13th European Conference of Ministers responsible for Regional Planning (CEMAT) (Ljubljana, Slovenia: 16-17 September 2003) on "Implementation of strategies and visions for sustainable spatial development of the European continent"

Resolution No. 1 on Public–private partnerships in spatial development policy

adopted at the 13th session of CEMAT, in Ljubljana, on 17 September 2003

The ministers responsible for regional planning of the member states of the Council of Europe,

Pointing out that the 12th Session of CEMAT, which took place in Hanover, Germany, on 7 and 8 September 2000, adopted the Guiding Principles for Sustainable Spatial Development of the European Continent to provide a coherent strategy for integrated, regionally balanced development of the European continent based on subsidiarity and reciprocity;

Referring to Part III of the Guiding Principles on the specific role of the private sector in spatial development;

Drawing attention to the Council of Europe Committee of Ministers' decision of 7 February 2001 (740/9.1 – CM (2001) 6) to take into account the Guiding Principles for Sustainable Spatial Development of the European Continent when deciding on projects with a spatial impact;

Referring to Council of Europe Committee of Ministers' Recommendation Rec(2002)1 to member states on the Guiding Principles for Sustainable Spatial Development of the European Continent, adopted on 30 January 2002;

Having regard to the European Spatial Development Perspective (ESDP) agreed at the Informal Meeting of ministers responsible for spatial planning of European Union member states at Potsdam in May 1999;

Taking the view that, because available public finance is insufficient to cover society's needs, particularly as regards technical and social infrastructure and the services to operate it, private investment will be required in the years ahead to achieve regional development objectives;

Supporting active involvement of the private sector in implementing and combining EU programmes such as Interreg, Phare and Tacis, in particular as a partner and participant in national contributions, though with the public partners retaining leadership in order to promote sustainable spatial development in Europe;

Bearing in mind that public–private partnerships (PPPs) are developing in fields which used to be entirely in the public sector, such as transport infrastructure and services, telecommunications, water supply, waste collection and processing, health and education;

Taking into account the rules on state aid, and its effects (positive and negative) on the public-sector aid available to private-sector partners;

Drawing attention to the report, "Models for financing regional infrastructures and development projects, with particular attention to the countries of central and eastern Europe – public–private partnership in spatial development policy", which was presented at the Hanover Conference with the aim of putting forward suggestions, based on experience of public–private partnerships, as to procedure for successfully mounting projects of this type, in particular in the countries of central and eastern Europe;

Taking into account that, to make a success of PPP projects, there are various prerequisites such as sound administrative structure and a sufficiently developed private sector and that these considerations are extremely important in central and eastern Europe;

Recommends that the governments of member states heed the following proposals for effective design and organisation of PPP procedures, with particular reference to central and eastern European countries:

1. Establishing a clear and effective legal framework

The point and aim of national legislation on PPPs is to assign new powers to the various administrative levels so as to ensure that the new types of partnership with the private sector, which go beyond the traditional contracting-out of work, can develop.

Policy on PPPs can be laid down in a general, multi-sector piece of legislation (an "omnibus bill") or in legislation on a specific sector (road construction, town planning, municipal networks etc.). Special legislation for individual projects should in general be avoided. It is particularly important that policy concerning PPPs be clear as to property (ownership rules, terms of lease, etc.), the tax framework and treatment of potential conflicts of interest. It should also establish an acceptable operational framework for public-sector assumption of risk-related responsibility.

A clear legal framework is important for attracting private-sector interest in PPPs because it helps reduce the political risk. It is crucial in central and eastern Europe, where the private sector is still rather wary of PPP projects. Clear legal rules on public-sector involvement in international and European funding programmes are therefore essential.

The new Structural Fund rules of the European Union stress that getting the most of Community-financed schemes means making every effort to facilitate the use of private sources of funding, in particular investment capital and public–private partnerships (PPPs), both as a boost to funding of projects and to ensure that the private sector, with its special expertise, scrutinises how schemes are managed.

In the area of urban regeneration, the Community's URBAN initiative encourages setting up public–private partnerships, in particular to run integrated economic-development programmes and to promote "green" activities.

Community policy on supervision of state aid has various tools for promoting rural and urban regeneration, as for example the Community guidelines on state aid to protect the environment (OJ C 37/3 of 3 February 2001). Also relevant here are the Communication on State Aid and Risk Capital (OJ C 235 of 21 August 2001), Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to state aid to small and medium-sized businesses (OJ L 10/33 of 13 January 2001) and the guidelines on national regional aid (OJ C 74/9 of 10 March 1998).

Current state aid rules could nevertheless present a barrier in some particular cases to the ability of some member states to pursue their spatial development policy, particularly when seeking to involve the private sector. Based on the experience to be gained in such future cases, it will be helpful to examine whether there is a need for an additional, specific instrument dealing with state aid for undertakings in deprived urban areas and what the basic features of such an instrument would need to be.

2. Careful preparation of PPP projects

The preparation phase in PPP projects is crucial. A project's success generally depends on thorough preparation. The following aspects of preparation are important:

a. Adapting the organisational structure to local conditions

There is a wide variety of PPP models. PPPs can take various forms, ranging from mere commercial operation to complete privatisation. Great care needs taking to adapt the PPP concept to local and time factors. Many problems with PPPs stem from copying solutions which were designed for other PPPs and which therefore do not take sufficient account of the particular context.

b. Compatibility of objectives

First of all, it is necessary to clarify the aims of the public and private partners and to see how compatible those aims are. This requires detailed discussion between the public sector and the private sector on their respective intentions regarding the project. There also has to be discussion between the various potential private partners at the tendering stage. Involving the private partners early in the preparations contributes considerably to a project's success.

c. Selection of the private partners by the public sector

Selection of private partners needs to be part of the tendering procedure. In addition to formal matters, qualitative criteria have to be taken into account.

A PPP's economic success crucially depends on the expertise the private partners bring to the co-operation project and the relevance of the expertise to the sphere of activity involved. Ways must therefore be found of inducing potential private partners to reveal their expertise. Voluntary options are one method of doing this. They involve giving private partners various alternatives in which profit margin is tied to how far the objectives and requirements are met. This approach is a way of gauging a private partner's potential commitment and productivity.

In addition, the public sector needs to be fully informed about the potential risks when it contemplates co-operation with a private partner. The criteria and requirements must be designed accordingly and built into the tendering arrangements. Here the public sector must be careful about the problems that can result from inadequate and unilateral information.

d. Democratic control and acceptance by the public

The introduction of PPPs requires political debate in order to ensure political and public acceptance of the approach, particularly when users are to be charged for services. From the public policy standpoint the key to PPP success is the economic factor, mainly reflected in value for users' money. In addition, PPP models must be able to show plausibly in which fields (the economic, technical and environmental ones, for example) they can help boost effectiveness and improve results.

Use of third parties and lack of democratic control should be avoided by means of appropriate organisation of the “collective consumption unit”. This requires consultation arrangements that ensure closeness to the consumer and allow people to express their preferences.

e. Special tools to assist preparation of PPP projects

Western examples show that various tools can assist PPP projects. Particular mention should be made of:

– tools for financial evaluation of PPPs, such as the Public Sector Comparator (PSC) in the United Kingdom, the Publiek Private Comparator (PPC) in the Netherlands and the cost-benefit analyses used in France and Germany. These tools show whether a PPP is financially preferable to conventional solutions;

– setting up an information and co-ordination office for PPPs to compare new PPP projects with previous PPPs, and draw up recommendations and detailed guidelines for making a success of a PPP.

3. Efficient implementation of PPP projects

a. Careful structuring of the PPP contract

PPP contracts must be particularly clear about the characteristics of the project, the responsibilities of the respective parties and how potential conflicts of interests are to be dealt with. They should include specific provisions to guard against opportunistic behaviour by the private partners. The private partners can, for instance, be required to pay a security, or contracts can include incentives, such as a profit-sharing arrangement agreed by the public and private partners.

PPP contracts should cover all main aspects of the PPP project, including any environmental aspects, but should also allow a degree of flexibility, innovation and profitability. The parties’ main duties should be laid down in the contract, but not the full technical details.

b. Trust between the partners

Great trust between the partners is essential to the success of a PPP. The public sector must show itself to be a partner on whom the private partners can rely, for they are taking substantial financial risks in entering into a contract with long-term binding effects of various kinds according to the provisions of the contract.

c. Acquisition of competence and modernisation of the public sector through PPPs

It is essential, where PPPs are concerned, that the public sector acquires certain abilities. It must learn skilful conduct of negotiations in imperfect markets. In particular it must acquire economic expertise in order to identify which variables play a part and gauge the consequences of contractual provisions.

The public partners must learn about the formulation, supervision and implementation of contracts and recognise that contracts involve transaction costs. This learning of new skills amounts to a complete change of culture.

The greater the complementarity between the public sector and the private sector, the more efficient the modernisation of the public sector.

d. Effective leadership by the public sector

PPP models must be designed in such a way as to preserve the public sector's fundamental guiding role, for reasons both of public law and public acceptability. The point must never be reached where the public authorities are so fiscally starved as to have to rely almost totally on the private sector.

The public sector must lead and guide the PPP so that infrastructure and public services develop as a component of national, regional or local policy.

e. Use of public financial input as a lever for mobilising private finance

PPP projects financed entirely by the private sector are relatively rare. In most cases part of the funding must come from the public sector. The proportion of public financing is in general inversely proportional to the purchasing power of the potential users of the infrastructure or services. This is why PPP projects in the countries of central and eastern Europe need a relatively large amount of public finance. In a PPP, public financing, particularly when modest, has a special function. It should be used as a lever to attract private resources that will cover most of the costs. There are various ways of exerting this leverage: for instance, the public sector can act as guarantor of any loans needed for the capital investment involved or it can pay for the feasibility studies.