project cycle).
12. Decree No. 238/2006 (containing the opinion of the Ministry of Finance on the proposal for a concession contract - in accordance with the Law on concessions § 30).
13. Legislation in respect of State aid, in particular Law 215/2004, amendments to certain contractual arrangements in the field of state aid and Change the Law for Promotion of Research and Development⁴

In legal terms, the Czech cities primarily use one of two combinations of laws for the preparation and implementation of PPP contracts.

The table below illustrates the comparison between these models: PPP draft prepared by:

- a) Concessions Act and the Act on public sector contracts (CA APSC) or
- b) Commercial Code and Civil Code (CC + CC1):

Table 6

	CA+APSC	CC+CC1
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⁴ <http://www.compet.cz/en/state-aid/legislation>

Contracting agency is required to undertake a preliminary study	Yes	No
Preliminary study should be approved by local parliament	Yes	No
Contracting agency is required to declare the tender	Yes	No
Award procedure shall be governed by the law	Yes	No
Information announcing the tender and the selected concessionaire, published by the Ministry of Regional Development	Yes	No
PPP contract has to be approved by local parliaments	Yes	No
The municipality is obliged to request an opinion from the Ministry of Finance before the conclusion of the PPP	Yes	No
Monitoring - estimates, averages	Yes	No
Monitoring of national accounts	Yes	No
Short period between the initial stage and the contract	Yes	No

4.4. Greece

According to the Constitution of the Hellenic State administration is organized on the principle of decentralization. Administrative division of the country is based on the geographical economic, social and transport conditions. The Government coordinates and supervises (except for specific functions) the regional government bodies, while the latter had effective control over matters, that concern the region and implement internal and European policies of economic and social development in the geographical area of their competence . In addition, according to the Greek Constitution local affairs are the responsibility of local authorities, while the government has no autonomous presence at this level. Therefore a structure of local authorities of first and second level and regional administration is created.

4.5. Italy

Administrative units in Italy have competence to exercise legislative power on the remaining issues (ie they have limited authority). There is a second list of questions contained in paragraph 3, Art. 117, called "competitive" issues for which legislative power belongs to the administrative units, except the determination of the principles being implemented by the state. The government may also issue a decision by force of law (known as Decree Law), but it must be approved by Parliament. Moreover, Parliament can provide the relevant powers of the Government to exercise legislative power on certain issues, but also sets the limits within which the Government may act in issuing laws. These regulations issued, by the Government

are called legislative decrees. Any Member of Parliament can take Legislative initiative through the institution for proposal of laws of national importance, also the government can act so if proposals for legislation are signed by the President of the Republic. All laws must be promulgated by the President of the Republic, which in turn can go back to the Parliament Act if he considers that it is inconsistent with the Constitution. The executive body is the Council of Ministers and is appointed by the President. The Council of Ministers is a collegial body, performs a crucial role in the government. It is managed by the Chairman of the Council and its composition consists of all ministers, with or without portfolio. With the exception of Deputy Minister of the Presidency of the Council, acting as Secretary of the College, no other Deputy Minister may take part in Council meetings.

Under special regulations Presidents of areas with special status (Valle d'Aosta, Sardinia, Sicily, Trentino-Alto Adige-, Friuli-Venezia-Giulia) and President of the Council of the two autonomous provinces (Trento and Bolzano) can participate in meetings of the Ministerial Council with voting rights provided that the matter is of their interest. Under Article 2, Law № 400/88, the Council of Ministers determines the leading policy of the Government and to its implementation and the basic directions of administrative activities. Furthermore, it shall decide on all other matters, connected with set policy guidelines, and take measures to prevent conflicts between ministers associated with attribution of actions. The internal order of the functioning of the Council of Ministers is under special regulations adopted by decree of President of the Council of 10/11/1993. It covers the rules, set out the attendance of meetings of the Council and the conditions for convening the same. Ministers make one of the government bodies - the Council of Ministers. They are selected from the President of the Republic upon proposal of the President of the Council and responsible - individually for acts adopted within their own ministries and collegial for the decisions of Council of Ministers.

4.6. Summaries and conclusions based on the experiences of countries implementing PPP projects

The new legal framework in Greece regulates the multitude of privately funded projects in Greece. The new law is the first step towards the revival and expansion of the Greek PPP market. In particular, the PPP law defines a number of basic parameters in terms of allocation of risks and laying the foundation for a final standardization of certain aspects of the concession contracts. The political will, responsibility and the establishment of institutions for organizing and conducting PPP accelerates the process of decision making and implementation of PPP projects.

Besides infrastructure projects, PPP projects in health care lie ahead - building hospitals. For example, in *Greece* were announced three pilot projects for the general hospital in Athens worth 150 million euros, pediatric hospital with 500 beds in Thessaloniki for 80 million euros and the transplant center with 250 beds in Athens. PPP are successfully applied in concessions for roads, highways, tunnels and bridges, building hospitals, waste management, energy projects, parks, marinas and more.

Both legal schemes that are usually applied in *the Czech* PPP, as described above, the present two extreme models. On one hand - very liberal decision with almost no rules on the other hand - very detailed and strict laws, which unfortunately encourages businesses to seek other alternatives to circumvent the law. Several pilot projects are prepared, at the moment, in accordance with the Law on Concessions. There is no doubt that the use of "best" practices takes time and resources, but on the other hand, it is better to use time and money for project preparation to avoid losses in the future.

From the *Czech experience* the following conclusions and recommendations may be drawn:

Each local or state agency must find its own appropriate model, but there are some key features of successful PPPs, which are repeated many times in other countries which were evidenced in the Czech Republic:

a) The appropriate management structures are vital to enable the project to meet the higher targets. Significant differences between conventional projects offered in the public sector and implementation of PPP projects are:

- Compared with traditional investment projects, PPP projects require *more extensive preparation and research*, because of financial, technical and legal characteristics of the project. PPP schemes are provided to utilize the business arrangements and mechanisms to predict the value for the lifetime of the project. This is achieved by creating long-term contracts (15-30 years) and by financial institutions (project financing). They should be seen more as service contracts rather than contracts for assets. PPP contracts cover the entire project life cycle - design, construction, financing, maintenance and performance. This means that specific agreement on the draft PPP contracts and financial performance specifications must be fully covered at the end of the contract. This endpoint sets requirements that must comply with the management process - extensive training, detailed specifications drawn up for implementation, including interdisciplinary teams of experts, strictly observing the principles of PPP methodology guidance, planning and control.;

- PPP is used as an *instrument for granting concessions* (rather than follow the conventional model) to obtain better value for money;
- The full project cycle of PPP has *different stages*, each with its own characteristics in terms of key processes and decisions. It is a good idea the stages of a PPP project to be planned, regardless of what model of provision and what kind of contract is used:
 - o Stage of Development: Development of the project at the political level.
 - o Project preparation stage. Conduct preliminary technical study and analysis of business structure.
 - o The delivery: presentation of the project on the market.
 - o Design stage, design and construction: completion of project and construction of assets.
 - o Implementation phase of the project: provision of service by the organization, contractor, monitoring the process by municipal governments is also key point at this time.
- The form and procedure of granting the contract must be selected according to the scale of the project. Especially, for larger and longer-term projects it is recommended to use a complex procedure, which includes coherent control for better value of money through all stages the project.
- Creating a well-qualified and managed project team and board of management is a key prerequisite for a successful project. Clear responsibility of individual members of both teams prevent confusion. Public administration must establish and maintain its own group of qualified experts who can manage the project, to conduct cost-benefit analysis, costs.
- Building a program of measures is better than individual solutions for each case;
- No project for PPP can be successful without political support;
- The approach to monitoring the entire cycle to improve budgetary control and sustainability of the project for both the public and the private contracting party, which will lead to lower costs for all participants.

The expertise of Spain demonstrates the importance of preliminary studies, which could determine the type of PPP contract, manage risk and achieve financial sustainability of the project.

5. GOOD PRACTICES IN THE SECTOR OF PPP PROJECTS

With view to the specific objectives of the project, for which this report was prepared for, hereby we will discuss in more details the relationship between public and private sectors

in the public sphere. The examples, listed below are based on the experience of specific countries, taking into account the characteristics of the PPP.

Greece

The parameters of one of the emblematic projects of the Greek government, which we have already mentioned, and which came into the manuals for good European practices in public-private partnership - namely the Athens International Airport, are reviewed here.

In the mid 70's it became clear that the Helenikon airport does not have adequate territory to expand for meeting the rapid growth of air passengers in Greece and more specifically in Athens. There were many researches conducted. They analyzed at least 19 different sites as potential locations for a new airport. Like most of the big infrastructure projects, the first groundbreaking ceremony in September 1996, which marked the official start of erection works of the new international airport in Athens, was preceded by more than 20 years history of project development. In the end, a terrain near the town of Spata, 33 km northeast of Athens, was chosen as the best place. The company Athens Airport SA, 100 % state ownership, was established in 1978 to develop the project.

The Investors - Greek government (55%), Hochtief AirPort GmbH (39.875%), ABB Calor Emag Schaltanlagen AG (5%), Flughafen Athen-Spata Projektgesellschaft mbH (FASP) (0.125%). Operator is Athens International Airport Company. The duration of the PPP was 30 years. This PPP was the Build – Own - Operate – Transfer (BOOT) type. The building phase was 51 months plus five months of testing. The total value of the project was 2.25 billion euros

Brief description of the project

Athens International Airport S.A. (AIA) was founded in June 1996 in the form of partnership, including the Greek Government and a private consortium led by Germany's Hochtief Aktiengesellschaft. The consortium won the tender for building the airport, conducted 1991-1993 under the BOOT scheme (Build – Own - Operate – Transfer). The airport was opened in 2001 and is situated between the towns Markopolo, Koropi, Spata and Lutsa, about 20 km to the east of central Athens (30 km by car). Currently the airport has two terminals: a main and an additional terminal, connected with an additional pedestrian tunnel and two landing strips of about 4 km each. The airport has serviced 16,466,479 passengers for 2008. Currently, Athens International Airport is among the top 25 busiest airports in Europe, and is expected to climb up to top 15 by 2016

History of the project in short:

1978 Spata was chosen for the place of the new airport. Athens Airport SA, 100 percent State ownership, was established to develop the new Athens airport.

1978 - 1991 Slow progress in research and planning works.

Tender with BOOT scheme - private consortium led by HOCHTIEF Aktiengesellschaft is declared the winner in the tender.

1993 Change in the government– the tender is suspended.

1994 New tender procedure and selection of a private consortium led by HOCHTIEF Aktiengesellschaft as a partner of Greece in the project.

1995 The Greek State and the private consortium led by HOCHTIEF Aktiengesellschaft sign an agreement on the airport development (AAD); ratification of the AAD by Greek Parliament by Law 2338/95.

1996 Establishment of Athens International Airport SA (AIA) with 55% participation of the Greek government and 45 percent of the private consortium. A contract for construction (CC) with the main contractor has been signed; The AIA and the European Investment Bank sign a loan agreement with a consortium of commercial banks led by Bayerische Vereinsbank.

2000 The project as per CC has been transferred to Athens International Airport SA by the main contractor. Start of the testing operations and trial period.

2001 End of the tests and trial period. Relocation project: transfer to Helenikon airport.

Phases of negotiation

After a decade of slow development, the project was reviewed by the Greek government in 1991 and an international tender was announced for selecting a strategic partner to implement the project for airport under the BOOT scheme. Between the two bidding applicants, which have been approved for participation, the Government selected the private consortium led by HOCHTIEF Aktiengesellschaft. After the change of government in September 1993 the tender was suspended and a new round of negotiations was launched in 1994. Then the choice of the private consortium was finally confirmed. The Greek government and the private consortium concluded an agreement for the airport development (AAD) with aim to develop new international airport in Spata via public-private partnership in July 1995. AAD launches a 30-year concession ratified by Law 2338/95, giving the development company exclusive rights to possess and use the site for the purposes of design, financing, construction, completion, operation, maintenance, management and development of the airport.

Funding and project expenses

The consultant of the Greek government for the structuring and execution of the tender for building a new Athens International Airport in Spata is the American Investment Bank. Private financing was completed through a syndicate of predominantly German banks. The European Investment Bank (EIB) granted loans for a total period of 25 years for about 50% of total building costs. The Greek Government undertook to provide two grants from the EU (150 million and 250 million euros) or to grant them from budget in case EU funds cannot be provided. The Greek government agreed to introduce a surcharge for departing passengers from November 1994 least until 2014 (the so-called "Fund for airport development in the Spata"). The Government reserves the rights to introduce, change, preserve the airport charges. The Government was determined to raise the necessary funds, or to provide a guaranteed minimum of 45 million euros per year to finance the construction. This innovative partnership scheme proved successful for funding, establishment and operation of an organization, capable of managing the largest infrastructure project in the history of Greece. The business potential of this joint venture secured a grant from the Cohesion Fund of the European Union, large-scale and long-term financing by the EIB, as well as funding from a consortium of commercial banks. In this way, together with the Fund for airport development (state fee for airport passengers, part of which, related to traffic in Athens, is allocated to the AIA), the Greek state grant, equity and other smaller sources of funding, the total investment for development of a new airport in Athens reached an amount of about 2.25 billion euros.

Project Structure

AIA is considered fundamental project in this type of international PPP, being the first major airport built as a "greenfield investment" with private sector participation. The Greek Government owns 55% of AIA shares. Interests of the state are represented jointly by the Ministers of Economy, Transport, Communications and Environment, and the Regional Development. The partners from the private sector include three private companies, led by HOCHTIEF AirPort GmbH, which hold together 45 percent of the shares in the company of airport:

HOCHTIEF AirPort GmbH (100% owned by HOCHTIEF Aktiengesellschaft) - currently owns 39.875% of the shares, ABB Calor Emag Schaltanlagen AG - 5% and FASP mbH - 0.125%.

Conclusions

PPP projects could be successfully implemented in the construction of airports if they unite efforts from all the parties. There was an opportunity for the EU to contribute to the project through grants and subsidies of investment expenses. In this case, the Greek Government also assisted to provide funding. EIB loans with a total maturity of 25 years were available for 50% of total construction costs.

The Greek government agreed to introduce additional charges for departing passengers from all Greek airports for the period November 1, 1994 - 2014 (the "Fund for airport development in Spata").

To this date, PPP is the most efficient method for financing infrastructure projects. For Greece, it turned out to be one of the most important reforms in the country's development in recent years, which has already begun to bear fruit and is expected to continue to do so in the future. From 2006 till now the interdepartmental committee for PPP has approved projects worth 5.7 billion euros, which is a sheer confirmation of the undeniable success of the institution. The first contract for the implementation of public-private partnership through the establishment of seven centers for fire protection value of 27.7 million was signed in April 2009. The execution of this project has already begun. Several contracts for the implementation of PPP projects are pending to be signed and implemented soon. A contractor has already been conditionally approved for the contract for construction of administrative centers in Trikala and Corinthia prefectures, while other six projects for over 500 million euro enter in their final stages. It is a landmark that ten of the largest foreign companies with interests in PPP projects announced their interest to take up the implementation of the first PPP project, by participating in the bidding stage. So far there are 45 companies that participated in the tenders for the implementation of PPP projects. An eloquent fact is that there were five bids of interest in the first tender procedure, while the number increased to reach 8-9 bids for major procedures. This proves that despite the unfolding crisis, the main objects of the Greek economy remain attractive for investors thanks mainly to the comprehensive and complete institutional framework in the field of PPP. This framework is entirely relevant to the legislation of EU and international business practices, which is confirmed by the participation of the European Investment Bank / EIB / in the procedures.

Today, Greece is one of five member states of the European Advisory Board Know-How Center for PPP projects, which runs under the guidance of the European Investment Bank (EIB). This means that Greece, in cooperation with the EIB, disseminate the experience

gained from working in the field of PPP to neighboring European countries. This in turn will actively promote the economic relations between the countries, creating significant opportunities for development for Greek companies (or intending to enter) in the markets of neighboring countries. The chairman of the Special Secretariat for PPP from the Ministry of Finance of Greece, Mr. Leonidas Korres takes huge credit for this in particular. He has managed to achieve a definitely complex and difficult mission. On 16/09/2008 he personally, on behalf of the Special Secretariat signed a memorandum of understanding between Greece and the European center of expertise for public private partnerships. The same center was created in cooperation with EIB and the European Commission. Greece is not only a Member State, but one of the founding countries of this center, as the Greek Special Secretariat was actively involved in the set up. In conclusion, it should be noted that the successful implementation of the whole structure of PPP in Greece is not an isolated case in the light of the overall picture of successful reforms conducted in the Greek economy.

Spain

One last intriguing aspect in the Spanish experience is related to the development of the PPP formula and the wider implementation and its adaptation at different levels of the municipalities.

The majority of the projects are for the building of transport infrastructure, starting from roads and highways to railways (high-speed lines), airports and ports, which have come to realization thanks to the State. Later, the municipalities began to develop their own infrastructure (roads of regional significance, metro, etc..), following the line, drawn by the central administration.

With the process of decentralization, the PPP formula is more widely used when projects are implemented in regions, i.e. healthcare. The percentage of projects funded through the PPP increased more in recent years. The same situation is with the increasing volume of financing, taking into account the large investment that such projects require. The first example of investment in healthcare is in 1999 in Alzira Hospital, Valencia Province.

The best examples of applying the formula of PPP in healthcare are in the Autonomous Community of Madrid. The new hospitals comply with the concession model and in the Valencia Autonomous Region, which developed its own model for managing concessions in health care, known as the "Alzira Model". In this process, practically all Spanish regions joined. Same is true for the autonomous region Castilla y Leon, which built its first hospital (Hospital Burgos) that will start to function in 2010, thanks to a concession formula.

Later, the PPP formula extended to other areas with regional meaning, such as infrastructure for the environment (plants for waste water treatment, plants for waste) or for certain social services (retirement homes).

One specific example of the level of PPP projects, which is totally new in international practice is the case of the Court House of the Cortes of Catalonia or the Justice Palace of Madrid Autonomous Region.

In some cases the implementation of projects at regional level expands the spectrum of financing, i.e. the De Paula tram with approximate investment of around 95 million euros. The role of municipalities is much more significant, which by using the experience gained from the private sector, adjust the public-private schemes to sectors with specific activities in such a way that today it is difficult to imagine a sector, where examples of financing through this combined formula cannot be find.

Portugal

Highway Beiras Litoral and Alta The project provides repair works, replacement of the road surface and expansion of the 167 km highway linking the city of Aveiro, Portugal and the city of Formosa Villars, Spain. The features are that the terrain is hilly, with large displacement, and approximately 12,000 vehicles, one third of which are trucks, passing through daily. The costs of building and maintaining the highway will be covered by fees.

In 1998, the Ministry of Regional Development and the Ministry of Finance of Portugal began to prepare a tender procedure for selection the contractor for the project, having previously made studies (technical and geodesic), return and future financial sustainability of the project. Weaknesses in the preparation of highway construction have caused delays in the construction of Highway, as Ministry of Environment issued a document with some delay. A consortium with special purpose Lusoscut-Auto Estradas das Beiras Litoral e Alta SA has been set up, which is the concessionaire for a period of 30 years, including the five building years from 1999.

The company which has been formed is a joint stock with limited liability. Its shareholders are construction companies, financial institutions, banks and others. Shares are distributed as follows: Mota & Companhia - 18.6%, Bento Pedroso Construcoes - 14.2%, Engil - 14.2%, OPCA - 12.4%, Banco Espirito Santo - 10.0%, BCP - Banco de Investimento - 7.5% and 7 construction companies - 23.1%.

Table 7. Financial structure of the project

	<i>Mln.Euro</i>	<i>Percentage</i>	<i>Sources</i>	<i>of</i>	<i>Mln.Euro</i>	<i>Percentage</i>
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<i>Expenses</i>			<i>funding</i>		
<i>Construction</i>	<i>693.4</i>	<i>60.5</i>	<i>Property</i>	<i>102.0</i>	<i>8.9</i>
<i>Initial costs</i>	<i>75.5</i>	<i>6.5</i>	<i>EIB loans</i>	<i>470</i>	<i>41.0</i>
<i>Financial Resources</i>	<i>164.9</i>	<i>14.4</i>	<i>Banks for commercial loans (Syndicate)</i>	<i>448.4</i>	<i>39.1</i>
<i>Payments for Studies</i>	<i>51.5</i>	<i>4.5</i>	<i>VAT and taxes</i>	<i>126.0</i>	<i>11.0</i>
<i>Working capital (operating cash income)</i>	<i>161.3</i>	<i>14.1</i>			
<i>Total</i>	<i>1,146.6</i>	<i>100.0</i>	<i>Total</i>	<i>1,146.6</i>	<i>100.00</i>

The loan from commercial bank is for 25 years, the loan from European Investment Bank is for 27 years. Future revenue is generated from fees, the amount is predetermined by traffic on the highway twice a year and is updated according to the concession contract.

The first six years the state granted a fixed amount for construction. During the design and construction of the highway costs exceed those provided in the draft budget, which created major problems for its implementation in time and the deadline for implementation.

What are the lessons of the project:

- Receiving approval on environmental side after the selection of the concessionaire - a negative factor for the implementation of PPP. In the case of Portugal, this delayed the project by seven months and increased government spending. This has an adverse impact on the budget and allocation of risk between participants.
- The contract didn't specify requirements for quality standards, which resulted in further negotiation and increased transaction costs for the project. The public institution did not indicate clearly in the tender parameters for quality of service so that the applicant can give a fair and competitive market price, commensurate with the conditions and not to impose additional agreement after signing the contract and changing the parameters of project and the value of the project. Uncertainties with respect to preliminary estimates made in the offer for construction costs and expected revenues gave doubt whether the project is financially sustainable and public-private partnership is cost effective.
- During the execution of the project in order to secure completion, additional estimates have been made in terms of profitability and was requested additional guarantee from a bank.

Omissions in the preliminary study, which were made by the State Administration - Ministry of Regional Development and the Ministry of Finance were reported and it was build a specialized unit for PPP Parpublica SA in 2003. Its task was to carry out preliminary studies and to assess the risk and provide technical assistance in the preparation of tender documents. During the construction and implementation of the project specialized administrative structure was set up. It greatly facilitated the implementation of projects in the transport sector. As a result of omissions in the identification phase of the project, pre-schedule was not met, a bridge financing for working capital was used from the banking sector, which caused more expensive project. Project was completed successfully i.e. highway was built, maintained by the concessionaire. The problems of the project were in construction phase due to the delay of the permission from the Ministry of Environment and shortcomings in the assessment of benefits / costs.

6. GENERAL CONCLUSIONS AND RECOMMENDATIONS IN THE CONTEXT OF APPLICABILITY IN BURGAS MUNICIPALITY

5.1. Experience of the Municipality of Burgas

The following projects are conducted with PPP:

- The concession for the graveyard, combined with the ritual hall. The area is part of Park "Lake". The concession contract came into force on 9.5.2003, the concessionaire is: "Ritual complex" LTD. The object of the concession is the exclusive right to conduct commercial activity on the property, together with the surrounding infrastructure and equipment for a period of 35 years.
- Concession of 4 subways. The concession term is 15 years. The object of the concession is the exclusive right to use in return for annual concession fee.
- Kraimorie foreshore - the concession period: 3 years.

Burgas Municipality has adopted a PPP program for implementation of small development projects, decided by the City Council - Burgas, Protocol № 45/01.03.2007

The initiative plans to promote civic participation and implement PPP mechanism, in order to carry out public works on facilities, which are municipal property. The program is aimed at implementation of development activities, landscaping and maintenance of internal neighborhood, around the blocks, lane spaces and approaches to individual properties within the Municipality. Funding and resource provision comes from: municipal budget (75%), co-financing from individuals and legal entities, donations, contributions in kind and labor (25%). The program started in June 2008 with the signing of 10 financing agreements, by the end of 2008 8 were successfully finalized.

Future plans and potential projects of the municipality are:

- Development of industrial zones on the territory of Burgas (Burgas and the town Bulgarovo)
- 6 beach granted by the State - the concession period: 3 years
- Services related to security and safety of beaches
- Tendering procedures: in preparation
 - Project Super Burgas
 - Swimming pool and hotel in Park Slaveikov
- Term of Concession: 35 years
- In preparation
 - Program of the Municipality for public-private partnership to implement small development projects:
- Cost of a project to 10 000 BGN
- Financing of the Municipality: up to 75%
- In 2008 10 projects were implemented
- In 2009 300 000 BGN are provided .
 - Construction of sports school
- Conceptual design, in preparation

Conclusions:

The main advantage of the PPP despite the high costs of funding is the potentially better realization of the project following a competitive bidding process and the supposed efficiency of the private sector. In practice, however, PPP schemes often suffer from lack of competition, leading to increased costs, which, in turn, would have invalidated the primary reasons for the use of PPP for better benefits (value) of investment.

Other major advantage of PPP schemes is that the private sector is considered more effective for building and maintaining public infrastructure and services.

Table 8. Potential advantages of PPP programs

POTENTIAL BENEFITS FOR PROGRAMS PPP

FISCAL ECONOMIC TECHNOLOGICAL SOCIAL POLITICAL

BENEFITS	ADVANTAGES	ADVANTAGES	BENEFITS	BENEFITS
1. Improvement of domestic debt	1. Speed of transmission	1. Technology transfer	1. Social needs service	1. New role for government
2. Better value for money	2. Modernization	2. Education	2. Increasing the level of living standard	2. Maintain responsibility for providing public services
3. Optimal risk-taking	3. Trust	3. Innovation	3. Improving the environment	3. Controlling corruption and other influences
4. Budgetary Control	4. Efficacy		4. Balance between public and private purposes	4. Stability for a long time
	5. Access to international capital		5. More efficient targeting of resources	
	6. Support of the local capital market			

Cost reduction is not necessarily the best solution because it can result in reduced quality of service. Theoretically, the delivery of services can be guaranteed through contractual obligations and penalties in case of failure. Treaties, however, can never envisage all possible circumstances. This applies particularly to services in the spheres of health, education and places of detention.

According to the theory, *risks* of PPP schemes are transferred to the party which is the most capable of managing them. In practice, the private sector bears the risks in case of a good return and guaranteed income. When the distribution of risk is not consistent with the profitability and financing it may cause problems in project implementation. Sometimes this leads to contracts that guarantee profits at the expense of taxpayers (such as the contract for

the Trakia motorway in Bulgaria) but in other cases results in financial problems for the concessionaire and subsequent attempts to obtain guarantees for public sector revenue.

In countries without experience in PPP most problematic projects in terms of allocation of risk are often those for highways. Not good feasibility (financial analysis, cost analysis, cost-benefit analysis) arise problems with the concessionaire revenue or expenditure side of the state budget.

Firstly, it should be noted the similarity between the Spanish experience and that of Bulgaria, which will allow us to conclude that the Spanish experience, surely, is the best for application to current needs of Bulgaria with the necessity to introduce this formula public-private financing, and in particular at local level.

Bulgaria is currently in the same position, as Spain was several years after its accession to the European institutions.

- The fact that the share of GDP in Bulgaria is lower than that of the Community, makes it one of the priority countries in the Cohesion policy. This guarantees obtaining greater resources for a long period of time, which implies greater efforts at cooperation.
- Cohesion Policy in Bulgaria was planned on a territorial basis, which provides that in addition to projects directly managed by the national administration, regional (and local structures such as end-beneficiaries) are playing an increasing role, every time greater in the management of these resources.
- There are still no large companies to compete with multinationals, which requires expansion and consolidation of the companies in this sector.
- It is an absolute priority to create major transport infrastructures, which serve as a supporting pillar for the country and create conditions for internal and external liaison. Infrastructures in the environmental protection are also needed, so that legal requirements of the Community are met.
- At the same time, the creation of infrastructures and services grants locally is crucial, because that directly affect quality of life of citizens and the productivity of the local economic base.
- As happened in Spain, the necessary expertise in the management of this type of projects is developed at national level, including on the basis of local and regional. This is done in such a form, so that in all these areas specialized

individuals and teams are needed in assessment and in the application of PPP projects.

Due to these reasons, there is no doubt that the Spanish practice in managing projects under public-private partnership can be of great benefit to Bulgaria, as a whole and in particular municipalities, such as Burgas. From the experience of EU countries we can draw the following useful conclusions for the activities of the municipality of Burgas.

Additional findings

- Successful investment projects in the public sector are carried out in countries, in which at a national level there are task forces working for PPP performing technical assistance and coordination in managing and implementing projects.
- The PPP legislation does not exclude the concession agreements. One advantage of the law is making a good control of public administration, transparency of transactions and the flexibility of contractual arrangements, as well as better allocation of risk between public and private sectors.
- In applying various types of PPP contracts we should take account of the risk shared between the partners of the project, parameters as: project ownership, project financing, construction responsibilities, responsibilities for operation and maintenance period of duration.

Public administration should decide on the scope of PPP projects, incl. on the services it would like to offer in partnership with the private sector. The methodology for selection based on wide and complex range of criteria used, focus on:

- Financial criteria (services that require significant investments or major costs)
- Criteria for the level of services provided (services which are characterized by gaps and whose quality is subject to improvement)

- Social criteria (services with significant social effect)

- Public administration traditionally undertakes its activities in a strictly controlled system of budgeting. Thus, the prevailing understanding is that a larger budget should lead to better service delivery. On the other hand, the use of the concept of PPPs requires a broader understanding, which allows assessment of factors such as quality of service and better management practices with the same severity as assessed valuation of direct costs.

The private partner protects its interests of greater profitability, therefore the public authority must impose open and transparent procedures from the very initial phases of the project, with clear and complete tender documentation and independent evaluation. Public-private partnerships need time to mature and PPP projects demand significant time and commitment from all partners - public and private. Creating a favorable legal environment and regulations, is of great importance to the sustainability of PPP projects and protection and promotion the interests of stakeholders.

Public-private partnership is not always appropriate for each project.

Public-private partnership is a tool, not a goal but can be extremely successful tool for sustainable development at local and regional level.

Public-private partnerships must be based on partnerships with benefits for all parties involved, in which all partners have a mutual interest in the implementation of activities for which an agreement is reached. The private sector needs incentives not only to be part of them, but sometimes to continue the partnership, for example, to overcome the bad image or loss of support from the public sector.

Expectations regarding the contribution of each partner could be very different. All parties must reach an agreement on the final results and products and how they are calculated at the end of the process. The specific responsibilities of each partner should be clearly defined and agreed at the outset of the project to get the expected results.

NOTE: These tables are taken from the International Monetary Fund PPP March 2004