PRIVATE-PUBLIC PARTNERSHIP. IMPLICATIONS AT THE EUROPEAN UNION LEVEL AFTER THE FINANCIAL AND ECONOMIC CRISIS

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The Green Paper on Public-Private Partnerships (PPP) presents the fact that this term refers to "forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service"[1]*. The post-crisis economic international context generates the growing importance of public-private partnerships in consolidating the economies of the Member States of the European Union. The purpose of this paper is to provide a framework of analysis of the European legislation referring to public-private partnerships and also a framework of analysis of both the challenges and opportunities of public-private partnerships in the difficult economic context generated by the economic and financial crisis.*

Keywords: Public-Private Partnership, European Union, Single Market, economic and financial crisis, challenges, opportunities

General considerations on PPP

Marek Belka, the Executive Secretary of the United Nations Economic Commission for Europe, strongly believes that public-private partnerships have become a phenomenon which is spreading the

[1] Commission of the European Communities, *Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions*, COM (2004), p. 3, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0327&from=EN

globe and generating great interest[2]. Taking into account this opinion that meets the general debates about public and private partnership, we consider that it is with great interest to analyze the most important considerations that make PPP a real chance for the economic growth of the European Union.

Public-private partnerships projects are thought to have developed in the 1990s in the United Kingdom. As a form of agreement between the public and the private sector, where the later assumes responsibilities usually placed at the government level, it is far older. Oliveira Cruz and Marques Cunha argue that it is possible to find “concession models” in the fifteen century, where the grantor (the King) would allow navigators to explore unknown territory in return for rent. The model has been extensively used since 1990, first in countries such as the UK, Canada, Australia, Spain or Portugal, among others, and more recently, all over South America, Asia, Africa and USA[3].

Public-private partnerships have emerged as an important tool to bridge “the infrastructure deficit”, as evidenced by congested roads, poorly-maintained transit systems and recreational facilities, deteriorated schools, hospitals, water treatment systems, and other infrastructure assets which are either nonexistent or in urgent need of repair. It is well-known that PPPs are one option to meet this challenge. Furthermore, PPPs are a useful tool to provide a number of specific benefits to the public, such as: better value, access to capital, certainty of outcomes or innovation. We should also take into account that PPPs offer new financing models, through specialized financing that is different from both public finance and corporate finance[4].

Generally, PPP procurement can provide a wide variety of net benefits for a government. We have mentioned some important benefits presented by the United Nations Economic Commission for Europe. Scholars have also analyzed a taxonomy of benefits of public-private partnerships[5]. We will summarize these benefits in the following section:

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[2] United Nations Economic Commission for Europe, *Guidebook on Promoting Good Governance in Public-Private Partnerships*, 2008, available at http://www.unece.org/fileadmin/DAM/ceci/publications/ppp.pdf
[3] Cruz Carlos Oliveira, Marques Rui Cunha, *Infrastructure Public-Private Parterships. Decisons, Management and Development* , Springer, 2013, pp. 1-2.
[4] United Nations Economic Commission for Europe, *Guidebook on Promoting Good Governance in Public-Private Partnerships*, pp. 5-6, 2008, available at http://www.unece.org/fileadmin/DAM/ceci/publications/ppp.pdf
[5] Akintoye Akintola, Beck Matthias, Hardcastle Cliff, *Public-Private Partnerships. Managing risks and opportunities*, Blackwell Science, 2003, pp. 7-9.

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1. PPPs enhance government's capacity to develop integrated solutions – in a conventional procurement process, projects with a broad scope are generally broken down into the component parts and managed as separate units that have to be implemented sequentially due to budget limitations.

2. PPPs facilitate creative and innovative approaches – the PPP procurement process allows bidders to compete on the basis of their ability to develop unique and creative approaches to the delivery of the required project.

3. PPPs reduce the cost to implement the project – a PPP procurement approach offers the potential benefit of reducing costs or delivering higher quality for the same cost, both for the design-build phase of the project and for the operational phase of the project.

4. PPPs reduce the time to implement the project – public-private partnerships enable design and constructions to be undertaken concurrently rather than sequentially and reduce the number of times a government project or proposal goes out to tender.

5. PPPs transfer certain risks to the private project partner – an appropriate risk transfer strategy needs to be developed as part of the planning process of the PPP project, in which risks best managed by the private sector partner are transferred to it, and risks best managed by the public sector partners are retained by it.

6. PPPs attract larger, potentially more sophisticated, bidders to the project – by virtue of the size and scope of a public-private partnership project, governments are often able to solicit interest among larger potential bidders and therefore increase the intensity of the competition.

7. PPPs access skills, experience and technology – government can gain new skills, technology and knowledge as a result of undertaking a PPP project.

In the literature, there is an interesting approach regarding the multiple meanings of public-private partnerships. Greve Carsten and Graeme Hodge reiterate the fact that the greatest divide is between public-private partnerships seen as tool of governance and public-private partnerships seen as a "language

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game"[6]. Firstly, public-private partnerships are defined as co-operation of some sort of durability between public and private actors in which they jointly develop products and services and share risks, costs and resources which are connected with these products[7]. Secondly, PPP is defined as a language game. The language of PPP represents a game designed to "cloud" other strategies and purposes. One such purpose is privatization, and encouraging private providers to supply public services at the expense of public organizations themselves. In this context, it is all agreed that the use of the term "public-private" partnership must be seen in relation to previous more pejorative terms such as "contracting-out" and "privatization"[8].

Effective PPPs recognize that the public and the private sectors each have certain advantages, relative to the other, in performing specific tasks. The government provides social responsibility, environmental awareness, local knowledge and an ability to mobilize political support. The government also provides capital for investment and transfer of assets. The private sector's role in the partnership is to make use of its experience in commerce, management, operations and innovations to run the business efficiently. The private partner also contributes investment capital depending on the form of contract[9].

The legal framework for public-private partnerships

The legal framework of PPP contains a taxonomy of laws, regulations, policy documents, guidance notes and the design of PPP contacts. The advantage of the legal and regulatory framework that supports PPPs is the facilitation of the investments in complex and long-term public-private partnerships arrangements, reduce transactions costs, ensure appropriate regulatory controls and the provision of legal and economic mechanisms that enable the resolution of contract disputes. The provisions that make public-private partnerships project possible and facilitate its functioning define, for instance, the legal

[6] Graeme Hodge, Carsten Greve, *The Challenge of Public-Private Partnerships. Learning from International Experience*, Edward Elgar Publishing Limited, UK, 2005, p. 4.
[7] H. van Ham, J. Koppenjan, *Building public-private partnerships: assessing and managing risks in port development*, Public Management Review, 3 (4), pp. 593, apud Graeme Hodge, Carsten Greve, *The Challenge of Public-Private Partnerships. Learning from International Experience*, Edward Elgar Publishing Limited, UK, 2005, p. 4.
[8] Graeme Hodge, Carsten Greve, *The Challenge of Public-Private Partnerships. Learning from International Experience*, Edward Elgar Publishing Limited, UK, 2005, p. 7.
[9] Asian Development Bank, *Public-Private Partnership Handbook*, Philippines, p. 1, available at
http://www.adb.org/documents/public-private-partnership-ppp-handbook

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right to establish a public-private company, the terms and conditions under which public assets may be transferred to non-public entities or the power of the public-private company to choose sub-contractors on its own terms. Providing subsidies or making long-term commitments of public expenditure for the life of PPP contract are useful examples of provisions that enable governments to provide financing[10].

Firstly, the "Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions" highlights the fact that the term of public-private partnership is not defined at Community level. The Green Paper summarizes a series of characteristics of PPPs, as following[11]:

1. The first one is centered in the duration of the partnership – the relatively long duration, involving cooperation between the public partner and the private partner on different aspects of a planned project.
2. The second feature of PPP describes the method of funding the projects, in part from the private sector, sometimes by means of complex arrangements between the various players.
3. The attributes and role of the economic operator, who participates at different stages in the projects.
4. Finally, the distribution of risks between the public partner and the private partner, to whom the risks generally borne by the public sector are transferred. It is important to remember the fact that the distributions of risk is determined case by case, according to the respective ability of the parties concerned to assess, control and cope with the risks.

Secondly, the design of public-private partnerships legal frameworks varies across European Union countries depending legal traditions. It is important to take into account the following documents when analyzing the sphere of legal framework of PPP: "Transport Infrastructure Investment. Options for Efficiency"[12], "Legislative Guide on Privately Financed Infrastructure Projects"[13], or "Model Legislative Provisions on Privately Financed Infrastructure Projects"[14].

[10] *A Note on Legal Frameworks for PPPs*, available at http://www.eib.org/epec/g2g/annex/2-legal-frameworks/#
[11] Commission of the European Communities, *Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions*, COM (2004), p. 3, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0327&from=EN
[12] OECD, *Transport Infrastructure Investment. Options for Efficiency*, 2008, available at http://www.oecd-ilibrary.org/transport/transport-infrastructure-investment_9789282101568-en

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The global financial crisis and Public-Private Partnerships

Can public-private partnerships lever investment to get Europe out of economic crisis? This is one of the major debates of the present international economic context, but also the title of a very interesting project developed by the European Policy Center, with the help of European Investment Bank. The main argument of the paper is that the achieving of a step-change in the economic performance of Europe is crucial to highlight the importance of investment and public-private partnerships. According to the project, Europe has a key role to play in making full use of its Single Market by supporting European companies that invest in these economies. The key motivation of the project is the fact that the recent financial and economic crises have significantly changed the way Europe considers the role of the private sector with regard to the financing of the public infrastructure and delivery of public services[15].

The "Europe 2020" strategy brings into discussion the importance of investing in growth, following the pylons: cohesion policy, mobilizing the EU budget and private finance. The strategy also emphasizes that Europe must leverage its financial means, pursue new avenues in using a combination of private and public finance, and in creating innovative instruments to finance the needed investments, including public-private partnerships[16].

The European Commission Communication "A Budget for Europe" also lays emphasis on the leveraging investment. The European Commission explains the fact that by working with the private

[13] United Nations, United Nations Commission on International Trade Law, *Legislative Guide on Privately Financed Infrastructure Projects*, New York, 2001, available at https://www.uncitral.org/pdf/english/texts/procurem/pfip/guide/pfip-e.pdf
[14] United Nations, United Nations Commission on International Trade Law, *Model Legislative Provisions on Privately Financed Infrastructure Projects,* New York, 2004, available at https://www.uncitral.org/pdf/english/texts/procurem/pfip/model/03-90621_Ebook.pdf
[15] European Policy Centre, *Can Public Private Partnerships (PPPs) lever investment to get Europe out of economic crisis?*, Final report of a European Policy Centre (EPC) project with support from the European Investment Bank , 2012, pp. 1-6, available at http://www.epc.eu/documents/uploads/pub_3066_can_public_private_partnerships_lever_investment_to_get_europe_out_of_economic_crisis.pdf
[16] European Commission, Communication from the Commission: *Europe 2020. A strategy for smart, sustainable and inclusive growth,* COM (2010) 2020, p. 20, available at http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf

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sector on innovative financial instruments it is possible to magnify the impact of the EU budget, enabling a greater number of strategic investments to be made, thus enhancing the EU's growth potential[17].

Taking into account the growing role in solving the difficult context generated by the financial and economic crisis, the European Commission elaborated important guidelines for successful public-private partnerships[18]. We strongly believe that these guidelines are very important because in a number of countries, anti-crisis packages included higher public investment, at times implemented through public-private partnerships. The recent global economic crisis has generated challenges at all levels of economic policy decisions. The potential role of public-private partnerships as counter-cyclical fiscal policy tools is sizeable given that they can be used to support private sector recovery and generate employment[19].

Final remarks

The contemporary economic European and international debates, in the post-crisis international context, have as a main topic the pleading for the necessity of public-private partnerships. As we have presented, there has been a renewed interest at the European Commission level to improve economic stability and efficiency with the help of private investment and public-private partnerships. Europe has the chance to improve business, employment, economic growth, using the resources and advantages of public-private partnerships.

Public private-partnerships are one of the most effective tools to create innovation in Europe. Thus, policymakers would be wise to ensure the sustainability of a model that has the potential to touch the lives of so many people[20].

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[17] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *A Budget for Europe 2020*, COM (2011), p. 9, available at http://ec.europa.eu/health/programme/docs/maff-2020_en.pdf
[18] European Commission, *Guidelines for Successful Public-Private Partnerships*, 2003, available at http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf
[19] International Monetary Fund, *The Effects of the Financial Crisis on the Public-Private Partnerships*, 2009, p. 3, available at http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf
[20] The European Files, *Public-Private Partnerships in Europe: A New Growth Dynamic*, 2013, p. 37, available at http://www.eipa.eu/files/repository/20130322092835_MBU_EuropeanFiles_PPPinEurope.pdf

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