DEVELOPING PUBLIC PRIVATE PARTNERSHIPS (PPP)

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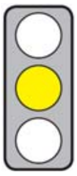
cep Centrum für Europäische Politik

MAIN ISSUES

Objective of the Communication: The Commission intends to encourage the use of public private partnerships (PPPs) in investment projects.

Parties affected: Awarding authorities, private investors.



Pros: (1) The removal of obstacles to PPPs is to be welcomed.

(2) The elimination of the discrimination of PPPs in the allocation of public funds is appropriate.

Cons: (1) Increasing EU funds to promote PPPs is not appropriate since the promotion of investment projects should not depend on the type of contract design.

(2) EU participation in private companies would distort competition and is likely to pave the way for a politically motivated exertion of influence from the EU on the private companies' freedom of choice.

(3) PPPs are not suited as a policy instrument to impact economic growth since their conception and implementation periods are too long.

CONTENT

Title

Communication COM(2009) 615 of 19 November 2009: Mobilising private and public investment for recovery and long term structural change: **developing Public Private Partnerships**

Brief Summary

► **Forms of public private partnerships (PPPs) in the EU**
- "Public Private Partnerships" are forms of co-operations between public authorities and the private sector
  - for the financing, design, construction, renovation, management or maintenance of infrastructures
  - or the provision of services traditionally delivered by the public sector.
- At EU level PPPs are mainly operative in the transport sector (roads & rail), in public buildings and institutions (schools, hospitals, prisons), and in the environmental sector (water treatment, waste management).

► **Advantages of PPPs**

According to the Commission it has been proven that PPPs can
- mobilise private funds, which they can pool and leverage with public funds,
- spread the cost of financing infrastructure over the lifetime of the asset, thus reducing immediate pressures on public sector budgets and allowing the completion of infrastructure projects to be brought forward earlier,
- facilitate an on-time and on-budget delivery of projects,
- reduce costs and achieve a better quality ration by exploiting the efficiency and innovative potential of the private sector,
- improve risk-sharing between public and private parties,
- boost sustainability, innovation, research and development efforts
- and enlarge EU companies' market shares in the field of government procurement in third country markets.

► **Developments of PPP in the EU**
- The Commission considers the share of PPPs in public sector investment, which accounts for 4%, to be "very limited" (p. 3).
- Due to the ongoing economic crisis
  - PPPs are currently being restricted through an increase in the cost of financing
  - and in the first three quarters of 2009 dropped by 30% in volume and number.

► **Joint Technology Initiative (JTI)**
- In order to promote research the Seventh EU Framework Programme for Research established the "Joint Technology Initiative" (JTI) as a new type of public private partnership based on Art. 187 TFEU (ex-Art. 171 TEC). This allows the EU to set up "Joint Undertakings" together with players from the private sector in order to execute EU research programmes.

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– To date, JTIs have been set up in the following fields: "innovative medicines", aeronautics, "fuel cells and hydrogen", nanoelectronics and information and communication technologies which are integrated in other devices ("embedded ICT systems").
– The Seventh Framework Programme for Research budgets € 3 billion for JTIs.

► **PPP support through structural funds**
The structural funds for the period 2007–2013 support Member States' PPPs within the framework of three EU initiatives:
– the JASPERS Initiative (Joint Assistance in Supporting Projects in European Regions) promotes PPP infrastructure projects in the twelve new Member States.
– the JESSICA Initiative (Joint European Support for Sustainable Investment in City Areas) promotes sustainable investments in PPP urban projects.
– the JEREMIE Initiative (Joint European Resources for Micro to Medium Enterprises) supports new business creation and is to improve access to finance for enterprises.

► **Promoting PPPs in the field of trans-European transport networks (TEN-T)**
– PPPs for TEN-T projects with possible variations in demand often face difficulties in finding competitively priced private financing. Loan guarantees by the EIB (Loan Guarantee Instruments for Trans-European Transport Network Projects, LGTT) are to compensate for this.
– Construction cost grants are to encourage project promoters to enter into PPPs for TEN-T projects.
– The Commission is considering EU equity participation in the "European 2020 Funds for Energy, Climate Change and Infrastructure (Marguerite)". This investment fund provides capital in particular for investments in the environmental, energy and transport infrastructure of EU Member States.

► **EU framework for co-operation**
The EU intends to build an "effective and enabling co-operation framework" between the public and private sector in order to promote PPPs. In so doing it will be pursuing the following goals:
– Improve access to finance for PPPs by
  - broadening the scope of EU financing instruments (e.g. JASPERS, JESSICA, JEREMIE, LGTT, Marguerite-Fonds)
  - and strengthening the provision of funds and guarantees by the EIB.
– The public procurement of PPPs is to be facilitated by
  - examining EU rules for public procurement (Directives 2004/17/EC and 2004/18/EC)
  - and a new legal act on concessions.
– Improve the equal treatment of PPPs in public procurement procedures for service concessions. The Commission is preparing an impact assessment in order to evaluate which future initiatives are necessary.
– Ensure a proper accounting of the public sector's financial obligations regarding PPPs through
  - the appropriate balance sheet treatment of PPP contracts in the national accounts of Member States,
  - guidelines on the accounting treatment of public guarantees provided in the context of PPP schemes
  - and advice to Member States on the statistical recording of individual PPP contracts.
– Improve information and expertise on PPPs through
  - guidelines for the promotion of PPPs in the framework of structural funds,
  - PPP pilot projects serving as models of best practices,
  - the European PPP Expertise Centre (EPEC), supported by the EIB, in order to improve the use of structural and cohesion funds in the framework of investment programmes,
  - the identification of provisions in national legislation that hinder the setting up of PPPs.

► **Actions by the Commission for 2010**
In order to strengthen PPPs, especially in view of the current economic crisis, the Commission intends to take the following action as soon as 2010:
– The Commission wishes to set up a "PPP group" inviting "relevant stakeholders" to discuss their concerns with regard to PPPs. Moreover, the PPP group is to issue guidelines assisting Member States in removing barriers affecting PPPs.
– It will work with the EIB to increase the funding available for PPPs, to re-focus existing EU funding instruments and to develop new ones.
– Furthermore, it will ensure that there is no discrimination of PPPs in the allocation of public EU funds.
– The Commission intends to propose a "more effective framework for innovation". To this end, the EU is to participate in private law bodies and directly invest in specific projects.

Statement on Subsidiarity

The Commission does not address the issue of subsidiarity.

Policy Context

The Commission launched a consultation on PPPs and on EU rules regarding public procurement and concessions in 2004 [Green Paper COM(2004) 327], reporting on the results in 2005 [Communication

(2005) 569]. In 2008 the Commission issued guidelines for the interpretation of these rules with regard to their application to PPPs. According to these guidelines, the choice of private partners is subject either to the procurement directives or to the general principles of the TFEU (ex TEC).
Within the framework of the European Economic Recovery Programme [Communication COM(2008) 800] the Commission proposed three PPPs to promote the development of innovative technologies: die "European initiative for green cars" (€ 5 billion), the "European initiative for energy-efficient buildings" (€ 1 billion) and the "initiative for factories of the future" (€ 1.2 billion).

Options for Influencing the Political Process

Leading Directorate General:	General Secretariat
Consultation procedure:	No consultation procedure planned.

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Public private partnerships can in many cases serve as an appropriate instrument for the realisation of public investments. From an ordoliberal view, however, there is the risk that PPPs are used to soften binding restrictions of public budgets. This is exactly the reason why public contractors often choose PPPs for their investments. To this end, it would have been desirable if the Commission had taken a clearer stand against the abusive use of PPPs in order to undermine budget restrictions.
It is to be welcomed that the Commission is taking action to prevent the discrimination of PPPs in the allocation of public EU funds. **However, an increase in EU funding for PPPs,** as aspired to by the Commission, **is not appropriate**. The EU should not make the subsidization of public investment projects dependent on whether or not they are implemented in the form of PPPs. Equally, just as they should not be discriminated against, PPPs should also not receive preferential treatment. Instead, the decision for or against them should be based on factual considerations only and not on the question of how much money Brussels is going to spend.
Another aspiration of the Commission, EU participation in private companies, should also be refused from an ordoliberal point of view. A public participation in private companies is problematic not only in terms of distortion of competition. There is also the risk of political influence on private sector decisions. Companies managed by the public sector are not likely to be more innovative, not even if the EU participates with the aim of creating a "more efficient framework for innovations".

Impact on Efficiency and Individual Freedom of Choice

Most of the existing PPP projects within the EU are still in their initial phase of their total duration. Therefore, any definite and general statements on their efficiency are not possible at present.
However, the success of PPP models mainly depends on the specific design of each individual project; insofar PPPs cannot be considered as generally appropriate for just any possible investment project. A precondition for economic advantage is that contractors comply with quality requirements at low costs. If these conditions are fulfilled, PPP projects can set very effective incentives for cost efficiency in the construction and deployment phase of investments.
Nothing is to be said against the removal of obstacles to the implementation of PPPs through a PPP Group to be established; the same holds true for the exchange of best practices, especially as not all Member States have practice in this area.

Impact on Growth and Employment

Due to the very long time frames needed from the preparation of procurements up to actual implementation, **PPPs are not appropriate instruments for impacting economic growth**. A special promotion of PPPs on the grounds of their impact on economic growth, as aspired to by the Commission, is therefore to be rejected.

Impact on Europe as a Business Location

Unproblematic.

Legal Assessment

Legislative Competetence

The EU can conduct its own policy of promoting PPPs through its structural funds and the cohesion fund for trans-European transport networks [Art. 177 TFEU (ex-Art. 161 TEC)]. Moreover, it is entitled to establish "joint technology initiatives" through "joint companies" [Art. 187 TFEU (ex-Art. 171 TEC)].

Subsidiarity

Unproblematic.

Proportionality

Unproblematic.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

Not foreseeable at present.

Alternative Action

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Possible Future EU Action

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Conclusion

Public private partnerships can in many cases serve as an appropriate instrument for the implementation of investment projects. Nothing is to be said against the removal of barriers to the setting-up of PPPs. The same applies to the elimination of discrimination of PPPs in the allocation of EU funds. The increase in EU funding for PPPs, as announced by the Commission, however, is to be refused, since one type of public investment should not be favoured over others. Also, EU participation in private companies is to be refused since it distorts competition and, moreover, is likely to attract politically motivated influencing of decisions made by companies of the private sector. Due to the very long time frames needed from the preparation of procurements up to actual implementation, PPPs are not appropriate instruments for impacting economic growth. A special promotion of PPPs on grounds of their impact on economic growth, as aspired to by the Commission, is therefore to be rejected.