

**Models for the financing of regional infrastructure
and development projects,
with a particular attention to
the countries of Central and Eastern Europe**

Public-private partnerships in spatial development policy

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Jacques ROBERT

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Foreword

Dr Welf Selke

Chairman of the Committee of Senior Officials of the Conference of Ministers responsible for Regional Planning of the Council of Europe Member States (CEMAT) from 1998-2000

The study submitted by Jacques Robert on behalf of the German Federal Ministry of Transport, Building and Housing, in the framework of the activities of the Committee of Senior Officials of the European Conference of ministers responsible for Regional Planning of the Council of Europe Member States (CEMAT), serves the purpose of underpinning the “Guiding principles for sustainable spatial development of the European continent” adopted at the 12th session, held in Hanover in September 2000. They aim to identify regional planning measures which may enable the population in all the Council of Europe Member States to achieve a better standard of living. This is an essential prerequisite for stabilizing democratic structures in the towns, cities and regions.

The countries of Central and Eastern Europe, which became members of the Council of Europe in the 1990s, exhibit substantial infrastructure deficits which cannot be overcome with public funds. The study shows that Public Private Partnerships (PPP) can be a suitable tool for carrying out spatial development measures. The author makes clear, however, that Public Private Partnerships are not a substitute for an efficient administration at local and regional level. Indeed they require an efficient administration in order for example to resolve conflicts of interest. The public authorities and the private sector partners must share the responsibility and risks involved in carrying out regional and local development projects.

It was therefore decided to take account of the results of a seminar on problems of the administrative systems and funding instruments for regional development by Public Private Partnerships, held by the Council of Europe in association with the State Institute for Urban Planning of the Russian Federation (GIPROGOR) in Moscow in April 2000.

The present study includes important insights (for instance the lessons learned in Western countries and also in the countries of Central and Eastern Europe) as well as numerous examples taken from western and eastern Europe. These mainly serve the purpose of identifying the broad range of potential partnerships and are not intended as a “blueprint” for new projects.

The recommendations and procedural proposals set out in the last section relate to the statutory framework for Public Private Partnerships and also include practical and concrete advice on how to successfully prepare and carry out PPP projects.

1. Origins and concepts of public-private partnerships (PPP)¹

1.1. North-American origins of PPP

The first and also most famous PPP, is that of Pittsburgh, the central institution of which, the ACCD (Allegheny Conference on Community Development) was set up in 1943 by Richard Mellon, President of the Board of Directors of the Mellon Bank. Within the ACCD the presidents of the boards of directors of the 30 most significant companies of Pittsburgh had come together, with for objective to define economic, social and urban development strategies for the city. The personal and financial commitment of influential entrepreneurs, pursued with constancy over years, did not limit itself to the conception of programs. It included also implementation and coordination strategies. By means of numerous initiatives and individual projects, and with the lasting support of the public sector, long-term plans were implemented relentlessly, spectacular locations of companies were realized and the urbanistic image was totally renewed. Pittsburgh is considered today, at world level, as the example of a successful control of a structural change by the means of PPP.

It is only towards the end of the Seventies and the beginning of the Eighties that the PPP boom occurred, when the problems of urban development became a nearly general concern and the concept of PPP entered with force the political arena.

The creation of the expression “PPP” is attributed to President Carter who wished, in this way, to make popular for a large audience in his governmental declaration of 28 March 1978 his conception of an urban development policy pulled by the private economy. The idea of “New Partnership to Conserve America’s Communities” was then described in detail in a report of the “Committee for Economic Development “.

At the beginning, the concept of PPP was less a general concept of procedure than a concrete attempt of interpretation by which the government presented his new promotion programme for urban development: “Urban Development Action Grant” (1977). Later on, it proved to be the most successful instrument of President Carter’s “New Urban Policy “.

During Mr. Reagan’s presidency, the concept of PPP was taken again as a politico-ideological concept, but modified in its contents in agreement with the objectives of its “New Privatism” campaign and combined with other strategies. The urban development policy was not regarded any more as a national task, but as a task pertaining to the own responsibility of cities and municipalities.

The new era of PPP in the United States (after 1970) is considered by observers as characterised by a significant quantitative increase as well as by a not less significant qualitative evolution. This last aspect refers in particular to the widening of the field of application of PPP to almost all areas of municipal and urban development activities as well as to an institutionalisation of agreements, i.e. to the efforts made to give shape to co-operation.

The Clinton government has promoted since 1993, by means of the “Omnibus Budget Reconciliation Act” PPP programs for the revitalisation of derelict districts in American cities. On the basis of a nation-wide competition, 72 “Urban Empowerment Zones” and “Enterprises Communities” were selected on the basis of the following principles:

- economic potential: creation of jobs, development of PPP, vocational and continuous training;
- sustainable development of the communities: promotion of safety, of “human development”, of the urban environment, of skills;
- partnerships within the communities, with the participation of the whole local community (inhabitants, public and private actors, associations etc);
- existence of a strategic approach likely to integrate the economic, physical and social aspects.

The promotion of PPP initiatives by the American government is carried out by means of tax rebates, loans guarantees and subsidies.

The North-American PPP conception reflects significant characteristics of the context, such as the historical weight of federalism with its strongly decentralised character, the weakness of city planning activities undertaken by the public sector, in spite of the existence of enormous urban problems such as the decline and the socio-economic and physical collapse of the central parts of a number of cities, as well as the importance of the commitment in urban policies, of personalities belonging to the business world or to caritative foundations.

1.2. Concepts of PPP

In its original meaning, PPP is a concept related to a project immediately directed towards action. Only later, a meaning of institutional nature developed, by which the organisational agreements became the distinctive sign of the definition.

This attenuation as well as experiments related to the concept generated a hardly sizeable diversity as regards definition attempts aiming at condensing the PPP concept into a tangible formula. Differences in interpretation of the definitions originate in the various meanings of PPP as a project, as an institution or as a general concept for action.

PPP are understood as a form of innovative co-operation at the interface between the State and the market. One of the oldest and most often quoted definitions is that of the “Committee for American Economic development” already mentioned:

“PPP refers to co-operations between people and organisations of the public and private sectors, for their mutual benefit. Such co-operations have two dimensions: a political dimension which refers to the formulation of the objectives of the municipality, and an operational dimension which aims at the achievement of these objectives. The objective of the PPP is to combine these two dimensions in such a way that the partners involved generate a benefit for the community while serving their own interests or those of their organisations”.

The political dimension requires a process likely to generate a consensus as regards common objectives, measures to be taken, the respective roles and the distribution of tasks as well as lasting support to operational activities. The operational dimension can take three basic forms: the private initiative in the public interest, the public initiative aiming at facilitating or at encouraging the private activities in the public interest or the “joint ventures” between public and private organisations”.

The basic principle of PPP is the idea of a division of tasks and of effective and efficient co-operation: the private partners take the responsibility for an effective achievement of their own mission and the public partners take the responsibility for the respect of objectives of the general interest.

Arguments in favour of the fact that private companies work in a more effective and less bureaucratic way than public institutions originate mainly in the micro-economic theory and, here in particular, in that concerning property rights. Due to the fact that owners may keep the benefit resulting from the achievement of their task, they will make everything possible to carry out this task at the lowest cost. At the same time, owners make efforts as regards innovation in products, to better match the demand than it was the case until then. The possibility to pretend to profit creates an incentive towards a behaviour which also respects the public interest.

2. Lessons from Western experiences²

In Western Europe, the contents and concepts of North American pilot schemes were considered with a time lag of five to ten years. The innovative dimension of resulting strategies is all the more modest. Typical projects such as the enhancement, tinged with attractiveness, of water-related areas in the cities, in connection with high level commercial, residential and leisure functions were practically identically copied and could not produce in Europe the same magnetism as the first north-American achievements.

The “success stories” of cities such as Pittsburgh, Baltimore, Minneapolis and San Francisco, where the revitalisation of the local economy was based on the mobilisation of endogenous resources, became an example of inspiration for the British PPP experiments, and later for those of continental Europe.

The debate around PPP proceeds in continental Europe in a quite different way from that in the USA. Here, the interventionist social State has a long tradition which generated a considerable field of official prerogatives as regards economic and social regulation. Confidence in the operation of the market economy is much less marked than in the USA. In the debate on new concepts allowing to master the problems of society, the issue is less about a fundamental modification of the respective role of the public and private actors and much more about strategies relating to a lightening of the tasks of the public sector, combined with the objective not to give up public responsibility for social regulation.

2.1. Diversity of organisation forms and procedures

2.1.1. Features and fields of application

The growing number of PPP is the expression of a process of change, in which the traditional institutionally defined dichotomy between the public and the private actors not only moves, but changes in qualitative terms and becomes permeable. Thus the border between public sector and private sector becomes blurred.

It was already mentioned at the beginning of the report that the concept of PPP is cannot easily be apprehended in the form of a single formula. One understands in general under the term of PPP, the dialogue between various systems of actors from the public and the private sector to arrive to a new form of co-operation. One speaks about PPP when the centre of interest of the public and private partners is turned towards common objectives, when synergies effects can be carried out to achieve these goals, when the objectives are at the same time social and economic and when the identity and the responsibility of the partners remain intact. PPP models can nevertheless comprise at the same time hybrid and complex arrangements. Relationships of competition and co-operation are interrelated in a complementary way.

The areas of application of PPP in the field of the spatial development policy in the countries of Western Europe are very diverse. They include inter alia transport (motorways, freight centres airport terminals, railways, urban public transport, etc), urban planning and renewal (land development and ground cleansing, local marketing, communication policy), construction of dwellings, development of technological centres, municipal networks of water supply and sewage, construction and maintenance of educational, cultural and administrative facilities, development of tourist infrastructure (marinas, leisure facilities, etc). Fields of specific activity cannot be used for the definition of PPP. There are PPP initiatives which concentrate on a specific field of political action or on a given economic sector, whereas others are limited to particular localisations (agglomerations, neighbourhood units).

2.1.2. Various levels of complementarity in the objectives

The level of complementarity of objectives between public and private partners is of particular importance as regards PPP:

- the public sector pursues in general, within the framework of a PPP, at the same time internal and external objectives. The external effect of the PPP supports, in the widest sense, the community interests defined by the political and administrative level. For this purpose, the public sector seeks, within the framework of the partnership, to improve its financial standing, to regenerate declining urban centres, to promote investments, to improve the competitive position of the region, to create jobs and to solve collective problems of various nature. At the internal level, the administrations generally try to induce effects of modernisation, rationalisation and flexibility. They generally attempt to benefit from knowledge of the market and from business competence from the private partners and, by achieving tasks in the form of a PPP, to lighten the administrations and to qualify the administrative units concerned;
- the private partners pursue on the other hand, within the framework of a PPP, the objective to increase or maintain (at least in the long term) their prospects for profits. Moreover, they wish to remain competitive and to support their expansion. They also look for possibilities of distributing or reducing the risk. They wish to increase their possibilities of communication with the administrations and to contribute to local progress. This contributes to improving their external image.

2.1.3. Various forms of formalisation and institutionalisation

Public-private partnerships can develop basically along two different ways:

- the public sector and the private partners join an existing company or create jointly a mixed company. The characteristic of a mixed company is the participation at the same time of public and private shareholders in the equity capital of the company, which leads to the coexistence of the most various objectives within the board of directors where they are focused. Often, the participation of the public sector is organised so as to have a blocking minority and to exert, in this way, sufficient influence. In the case of the numerous mixed companies existing in France, the law prescribes that the public sector must have the majority in the equity capital. Examples of mixed companies can be found in particular in the energy sector, in regional transport organisations, in the housing sector, in technology and industrial parks as well as in exhibition and trade fair companies;
- the public and private partners conclude a contract – Co-operative partnership in the pursuing of complementary objectives is indeed most easily implemented by means of a contractual co-ordination of the interests:
 - co-operation contract – The organisational details of the co-operation are fixed by contract. For the remainder, the partners remain independent one from each other;
 - contract of company management – This type of contract often has a limited effect in time and must be used to fill a phase where for instance a deficiency as regards management skills, personnel and know-how exists. This often occurred in the context of the creation of communal companies in new German *Länder*;
 - operation contract – In this case, the public sector concludes a contract with a private partner entrusting him with the task of creating a company for the purpose of building a facility (plan, build, finance) and of operating this company for his own account;
 - leasing contract – In the leasing models, the buildings and equipment (e.g. power stations, municipal networks) are planned, financed and built by the private actors and rented or given in leasing to the public sector;

- concession contract – This is the most current form of PPP. In the majority of cases, these contracts are concluded between the public sector (State, municipality) and their own companies or with mixed companies.

2.2. Various sources of financing

Only two categories of economic actors have to bear the final cost of investments as regards infrastructure: on the one hand taxpayers (by means of general or specific taxes) and on the other hand users (by means of user's contributions).

These financial resources are mobilised through three different channels: public financing, private equity and loans.

In most cases, financial resources intended for PPP projects are mobilised simultaneously along the three channels described above: state (or municipal) subsidies, stockholders' equity of the concession's holder and banking loans. In this way, the final cost is beard at the same time by the taxpayers and the users. The distribution of the final cost between the two groups depends directly upon the privatisation level of the project.

In this context, it is also necessary to distinguish various categories of user's contributions:

- In the case of true PPP, the level of user's contribution is laid down in the concession contract. It can be modulated according to various categories of users and be indexed on the inflation level. User's contributions are perceived directly by the concession's holder;
- if the concession's holder is a mixed company or a private company with public equity, the user's contributions may have a "reduced" or "symbolic" character. They are not the single source of income of the project, but only one part and are supplemented by public resources. This solution is to be recommended when the purchasing power of the potential users is weak;
- in the case of "shadow tolls", the public sector pays the concession's holder, for all the duration of the concession, a fixed contribution for each use of the infrastructure or service concerned. The amount of this fixed contribution is subject to a call for tenders. The potential concession's holder must estimate in a precise way the level of use of the infrastructure concerned, before tendering. This model is very widespread in the United Kingdom in the field of motorway and road maintenance and improvement carried out within the framework of a DBFO procedure (Design, Build, Finance and Operate). In Portugal, the fact that motorway tolls caused problems of acceptability to the users, the government also decided to use the "shadow tolls" system for a series of contracts with a year duration, in order to modernize the motorway network. In Spain, the regional authority of Madrid introduced the first "shadow tolls" program in the country for the construction of a section of the motorway ring (25 years contract).

2.3. Benefits and risks

2.3.1. Added value and factors of success

The fast development of PPP in Europe is not only a fashion effect. It proves to have objective and verifiable advantages compared to conventional methods used for infrastructure development. These are of varied nature:

a) Synergies, innovation, effectiveness

PPP make synergies possible in the field of collective and innovative use of resources as well as in the application of management know-how. Administrations and private companies often pursue complementary goals and can jointly not only approach in a more effective way the

specific fields of problems, but find a solution. The opinion is increasingly widespread according to which certain tasks cannot be solved any more without the participation of private partners.

Moreover, the PPP promoters consider them as a possibility for increasing the labour productivity and the effectiveness of public service providers. They make the point that the constant impregnation of public companies by modern methods contribute to durably modernise their management and production. At a time when most private companies are in a deep process of change, public companies cannot escape this process.

b) Higher professionalism in decision-making

PPP are generally more independent from political influence than true administrations and can act therefore in a more independent and more professional way. In the case of complex projects, it may occur that the administrations and the elected officials are overtaken by difficulties.

c) Flexibility in project design

By difference with traditional projects of the public sector, the consumers of public-private services can more easily express their preferences, since these stay in direct relationship to the economic degree of success of the project.

d) Time savings in project implementation

The implementation of PPP projects proceeds in general more quickly than in the case of a public financing. Nevertheless, projects with private financing can require more time for their preparation than projects financed by the public sector, because a characteristic of the private financing of infrastructure projects is the large number of actors involved, which can lead to high complexity and to delays.

e) Reduction of pressure on public budgets

Several factors lead to the need for reducing pressure on public budgets, among which the level of indebtedness already reached is not the least. At the level of the European Union, the respect of the Maastricht criteria as regards public indebtedness sets a political limit to the contracting of new loans. It was thus logical that new ways to eliminate budgetary bottlenecks were investigated. In this direction, the private financing of infrastructure projects is a response to the creation of the single currency within the European Union. The fact should also be taken into account that not all PPP models are looking in priority for a reduction of pressure on public budgets. The aim may also be to postpone pressure to a later stage or to distribute it over time. The priority is then the rapid implementation of the project.

f) PPP in the context of the modernisation of the public sector

Public-private co-operations are certainly not the universal formula against current structural problems faced by the public sector. They can nevertheless be regarded as a dynamising element in the execution of public tasks. If the fundamental primacy of politics as regards the formulation of objectives and the leading functions is to be preserved, the public sector must achieve a much higher effectiveness in the field of internal decision processes. From this perspective, the most significant elements of an administrative entrepreneurial leadership are the organisation of productivity by means of agreements, the orientation towards the services to be fulfilled, and not, like so far, towards available resources, a general decentralised responsibility in the field of implementation and finance as well as competition with bodies internal and external to the public authorities. By means of public-private co-operations, the room for political handling can be widened to answer changes in the requirements. In this way, the opportunity of a successful implementation of the local and regional development strategies can be made profitable.

2.3.2. Potential shortcomings and risks

a) For the public sector

- Asymmetrical information flows

One can consider that private partners in general have a better knowledge of the market and of profitable investment possibilities than the public sector. Moreover, the quality and the competence of the private partners as regards project implementation are not known in advance. This information deficit represents a substantial disadvantage for the public sector.

- Unfair intentions of the private partners

It is not certain that private partners behave in conformity with the provisions of the contract, in particular when the public sector leaves to private partners a large part of the management of the partnership concept. If the public sector is deeply bound in a co-operation scheme, it is then vulnerable to possible unfair intentions from the private partners. These may try to derive excessive advantages compared to the public sector.

- Transfer of risk on the public sector

PPP may, in the context of a short-term reduction of the financial pressure on public budgets, be subject to a transfer on the public sector of the risk incurred by the private sector. This risk is rather largely spread, because the public sector bears, in the eyes of the citizens, the co-responsibility of the project. In the event of failure of the project, the public sector cannot easily leave the financial consequences to the private partners alone, if that were to lead to a stop of the project together with negative political consequences. In practice, the public sector is more or less constrained to act financially, i.e. to transfer a part of the financing of the project from the users of infrastructure or services towards the taxpayers. In such a case, there is no emergence of a strategic potential for innovation and development in the public sector.

b) For the citizens and the society

- Lack of participation and democratic control

By means of externalisation compared to traditional administration and of the transfer of the decision-making process towards informal networks and private companies, the danger exists that significant political decisions are taken and carried out within the opaque framework of pseudo-administrations having a low level of democratic legitimacy. It can result from this, at the end of the day, a hybrid economy, whose mechanisms of allowance and operation remain largely misunderstood.

- Lack of social justice

As regards social justice, the criticism is often formulated that PPP benefit primarily to the social elites, i.e. to the citizens with an above-average purchasing power. The poorest population groups face in general difficulties in accessing infrastructure and services provided on a market economy basis.

- Risk of exploitation of the citizens through a profit-orientated partnership

A particular problem exists when the partnership was not initially set up with a view to producing a public good but, on the contrary, to fulfill a public task for third parties. In such a case, it may exist a strong economic incentive for the partners to exploit the third parties concerned, in fact the citizens. This risk is rather widespread in the sectors of supply of the households with water and energy as well as with services of waste disposal.

- Unfavourable results in economic terms

Critical observers of PPP encourage to reflect on the fact that public-private co-operations lead neither to more competition nor to a less expensive production, since from the point of view of the private economy, only the most profitable sectors are taken into consideration for PPP. It was for instance observed that private pre-financing of road projects based on the concession model would cost 1.6 to 1.8 times more than conventional financing from the state budget³.

- Risk of oligopolisation of the supply sectors

Because of the introduction of competition into the supply sectors (water, energy, etc.) in a context of globalisation of the economy, the question can be put if PPP do not constitute the first step towards the final privatisation of public companies and therefore towards the abandonment of the economic activities of the local authorities in the field of supply. The fast penetration of this sector by the multinationals suggests a development of oligopolisation.

c) For the private economy

- Political and legal risk

This category of risk refers to possible changes in the political regime or in the governmental policy, to unfavourable or unstable framework conditions, to the incapacity or refusal of the public sector to respect contractual provisions. It can also relate to changes in the tax legislation or to the introduction of measures with unfavourable impacts for private partners. This is for instance the case when a concurrent infrastructure is constructed.

- Technical risks relating to infrastructure construction and operation

This category of risks comprises various components: unexpected technical problems in the phase of project implementation, vaguely formulated environmental provisions, not respected implementation schedule, expenditure going beyond the forecasts, interruption of the service operation, etc.

- Economic and financial risk

This category of risk primarily refers to the rate of inflation and to the evolution of exchange rates between currencies (loan currency and currency related to income from the users). It is also necessary to include in this category the factors reflecting the economic situation. A famous example is the impact of energy crises in the seventies on the motorways concessions in France and Spain. It resulted for the concession's holders a significant decline in traffic volume and an increase of the construction costs, mainly produced by the strong rise in interest rates. In France, the concession's holders were constrained by the new context to negotiate new loans in adverse conditions. Three among the companies concerned had to resort to loan guarantees of the state. In Spain, three private motorway companies, accounting for approximately 15% of the national motorway network, went into bankruptcy in 1983. Since towards the end of the eighties the economy had recovered and traffic was again increasing, the construction of motorways became again attractive for the private sector, which hold true up to now.

- Commercial risk

The commercial risk combines the volume of users flows and the amount of contributions / tariffs for use. In the case of motorways, these are on the one hand traffic flows and on the other hand the level of tolls. The two factors are closely interdependent. As the Hungarian experiment showed, the commercial risk must be considered against the general context of economy and society. The purchasing power of potential users and the acceptance by the citizens to pay contributions for use, play a significant part in this field.

- Risk of “*force majeure*”

This category of risk can neither be anticipated nor avoided. It relates for instance to natural disasters, social disturbances and wars, by which the continuation of the project, the infrastructure facilities and the economic operation can be counteracted or damaged.

3. Examples stemming from Western experience

The practice of PPP strongly developed in Western Europe in recent years. In the description of examples below, the attempt was made to show a wide range of possible partnerships concerned with territorial development. These examples should not be necessarily regarded as models for new projects. Moreover, this description is judicious to emphasise the differences which exist between the various national approaches as regards PPP. The practice of PPP was not studied for all the Member States of the European Union. On the contrary, a limited number of countries were selected which have particular characteristics in this field: United Kingdom, France and Germany. This does not exclude that the practice of PPP in other European countries such as the Netherlands, Ireland or Portugal could also offer examples with high learning effect.

3.1. United Kingdom ⁴

In the United Kingdom, the concept of PPP was introduced by the former Thatcher government with an ideological connotation similar to that of the United States under the Reagan government. But whereas in America, the campaign of “Privatism” was accompanied by a policy of decentralisation, the characteristic of the privatisation policy of the Thatcher government consisted in centralising the urban development policy and reducing the autonomy of the local and regional decision makers. The combination of policies of privatisation and centralisation led to a typically British approach of PPP, that of “Urban Development Corporations” (UDCs). This new type of local development agencies was instituted for the first time in 1981 for the revitalisation of the London docks, the flag of the deregulated and market-based spatial planning policy of the Thatcher government.

The general objective of the PPP practice in the United Kingdom lies in the development of high level infrastructure and service facilities. The system is intended to combine competences and advantages of public and private actors to lead to the best possible result.

In the PPP practice, two categories of procedures can be distinguished:

- contractual procedure: a local authority wishes to acquire from a private partner a long-term service (e.g. the availability and maintenance of a school building); it concludes with this partner a long-term contract. The contract determines, among others, the technical execution of the project (e.g. characteristics of the school building) as well as the level of the annual financial contributions which must be paid by the municipality to the private partner for the duration of the contract. In this category, there is no general model of effective PPP. Adapted solutions must be elaborated according to the context.
- a second category of PPP used by local authorities to develop services on the basis of a long-term procedure is that of the “Joint Venture Companies” (JVC). The share of the local authorities in the capital of such companies can widely vary from one case to another. When the municipalities wish to benefit largely from the management skills of the private sector, they take in general a minor share in the venture capital.

The “Private Finance Initiative” (PFI) was introduced in 1992 with for objective to develop effective and high quality public services and to promote economic development. It encourages partnerships and supports the participation of the private sector. In April 1996 the “Public Private Partnerships Programme Ltd” (4Ps) was created under the aegis of the national

association of local authorities. The task of 4Ps is to advise the local authorities as regards project development and other partnership initiatives. Case-studies and models of contracts are proposed by 4Ps. 4Ps collaborates with the “Department of the Environment, Transport and the Regions” (DETR), with other sectoral ministries as well as with the ministry of Finance.

After the change of government in 1997, the PFI procedure was modified on the basis the 29 proposals of the “Beates Review” (June 1997). In this context a “Treasury Task force” was instituted. This Task force chairs the new “Project Review Group”, which accompanies at the interdepartmental level the procedure of approval of PFI applications. A new law, the “Local Government (Contracts) Act” on the regulation of partnership contracts was adopted the same year.

These changes aimed at promoting in particular projects of the local authorities belonging to the category “Design, Build, Finance, Operate” (DBFO). Examples of such projects are: schools, libraries, buildings for police forces, for care services, waste processing facilities, courts, administrative buildings, etc.

The introduction of promotion measures for the PFI and other PPP into the local authorities aims at:

- promoting private investments in infrastructure facilities aiming at an effective supply of services;
- improving the productivity of investments (“value for money”) by the transfer of the risk towards those which are the best capable of managing it effectively;
- supporting the improvement and the rationalisation of the real estate property of local authorities,
- transferring to the private sector commercial facilities, grounds and superfluous buildings,
- supporting the “joint ventures”, when local authorities are associated to companies managed by the private sector;
- accelerating partnerships in the field of economic development and revitalisation.

For the allocation of PFI credits to the PPP projects of local authorities, two categories of criteria are taken into account:

- sectoral technical criteria fixed by the ministries concerned. A part of these criteria is valid for all the sectors, another part is specific to each sector,
- financial criteria fixed by the ministry of Finance.

When the projects correspond to these two categories of criteria, they are accepted by the interdepartmental “Project Review Group”, which chairs the Task force and in which also the representatives of the PPP Program take part.

The four PFI principles are:

- “Genuine risk transfer” – PFI projects transfer to the private sector substantial risks relating to the design, building, financing and operation of an asset. Operational responsibilities transferred relates to maintenance, renewal and replacement of the facility. The degree to which such risk can be transferred depends on the extent to which the public sector directly controls the flow of users and revenue.
- “Output specification” – Contract must specify the nature and the quality of the services;
- “Whole life asset performance” – Contracts require the contractor to take responsibility and assume risk for the performance of the asset over a long term covering most of the lifespan of the asset concerned;
- “Performance-related reward” – Payments to the contractor take account of the standard of service required.

There is no regulation as regards the duration of contracts. In the case of large-scale projects, the duration of the contract can reach 15 years, even 30 years in particular cases.

A significant instrument for the PPP evaluation is the “Public Sector Comparator” (PSC). The PSC is a fictive value making it possible to compare the traditional methods of financing with a PFI approach and to determine the value for money VFM (efficiency of realisation). If the private offer is higher than the PSC, a new call for tenders is organised or a traditional method is chosen. The PSC is determined within the framework of a process with several stages and must be permanently controlled and revised. The public sector is therefore obliged to reflect with precision on the cost of the project’s life cycle.

PFI credits allocated by central government over the period 1999-2002 amount to 800 million £. By taking into account the PFI credits allocated until 1998, the total amount of PFI credits rises to approximately 3 billion £. Until the end of the year 1998, 87 projects were approved, representing a total volume of investments of 1.8 billion £.

a) Examples of projects benefiting from DETR PFI credits:

Until March 1999, the following PFI projects were approved by the ministry:

- Dartford-Thurrock Crossing	150 Million £
- Second Severn Crossing	330
- Birmingham Northern Relief Road	300
- Eight DBFO roads	591
- Channel tunnel rail link	4 300
- Luton Airport Parkway	20
- Northern Line Trains	400
- Croydon Tramlink	200
- Manchester Metrolink Extension	125
- Midland Metro Line One	145
- Docklands Light Railway Lewisham Extension	200
- London Underground-Power	108
- London Underground-Prestige	222
- Oceanic flights data processing system	30
- Waltham Forest Housing Action Trust	40
- Tower Hamlets Housing Action Trust	23

b) Examples of projects benefiting from PFI credits of other sectoral ministries:

- Information technologies; London Borough of Harrow – Modernisation of the data-processing networks with innovating solutions;
- Integrated system of waste collection and processing – Reinforcement of recycling; reduction of discharges;
- Library in Bournemouth – Construction of a new building, development of information technologies;
- Social housing in North East Derbyshire – Part of the strategy of restoration of a housing district; construction of social housing for young families and elderly. Fifteen year contract;
- School in Bridport/Dorset – Construction of a new school (total investment: 15 million £); 30 year contract;
- Primary school in Kingston upon Hull – Fifteen year contract (total investment: 2 million £) within the framework of an urban renewal program;
- Administrative Building in North Wiltshire – Construction of a new administrative building with central location, rationalisation of the real estate property of the local authority by means of transferring grounds and buildings to the private sector for the purpose of urban renewal.

Distribution of PFI credits between the various ministries (million £)

	1997/98	1998/99	1999/2000
DETR	149	200	250
DfEE-Schools	22	130	350
Home Office (Police, Firemen)	41	80	100
DoH Social Affairs	37	30	30
LCD – Courts	0	60	70
Total	250	500	800

3.2. France

3.2.1. Sociétés d'économie mixte (SEM) ⁵

In the French PPP practice, the SEM have a long tradition, in particular at the local level. The public sector is associated to their activities in a double way: on the one hand by its participation in the capital of the SEM and on the other hand as a partner of the concession contract. Concession contracts are also concluded between public bodies and purely private companies.

The SEM have been created by the municipalities, "Departments" and the State, jointly with private actors, for numerous purposes, in particular in the field of urban development planning and urban utility networks. Whereas in the case of the first SEM the idea of a service provided by the private sector for the public sector prevailed, more recently examples can be found where planning and development concessions are concluded with a real risk for the private sector.

a) Legal and organisational bases of the SEM

SEM which are active at the local level are in general constituted as limited liability companies. In recent years, some SEM were also constituted as S.A. (the first, "Euralille", was created in 1990). Members are the local authorities (municipalities, associations of municipalities, "Départements", regional authorities) as well as other partners of the business and finance world (Chambers of Commerce, banks, private companies). The legal bases of the SEM are the Law of July 7, 1983 (which allows the participation of local authorities in the capital of companies) as well as the Law of July 24, 1966 on the companies with commercial purpose.

The first law prescribes that local authorities must have the majority in the capital of the SEM and must therefore control them. In addition, local authorities have another possibility to direct the activities of the SEM. The SEM carry out their activities on the basis of a contract which they conclude with the local authority (-ies). This contract can take various forms (concession, leasing etc). It transfers to the SEM statutory powers belonging to the public sector (e.g. commercial operation of car parks along the roadway system or water supply to households). The contract also regulates subsidies granted to the SEM by local authorities.

There is a national federation of SEM which contributed, inter alia, to the adoption by the SEM of a "Charter of Deontology". The major topic of this Charter is the safeguard of the public interest. This Charter was also signed by financial institutions (*Caisse des Dépôts, Fédération des Caisses d'Epargne*, etc), which are in general associated to the SEM.

b) Characteristics and activities of the SEM

There were 1272 SEM in France in 1999. Three categories of SEM can broadly be identified:

- land development SEM (324 in 1999),
- real estate SEM (326 in 1999),
- service SEM (622 in 1999).

Actually, more than 40 categories of professions are exerted by the SEM. Since 1983, a significant growth in the number of service SEM can be observed. Their share increased from 30% to 48%. Another trend is diversification in the activities of SEM. In 1999, already 180 SEM had activities in at least two of the three categories mentioned above.

A characteristic of the French SEM, compared with the British Joint Ventures Companies, is that the public bodies must own at least 50% of the venture capital.

In 1999, the 1272 SEM employed 60 000 people. These are distributed in the three categories as follows:

- 8% in the land development SEM,
- 17% in the real estate SEM,
- 75% in the service SEM.

More than 80% of the jobs created in the SEM since 1997 concerned the service sectors. From a global economic point of view, the SEM represent a total venture capital of 11 billion Francs and an annual turnover of more than 70 billion Francs. The total venture capital of SEM is distributed among various organisations and institutions, in the following way:

- municipalities	46,2%
- inter-municipal associations	7,5%
- "départements"	8,2%
- regions	1,9%
- state organizations	2,0%
- other SEM	1,4%
- chambers of Commerce	2,7%
- public housing organisations	2,5%
- private companies	9,0%
- caisse des Dépôts	6,4%
- other banks	6,2%
- others	6,0%

The trends regarding the capital structure of SEM reveal a light increase of the share of the inter-municipal associations and "Départements", a more marked growth of the share of private companies, except for banks, the share of which in the capital of SEM tends to decrease. Local authorities own on average 64% of the venture capital of SEM.

c) Land development SEM

The total annual investments of the 324 SEM belonging to this sector are estimated at 30/35 billion Francs. In 50% of these SEM, only one local authority is involved; in 30% of them several local authorities are involved, whereas 20% of them are controlled by a "Département" or a Region.

Most of the investments carried out by these SEM are based on mandates (49%) or concessions (36%) of the public bodies.

The land development SEM diversify more and more their activities, for example in the construction of dwellings, the hiring and the management of housing estates, in the operation of car parks, etc.

d) Real estate SEM

In 1998, the 300 real estate SEM owned on the whole 513 000 rental dwellings, mainly in the field of the public housing. Whereas many small size SEM currently give up their activities, the number of dwellings owned by the large SEM increases. On average, a SEM owned in 1998 1700 dwellings (against 1500 6 years before).

In 1997, the real estate SEM started the construction of a total of 11 600 dwellings (of which 70% in the sector of public housing).

e) Service SEM

The 622 service SEM employ 45 000 people. The majority of these SEM were created between 1983 and 1993. Their principal field of activity is tourism (28% of the service SEM), whereas the “leisure and sport” sector is the field of activities of 12% of the service SEM.

Sectors of services	Percentage in the total of the service SEM	Percentage of service SEM created since 1966
Economic development	17 %	12 %
Tourism	28,1 %	39 %
Leisure	6,3 %	3 %
Culture	5,6 %	10 %
Sport	5,3 %	14 %
Transport	15,8 %	0 %
Environment	11,9 %	12 %
Other local services	10 %	10 %

The following service sectors are particularly significant:

✓ Construction and administration of trade fair centres

Thirty SEM are active in this field among which eleven were created during the past five years. The majority of them are located in the large cities. Half of them employ less than ten people, organise on average 30 fairs per year and carry out an annual turnover of 3 million Francs.

✓ Cultural tourism

Within this sector which is characterised by a regular growth, 35 SEM have their main activity and 40 others an ancillary activity. 1100 people are employed by the SEM of this sector (on average 32 people by SEM). Approximately 85% of these SEM were created during the past ten years.

Fields of cultural tourism	Part of the SEM
Congress centres, halls, theatres	46%
Museums	26%
Arts centres, exhibition centres	23%
Others	6%
Total	100%

✓ Collection, treatment and recycling of waste

The 30 SEM of this sector are different from each other; the smallest SEM employ less than ten people. Most of these subcontract to private companies. Most SEM of this sector deal with waste processing (60% of them) and a more limited number with waste recycling (30%). Only 18% of them practise the collection of waste. Their catchment area comprises on average 250000 inhabitants. Inter-municipal associations own on average 45% of the venture capital of the SEM of this sector (against 7% for all SEM). Private companies are over-represented in this sector.

✓ Marinas

Approximately 25 SEM manage several marinas (44 of them are on the Mediterranean coast and 25 others in Brittany). Their total turnover amounts to 215 million francs (1996). Most SEM of this sector manage relatively large marinas (2/3 of them have a capacity of more than 750 boats

and 40% of them a capacity of more than 1000 boats). Most services concerned with the operation of the marinas, are ensured by the SEM themselves. Most SEM of this sector carry out, moreover, other activities in the sector of tourism (sailing schools, tennis, golf, leisure centres, etc).

✓ **Urban Public Transport**

Approximately 40 SEM operate urban public transport (bus lines, trams, etc). Their share in the total sector of urban public transport amounts to 30% with regard to the length of operated networks, 22% with regard to the vehicle fleet and 16% with regard to the number of employees of this sector. Their total turnover amounts on average to 3 million francs per year (1996).

Inter-municipal associations own 34% of the total venture capital and are shareholders of more than 55% of the SEM of this sector. More than 3/4 of the SEM of this sector sub-contract of private transport companies parts of their tasks (e.g. school transport).

The SEM of this sector employ on the whole 12 000 people. Their annual volume of investments amounts approximately to 30 million francs.

✓ **Cable networks**

Approximately 25 SEM have built cable networks and supply 20% of the households connected to cable networks. These are in general large companies located in the large cities: 2/3 of them supply with cable connection each more than 18 000 households. Most of them (60%) subcontract the whole commercial operation of their networks to private companies. They carry out an annual turnover of 30 million francs.

✓ **Water supply and sewerage**

Approximately 20 SEM are operating in the field of water supply and sewerage. Most of the SEM of this sector were created during the past ten years, mainly in the large cities. Approximately 2/3 of SEM operating in the field of water supply have more than 10 000 households connected to their networks. Sewage treatment plants operated by the SEM have a catchment area of 150 000 equivalent-inhabitants on average. Inter-municipal associations own 17% of the total venture capital of this sector.

✓ **Operation of car parks**

From a historical point of view, these are the oldest SEM. The SEM operating in this sector manage on average 4600 parking units. Many SEM manage car parks by way of ancillary activity. They employ on the whole 900 people in the sector.

3.2.2. Other forms of PPP ⁶

All PPP projects are not implemented by SEM. Purely private companies also take part in it. In this field, two categories of contracts can be identified:

- concession contracts: the remuneration of the concession contract is mainly or completely based on the perception of financial contributions from the users. This model finds therefore an application in the fields where a market for the perception of contributions can be created (e.g. transport, leisure activities). In the case of concession contracts, a right of compensation exists. In the case of unforeseen events, of “force majeure”, of changes in the legislation or of State intervention, the contracting partner suffering a damage can, when the profitability of the contract is affected, claim legally for a financial compensation.
- METP model (*Marché d'entreprise de travaux publics*). This model is taken into account whenever the perception of contributions is not possible for social (e.g. in the poor neighbourhoods, in the case of hospitals and prisons), or technical considerations (e.g. for street lighting). Remuneration comes then primarily from the public budget of

the municipalities concerned and takes the form of fixed contributions for the duration of the contract. In the event of non-observance of quality standards fixed by the contract related to construction, maintenance and operation, financial deductions can be operated.

A formal decision-making process as regards the calculation of comparative advantages of PPP procedures was introduced by the decree of 20 October 1998. In a first stage, the checking of the public economic interest of the project is carried out. Then various possibilities of financing using cost-benefit analyses are examined on the basis of the life cycle of the asset considered. The economic stability is also checked using sensitivity analyses by the means of the variation of the forecast parameters (revenue from tolls, traffic volume etc).

✓ Road construction

With the law of 18 April 1955 the legal basis was created for the perception of tolls for the construction of a motorway network. The motorway sections with toll comprise 6 500 km and are operated by 6 semi-public concessionary companies and a private company (Cofiroute). Several private concession companies went bankrupt during the Seventies and Eighties and had to be taken over by the State, because the traffic volumes were much lower than forecasts predicted.

Among the PPP projects in field of road construction, the following examples can be mentioned:

- the motorway sections Paris-Poitiers and Paris-Le Mans (Cofiroute),
- the BPNL Northern Ring Road of Lyon (private concession company),
- the Prado-Carénage tunnel in Marseille,
- the Tancarville bridge in Normandy (concession company under public law).

✓ Railway networks

PPP projects are also carried out in the field of the railway networks. Examples are:

- subway networks in Bordeaux and Toulouse (concession companies under private law),
- the Orlyval line (connection between the Paris-Orly airport and the RER network).

✓ School and university premises

The bad state of repair of school and university buildings in the Paris region was the origin of a 12.3 billion Francs programme (339 projects) at the beginning of the Nineties. The private sector was invited by means of calls for tenders to make proposals for maintenance, rebuilding and partly, operation as well as for prefinancing methods related to these measures; the property of the buildings remaining public. The invitations to tender were not based on the description of performances, but on the contrary, on the definition of objectives. The offers were to develop a relevant technical concept and a system of transparent control making it possible to measure the quality standards to be reached. Refinancing is carried out by means of annual instalments by the local authorities concerned.

✓ Prisons

Between 1987 and 1992 the program “private prisons” was implemented (20% of the total capacity in France). The division of tasks between the public and the private sector was organised in the following way:

- the public sector deals with the tasks of official nature, such as the administration and the monitoring as well as the personnel dedicated to socio-educational tasks;
- the private sector deals with the construction and the maintenance of prisons, catering services, cleaning, health services as well as preparatory measures for the later social integration of prisoners by means of training measures and of work in prison.

3.3. Germany

In Germany, the PPP idea was carried out in former times in the co-operative construction of dwellings. The first public interest companies involved in the construction of dwellings were founded on the basis of private initiatives in the middle of the 19th Century. Immediately after the Second World War, the PPP idea was realised in the creation of co-operatives and development corporations supported by private building companies of the housing sector and by the State.

The financial situation of the federal level, of the *Länder* and municipalities has again generated in recent years a debate on the involvement of the private economy in the achievement of public tasks. Banks and financial institutions take an active part in the debate on PPP. Private financing of public investments by means of leasing funds, factoring and participation models is propagated as a variety of intelligent alternatives to traditional municipal financing by loans. Urgently necessary investments would be immediately realisable in spite of weak public resources and financing would be directly related to the use.

Complex financing and organisation models were conceived under the name PPP, especially for municipal companies operating water supply and sewage treatment. The construction and operation of assets constitute an interesting field of activity for private companies.

In the field of urban renewal, the Law on the Promotion of Town Planning (1971) had given the possibility to the municipalities of entrusting to a private operator the preparation and implementation of renewal measures. Later on, numerous development agencies were created, e.g. in North-Rhine-Westphalia, as instruments of a new regional structural policy, which brought together public actors (public bodies, the Land development company) and private actors (landowners, economic associations, etc). These agencies were given as main objective the development and marketing of industrial parks of regional importance, with a priority lying in the reactivation of derelict areas. Moreover, they pursued also a goal of regional marketing.

New forms of co-operation through the division of tasks between private and public actors develop in particular in the field of large-scale urban development projects as well as in the field of projects for the *Länder* of Eastern Germany. In these *Länder*, dependence on private partners was higher because of the lack of binding plans. In addition, the issue is one of mobilising the capital and know-how of the private economy for the purpose of urban development, since the cities and municipalities reached the limits of their financial capacity. Co-operation between the partners is to be developed on the basis of very different legal structures, with a very variable distribution of functions and competences.

3.3.1. Reforms of the legislation for the realisation of PPP⁷

a) Town Planning Law

Whereas in many other European countries (except the Netherlands), development and land restructuring plans for housing and industrial estates are implemented by private companies, in Germany, the responsibility for land and infrastructure development belonged for a long time to public authorities. After the German reunification, changes in the town planning law were undertaken in order to enable and to widen possibilities for concerted action and co-operation between the public and private sectors.

At the end of the transition period, which was characterised by specific provisions for the New *Länder* in the field of planning legislation, the Town Planning Law was unified in 1998. In this context, instruments such as the “town planning contract” and the “project and service road plan” deserve particular attention:

- the basic idea of the “town planning contract” is that through co-operation of the municipalities with private investors, the interests of the two parts are better taken into account. The landowner or investor, whose grounds gain an added value because of town planning measures or of their designation as building land, declares himself ready either to finance land development, or to carry it out and to co-operate, as far as necessary, to the development process. He may deal with the regrouping of land plots and be committed in the realisation of service roads. Moreover, he may support the total or partial realisation of the necessary public facilities such as schools or nurseries, or contribute through the payment of an equivalent amount. Thus, by means of the town planning contract, all the land development stages can be transferred to a private developer, except if they belong to the field of public statutory powers reserved for the municipality. The most significant types of contracts are in practice the contract of service roads, often combined with a contract pertaining to facilities and the voluntary regrouping of land plots.

The town planning contract acquired significant importance during the relatively short time period after it was introduced into the legislation. A considerable amount of land could be mobilised and built on the basis of town planning contracts. Since 1990, more than 10 000 ha were urbanised by using this strategy in a total of 567 municipalities, for the realisation of significant projects, which correspond to 15% of the total areas developed by these municipalities.

As a consensual instrument, the town planning contract does not have binding effects on the mobilisation and development of land. But it brings together the respective interests of the investor and of the municipality and can have in this way a mobilising effect as regards the land to be built. The duration of the planning and implementation procedure of the project is generally shorter by using the contractual instrument than in the case of development carried out by the municipality. The contractual strategy should significantly discharge the municipal authorities as regards administrative procedures. The use of the town planning contract could be facilitated if this instrument were applied in a strategic way by the municipalities on the basis of fundamental and transparent decisions as regards land policy.

The “project and service road plan” (VEP) corresponds to a particular conception of town-planning, characterised especially by the fact that the preparation and implementation of the plan are ensured by the developer himself. By difference with the operational building plan, participation of the citizens is not prescribed in detail; only a consultation of the people concerned is envisaged. The VEP is composed of a development plan relating to the project, which is in fact the true “project and service road plan” and of a contract for implementation. By difference with the town planning contract, a number of significant binding provisions are fixed by the legislation. Moreover, the link between the development plan on the one hand and the contractual provisions pertaining to the realisation of service roads and to the obligation to build, is also fixed by law.

b) Road construction law (roads of federal importance)

In the law of 3 September 1994 on the construction and private financing of roads of federal importance (FstrPrivFinG), a legal base was established for PPP in certain categories of projects relating to federal roads. This law limits the PPP model in its application, because of Community legislation, to new constructions as regards:

- bridges, tunnels and crossings of mountains within the context of federal motorways and roads;

- multilane federal roads with separate roadways (highways similar to federal motorways).

Within this framework, the construction, maintenance, operation and financing of roads of federal importance can be transferred to private companies. For refinancing, the private company receives the right to perceive tolls.

There are currently thirteen projects for which the application of a PPP model was examined or is under examination. Two advanced projects are in the field of competence of the municipalities (Warnow crossing in Rostock, Trave crossing in Lübeck). For two PPP projects in the field of federal competence (bridge over the upper Moselle, Strelasund crossing), the results of the feasibility studies are available and the private realisation of the projects is awaited soon in the form of a joint declaration of the federal government and *Länder* concerned.

By using PPP procedures, the projects can be realised more quickly than it would be possible by using conventional financing stemming from public budgets.

c) Investments in railways

On the basis of reforms of the railroad company (1994, 1999), the DB Netz AG and the DB Station & Service AG became companies under private law. The possibility is opened to these two federal railway companies to attract private capital for the financing of the railway investments.

However, it is not very easy to attract private venture capital in this sector, because the conditions of profitability are difficult to fulfill. In this respect, a feasibility study relating to the modernisation of the Berlin-Dresden-Schöna line examined to what extent it would be possible to attract private risk capital in the financing of the project. Detailed forecasts of costs, traffic and revenue quickly showed that a financing of the project using private capital would not lead to a positive profitability.

3.3.2. Examples of PPP projects pertaining to urban development

a) PPP for a new urban centre: CentrO in Oberhausen⁹

Nowhere in Germany the attempt was made, until the implementation of CentrO, to develop close to an existing urban centre, a new central zone. With the CentrO, one of the largest shopping centres in Europe was carried out with a commercial surface of 70 000 m² corresponding to a downtown area combined with restaurants and leisure facilities. The “new centre” of Oberhausen is the result of a voluntarily forced strategy by the municipality in order to increase its area of influence on the region by means of a large multifunctional project and to accelerate structural changes. From the side of retail trade companies, the development of CentrO was based on the recognition of the fact that the previous catchment area did not make it possible to carry out a qualitative jump. Nevertheless problems still exist for existing retail trades in the old central zone.

During the summer 1997, representatives of large retail trade companies consulted with the representatives of the municipal authorities and of the political world about the efforts to be made in order to stop the regular decline of sales in retail trade. After various alternatives with regard to the strategy were examined, the large retail trade companies adopted a development concept to be tackled as a joint project and in which prefinancing was necessary. The starting impulse of the project was given by the retail trade itself. The involvement at an early stage of the administration and of political representatives contributed to the acceptability and to the success of the project. Through this project, the city of Oberhausen succeeded in being reinforced as a commercial and attractive town within the Ruhr region.

b) PPP for urban development in the New *Länder*: the example of Schenkenberg¹⁰

In Schenkenberg, a small borough in the north of Leipzig, planning activities related to municipal land development for the creation of industrial sites and residential areas began in 1991. Jointly with motivated private companies, an innovating PPP concept was conceived for the realisation of the project. A local development company was created for this purpose jointly by the municipality of Schenkenberg (70% of venture capital) and a private developer (30% of venture capital), which carries out the planning and development of land. Thanks to the creation of this development company controlled by the municipality, it was possible, in spite of scarce financial resources of the municipality and of the inexperience of the administrative staff, to quickly carry out the “Rödgen industrial site” (15 ha), the “housing estate of Schenkenberg” (4 ha) and the “rehabilitation of the village of Schenkenberg “, under profitable conditions. Municipal financial resources and subsidies were made available for the prefinancing of the purchase of land and for the expenditure related to planning and development of land.

c) PPP for the recycling of land¹¹

Because of structural changes in the economy, numerous areas, such as industrial parks, harbour zones, freight railway stations, airports in urban areas etc. become derelict land. This creates significant potentialities for land recycling measures. As an example, the statistics of derelict land surfaces in the inter-municipal association of the Ruhr, make evidence for a total amount of 16 000 ha in the cities and districts concerned, but it can be assumed that the real figure is higher. Military areas, such as military airports, grounds for exercise and barracks have to be added to it. This represents for Western and Eastern Germany, a total of approximately 970 000 ha, of which 286 000 ha were until now officially given up by the army.

The recycling of industrial estates or the realisation of reconversion projects in the military sector by means of municipal investments are not realistic from a financial point of view. Such efforts in the field of industrial estate recycling are in general only possible on the basis of considerable subsidies from the Land and the federal level. EU subsidies can also be obtained. The location of activities in new sectors, the economic enhancement of infrastructure, in particular through activities of economic promotion aiming at the creation of hotels and service firms, and thus the creation of modern jobs, succeed in localities which do not have high level functions, only through the attribution of particular advantages.

d) PPP for leisure centres: Ocean Park Bremerhaven¹²

The Land of Bremen will soon have two urban leisure parks. In 1998, the political and economic conditions were met for the realisation of the “Space Park” in the city of Bremen. Planning provisions for the realisation of the “Ocean Park” project in the city of Bremerhaven were adopted in 1999 by the political authorities of the city through the starting of a formal building plan procedure. The Ocean Park is jointly carried out in the form of a PPP by a private company of Wiesbaden and the city of Bremerhaven.

e) PPP for water supply and sewage treatment at municipal level¹³

A joint subsidiary of a German company and a French company proposes to German municipalities long-term co-operations in the field of the water supply and sewage treatment. Maintenance, modernisation and development of the corresponding pipe networks are also included.

Partnership with the private company reduces the financial burden on municipal budgets. Current utilities as well as long term financial expenditure are taken over. The new investments do not call upon municipal financial resources nor upon loan guarantee. Instead, fixed contributions are paid to the municipality. Responsibility and risk relating to the level of investments and to operation costs are dealt with by the private company.

In 1998, three German cities had established a partnership with this private company:

- since 1993, the company has been ensuring the water supply and sewage treatment for the 240 000 inhabitants of Rostock and the 38 000 inhabitants of the district of Doberau. The contractual partner is the inter-municipal association Warnow-Wasser- und Abwasserverband which comprises the Hanseatic city of Rostock and 41 municipalities of the surroundings;
- in Goslar, the private company dealt with sewage treatment. It financed a new sewage treatment plant, which is already in function;
- the third partner city is Potsdam, where the private company operates since January 1, 1998 the water supply and sewage treatment. Utilities and networks belong jointly to the capital city of Brandenburg and to the private company while the operation for the twenty years to come is entrusted exclusively to the private company. In the context of this PPP, the company ensures water supply and sewage treatment for a total of 134 000 inhabitants.

f) PPP in the field of leasing funds for sewage treatment plants and district heating plants¹⁴

A trust and a leasing company have been jointly developing since 1993 leasing funds. Since then, more than twenty funds with a total volume of more than 2.5 billion Marks were successfully introduced on the market. Several funds for sewage treatment and district heating plants, railway rolling stock and buildings for public administration are to be found among them. In 1996, the financial actors have for instance set up funds for the development of environmental infrastructure in the form of a PPP functioning with tax mechanisms for the construction of a new sewage treatment plant in Halle/Saale.

The public service companies of Berlin (BSR) recently adopted an innovating financial solution in the form of a PPP for the modernisation and technological reconversion of their waste incineration plant (MVA) in Ruhleben corresponding to an investment volume of more than 500 million marks. BSR invest in MVA, which exists since 1967, not only to respect the strict standards of the federal regulation on protection against immissions, but to even exceed them by means of a new concept. Within the context of a financing model based on private leasing, private capital is collected. In this way, private money is invested in useful projects and in a profitable way for those who invest. As the financial needs exceed the contributions of the leasing funds, the gap is filled with loans contracted with well-known credit institutions. In the case of MVA Ruhleben, a saving in financing costs of at least 50 million marks could be achieved compared with traditional financing methods.

3.3.3. Examples of other projects relevant for regional and urban development

a) PPP for urban marketing: Berlin¹⁵

“Partners for Berlin” was created in 1994 by well-known German companies jointly with the chambers of commerce and business associations. The objective of this partnership is to promote Berlin in the field of location of companies. Organised as a limited liability company, the company co-operates within a PPP with the Senate of Berlin. It is financed by private companies and entrusted by the Senate with the development and implementation of marketing measures for the capital city and with the attraction of companies.

b) PPP for technology parks: examples of Berlin-Marzahn and Berlin-Hohenschönhausen¹⁶

Technology parks are local communities of companies which put at the disposal of young technology companies premises and services adapted to their needs, if possible in the immediate vicinity of applied research centres.

In addition to specific technology parks, which relate to practically all technology sectors significant for Berlin, non-specialised technology parks are more and more developing. Typical examples are those of Berlin-Marzahn and Berlin-Hohenschönhausen. Since 1996 these two technology parks were developed on a PPP basis. Beside micro-companies SME, handicraft, industrial and service companies as well as wholesale companies can also locate there. At the end of 1997, approximately 3500 m² were rented to 33 companies.

c) PPP for the strengthening of the industrial site of Siemensstadt in Berlin¹⁷

Thanks to a close co-operation between representatives of the business world and of the Senate of Berlin, the opportunity was taken of developing the industrial site of Siemensstadt in order to make out of it a service centre. A particularly favourable aspect is the interaction between Siemens on the one hand and small innovating companies on the other hand. Siemens concentrates its Berlin activities on the site of Siemensstadt. This creates market niches for micro-companies. Young innovating companies ready to take risks benefit not only from attractive location premises under advantageous conditions, but some of them succeed in gaining Siemens as a customer. Others were detached from Siemens. In this way, the industrial site of Siemensstadt receives new growth impetus. The initiative "Partners for Siemensstadt" is regrouping the Senate of Berlin, the company for the economic promotion of Berlin as well as the representation of Siemens's employees. This initiative offers to young companies an excellent network of business contacts. Since 1990, approximately 100 companies employing altogether 1300 employees located on the site.

d) PPP for economic promotion: "Funds for innovation in Schleswig-Holstein and Hamburg"¹⁸

High-tech innovating companies carry out technology transfers which are urgently necessary from an economic point of view as well as above average jobs creations. Insufficient capital stocks as well as weaknesses as regards management often constrain the development of young companies. It is exactly there that the innovation fund created on the basis of a PPP acts in order to enable potential innovating technology companies, located in the economic regions of Schleswig-Holstein and Hamburg, to make a jump in profitability and in access to interregional markets.

It was possible, on the basis of an initiative of the Investment Bank, to create innovation funds with an offer of venture capital amounting to 100 million marks at the disposal of young high-tech companies.

Within the innovation fund, public-private also means division of risk: the public part of risk amounting to 30 million marks is dealt with by the Investment Bank of Schleswig-Holstein and by the Hanseatic free city of Hamburg jointly with the "Bank for reconstruction" (KfW) and the European Investment Bank. An amount of 30 million marks of private capital is made available by a technology holding on the basis of its own capital stocks. By adding to it the contributions of other promotion programs, in particular of KfW, the total offer of venture capital could reach 100 million marks.

The management support offered by the technology holding is at least as significant as its financial commitment. Precisely young innovating companies have deficiencies as regards management. Thanks to the agreement given by the technology holding to open offices in Hamburg and to provide on the spot participating companies, by means of a management office, with professional know-how and the necessary support, these problems could be solved.

e) PPP for vocational training and professional qualification in the information society¹⁹

Representatives of the German enterprises decided, jointly with the federal government, to launch the initiative “D21 - Starting point for the information era”. The strengthening of vocational training and professional qualification is placed at the centre of this initiative in relation to the opportunities and requirements of the information and knowledge society. The “Initiative D21” was impelled by the trade association of information technologies and by mid 1999 it was already supported by more than 50 companies and personalities.

According to the trade association of information technologies, the training initiative must achieve the following goals:

- generalised use of new media in training;
- integration of a module “new media” in all curricula for teacher’s training;
- further education scheme for teachers in the whole country;
- improvement of infrastructure related to information technologies in schools with for objectives “on each school bench a PC / in each class an Internet connection “;
- occupation of all student places in the field of data processing and engineering. Doubling of the number of female students;
- introduction of training modules on “information technologies for the non-data processing specialists” in all universities.

In order to attract new partners, the trade association of information technologies develops a sponsorship model for local companies, banks and other organisations: within this model, sponsorships for schools must be organised locally.

f) PPP for the preparation of schools in North Rhine-Westphalia to the professional significance of new means of communication²⁰

A further education scheme with a budget 4 million marks forms part of the project “schools of NRW connected to the network”. On the basis of the multiplication principle, more than 150 moderators are trained and transmit their knowledge to the teachers. More than 2000 teachers were prepared in this way to teaching by using the new means of communication.

The implementation of the project takes place in the context of a co-operation involving the ministries of education and economy of NRW, two private foundations and the European Centre of Competences for the New Means of Communication as well as the Institute of Land for Schools and Further Education.

The project “Schools of NRW connected to the network” is also supported by 60 further companies which collaborate directly with the schools.

3.4. Setting up central information and co-ordination offices on PPP (national examples)

Because of the complexity of the matter, the professional introduction of private financing is facilitated when the various experiments can be gathered in an ad hoc office. Various countries have set up such information and co-ordination offices on PPP:

- in the United States, the creation of an “Institute for Public-Private Partnerships” (IP3) in Washington was fruitful, in particular in its function as training centre. In Canada, the “Canadian Centre for Public-Private Partnerships in Housing” has a similar form;
- because of a centralised structure in the field of project’s financing and implementation, private financing started in the United Kingdom at the central level. This gathered, from the very beginning and years during, within the “Private Finance Panel” and later in the “Task force” which succeeded to him, all experiments with such projects. Since positive

examples were available by categories of investment, the know-how gathered was placed at the disposal of other users and proposed for instance to the municipalities, but also to foreign countries. Even today the “Task force” (i.e. the Project Review Group) at central level is associated to it with its know-how.

- at the beginning of the year 1999, the Dutch ministry of finance set up an advisory office (“Kenniscentrum PPS”). Its tasks includes, beside the distribution of advice, also the elaboration of comparative calculations, contractual schemes and financial instruments for infrastructure projects.

3.5. PPP for transnational infrastructure projects

3.5.1. Lessons from the Channel tunnel ²¹

Although it is not a PPP in a strict sense, the construction and operation of the Channel tunnel provide invaluable lessons on the implication of the private sector in the realisation of public infrastructure facilities.

The first project of the year 1973 was a PPP with private investments to be realised on the basis of loans guaranteed by the respective governments. Changes in the political context resulted in delaying the project. When it was taken again in consideration ten years later, the political leitmotiv was that public money should not be introduced. The French-British consortium Eurotunnel, which signed the concession, had to plan, develop, finance, build and operate the project at its own risk.

This situation led to many difficulties, in particular because the role and the responsibility of the various partners were not clearly defined and accepted. Even the question of the property of Eurotunnel was not clear. Since the banks and building companies were shareholders of the consortium, it was not possible to proceed to real invitations to tender. Although the respective governments did not agree to take a part of the risk, they expressed requirements, at the time of the realisation of the project, which exceeded the provisions of the concession contract.

In spite of these difficulties, the Channel tunnel is a popular success. Eurotunnel intends to build a second tunnel, but this time under conditions and with methods more similar to a PPP. In this case, the involvement of the public sector and the distribution of functions between the public and the private sector should be clearer.

3.5.2. PPP for a fixed link between Sweden and Denmark: the Öresund project ²²

The project presents technical similarities with the Channel tunnel insofar as it is a fixed transport link between two States through a strait. The project is composed of:

- a fixed link between the airport of Copenhagen and the city of Malmö, with an overall length of 17 km and composed of a bridge and a tunnel;
- a double track railway for trains rolling up to 200 km/h;
- a motorway with double two-lanes roads.

The organisational aspects of the project differ basically from the solution adopted for the Channel tunnel:

- from the very beginning, the conditions of property were clear: the owners are the two States of Sweden and Denmark;
- the project was developed on the basis of an inter-state agreement concluded in 1991 between Sweden and Denmark, which was supplemented by two distinct laws,
- the conditions of responsibility were clearly defined. They were laid down in a concession contract between the two owners and the Öresund consortium created in 1992;

- the Öresund consortium acts like a private company. The only difference is that it belongs to 100%, by means of two public companies, to the two respective States. The board of directors is composed of four members per State, who represent at the same public companies and the business world. The consortium has the task to plan the project, to build it and to operate it commercially. It determines the level of toll contributions. These are differentiated between the international transit traffic and the regional traffic;
- the loans contracted by the consortium benefit from guarantees granted by the two States. Moreover, the losses or profits must be consolidated by the two public companies in a proportion of 50% each. Expressed clearly, this means that the public sector covers the technical and financial risk of the project. In this particular form of PPP, privatisation concerns especially the overall management as well as the fact that the project is financed by the contributions of the users. No subsidy is attributed. The Öresund consortium is obliged to work in a profitable way, but not to generate a maximum profit.

4. The promotion of PPP by the authorities of the European Union ²³

4.1. Political context

Public-private co-operations play an essential role in J.Delors's White Paper of 1994 relating to a new strategy of "Growth, competitiveness and employment in the European Union".

The Transeuropean Networks in the transport, energy and telecommunication sectors must be carried out not through a widening of the state domain, but primarily on the basis of PPPs. This implies on the one hand the mobilisation of the private capital market, the activation of private management and organisation resources, while remaining within the framework of functions and initiatives of the Union's policy. By means of the strategic PPP principle, the traditional competition base of the European Union as a Single Market should be made coherent with the policy of economic and social cohesion of the Maastricht treaty. The issue is therefore one of setting up, by means of PPPs, a delicate but sustainable balance between the competition policy and that of cohesion.

4.2. The legal framework

The European Commission considers as a positive factor the use of private investments for the realisation of public equipments. The development of this co-operation form should be continued, while ensuring of the respect the Community legislation.

In 1999, the European Commission has organised a consultation related to the application of the Single Market's legal provisions to certain forms of partnerships between the public and the private sector and in particular to concessions. The basis of this consultation was the draft interpretative Communication of the Commission aiming at clearing up how must be applied the principles of the EC Treaty relating to non-discrimination, freedom of establishment and free provision of services, as well as the Directives on public procurement to concessions and similar contracts. The draft Communication of the Commission indicated that the role of the private sector in the field of infrastructures and public services has considerably increased for both technical and financial reasons. Concessions and other forms of public-private co-operation represent considerable economic stakes, the amount of which approaches that of the traditional public procurement markets (11% of the Union's GDP).

The first question examined by Communication is the difference between “public procurement works contracts” and “public works concessions”. It results from the 93/37/EEC Directive that the main distinctive characteristic of a public works concession is that a right to operate a construction is granted as a consideration for having erected it; this right may also be accompanied by payment. From these considerations, it follows that, in work concessions, the risks pertaining to operation are transferred to the concession’s holder. The definition of a concession allows the state to make a payment in return for work carried out, provided that this does not eliminate a significant element of the risk pertaining to operation. By specifying that there may be payment in addition to the right to operate the construction, the works Directive states that operation of the structure must be the source of the concession holder’s revenue. Only public works concessions exceeding the threshold of 5 million Euros are subject to a specific procedure. Other forms of public-private partnership as regards public works and services or concerning the sectors of water, energy, transport and telecommunications are not subject to the provisions of the directives on public procurement . This does not mean however that all these procedures escape any Community discipline. Indeed, concessions and similar forms of public-private partnership, as any official act fixing the conditions to which a service of economic activity is subordinated, are subject to the provisions of articles 52 to 56 of the Treaty or to the principles worked out by the decisions of the Court. These are in particular the principles of non-discrimination, proportionality and mutual recognition, transparency and equal treatment.

Moreover, the Commission points out that the provisions and principles stated above for service concessions and other similar forms of PPP are also valid for public works concessions.

In every case, the following legal principles have to be respected:

- in the case of public works concessions, the public authority is obliged to publish the concession in the Official Journal and thus to open competition on a European scale;
- the concession’s holder is also obliged to make public on a European scale his intention to entrust to a third party the realisation of the work. This is independent from his own statute, being or not a public entity according to the terms of the Directive;;
- the Member States must avoid any material or procedural measure likely to deprive of useful effects the mechanisms introduced by the 89/665/EEC Directive (appeal procedure).

4.3. Transeuropean Transport Networks ²⁴

In its Communication on public-private partnerships in the Transeuropean transport projects (COM (97)453 final of 10 September 1997), the Commission indicated its intention to promote this form of partnership, in particular the implementation phase of certain priority projects.

The Treaty had already envisaged the possibility of financial contributions for projects of Community interest, defined in the Orientations on the Transeuropean Transport Network. These contributions can take the form of grants to feasibility studies, of loan guarantees and interest rebates. This indicates clearly that alternative methods to the conventional financing of transport infrastructure are from now on considered. The Regulation on the financing of the Transeuropean Transport Network for the 1995-99 period took into account the PPP procedure (during the year 1998, 129 million Euros were allocated to PPPs of the transport sector). The second privileged instrument as regards financing of the Transeuropean Transport Networks is the Cohesion Fund which can also subsidise PPP schemes.

For the 2000-2006 programming period, the Agenda 2000 contains provisions for widened possibilities of financial support to PPP. In this context, the creation of venture capital funds should be supported. Provisions relating to a widened use of PPP schemes were also introduced into the regulations on the Cohesion Fund and Structural Funds.

The Commission is in favour of the creation of independent organisations for the development and implementation of PPP projects. Beyond the access to private capital, it also sees there an element of effectiveness. In this context not only the possibilities of the ERDF and of the Cohesion Fund should be taken into account, but also those of the European Investment Bank (EIB) and of the European Investment Fund (EIF).

The EIB systematically supports the development of PPP in the field of the Transeuropean Transport Network by attributing long-term credits. The EIF, the main task of which consists in supporting SMEs, also has the possibility of allocating guarantees to loans and venture capital within the framework of the TEN.

PPP projects within the framework of the TEN supported by the European Union's authorities, are for instance:

- in Portugal:
 - the new bridge "Vasco de Gama" on the Tagus;
 - various road and railway projects;
- in Greece:
 - the Spata airport (Athens);
 - the bridge on the Corinth channel;
 - the Essi motorway.

4.4. Other PPP sectors supported by the authorities of the European Union

Beyond the TEN, the authorities of the European Union support PPP projects in various fields, like for instance :

- infrastructure projects in the energy field. In this field, the power stations Pego and Tapada in Portugal, implemented on a PPP structure, were supported by the structural funds. The realisation of the project of power station "LUL Power PFI" in London was supported by the EIB;
- the purchase of rolling stock for public transport. The EIB and the EIF allocated loans and loan guarantees to the "Porterbrook Stock Lease/Securisation" in the UK;
- the development of the information society in schools. The European Commission adopted an action plan "Learning in the information society" which aims at supporting PPP concluded between private companies from the sector of information technologies and public educational institutions. In this context a European non profit association (European Education Partnership – EEP) was created whose members are private companies, educational establishments as well as administrations. The EEP adopted as an objective to accelerate the process of introducing modern information technologies into training and educational centres, and to this end, to support the creation of PPP in this field.

It should also be noted in this context, that the EIF, the main task of which is to allocate guarantees to venture capital for the development of SMEs, has itself the structure of a PPP. The following partners are associated to the capital of the EIF: the European Commission for 30%, the EIB for 40% and 76 other banks for a total of 30%.

5. PPP experiments in the Central and East European Countries (CEEC)

PPP experiments in the CEEC are not, by far, as widespread as in Western Europe. This is due to the still low attractiveness for the capital markets of the transition economies, with insufficient purchasing power of potential infrastructure and services users and with a still limited experience of administrations at national, regional and local levels as regards these new development methods. Nevertheless, in recent years, PPP projects were developed in various fields of the spatial development policy in several CEEC.

5.1. Construction of motorways

5.1.1. PPP for the construction of motorways in Hungary²⁵

At the beginning of the Nineties, the Hungarian government considered that public financial resources of the State would not be sufficient to develop a modern motorway network. It decided therefore to let the motorways be built under concession by the private sector.

✓ Motorways M1/M15

The motorways connect the three capitals Budapest, Vienna, and Bratislava. The length of the sections under concession is of 43 km on M1 (between Győr and the Austrian border) and of 14 km on M15 (between Mosonmagyaróvár and the Slovak border). The concessions were contracted in 1993. The two motorway sections were opened to traffic respectively into 1996 (M1) and 1998 (M15).

The financing was ensured up to 20% by the concession's holder and up to 80% through loans. It had been agreed that the refinancing of investments would be carried out up to 100% by income from tolls. The maximum risk was therefore on the side of the private partner, whereas the State took a share of risk as weak as possible. The concession contract had provided that initial tolls would be fixed for various categories of vehicles and would be indexed on consumer prices and/or on the parity between the loan currencies (Mark, dollar) and the Hungarian currency. Tariff reductions were introduced for local traffic and subscribers (individual motorists and transport companies).

However, the level of motorway traffic remained very much below the level of the forecasts (approximately 55%) and the motorways could attract only approximately 50% of the total traffic of the corridors concerned. The level of tolls could not be increased as much as it was hoped and the income reached only hardly 50% of the awaited level. Moreover, little time after the opening of the motorways to traffic, a lawsuit was brought against the concession's holder for reason of too high toll. The motorists were not prepared to understand and accept the new financing techniques (PPP/Build, Operate, Transfer) of motorway development.

✓ Motorway M5 (Budapest-Yugoslav border)

The government launched in 1992 an international invitation to tender for the modernisation and the continuation of the motorway M5. The concession contract was signed in 1994. The structure of financing (20% of stockholders' equity and 80% of loans) was comparable with that of M1/M15. The costs of construction accounted for 64%, the administrative costs of the concession's holder for 13% and the interests of loans for 19% of the total budget.

By difference with the case of M1, the State had to take a part of the risk. It granted to the concession's holder a guarantee of subsidy in the event of a too weak traffic volume valid for a six year period after the opening of the motorway. Little time after the opening, protests against tolls were expressed by the regional population and the motorists. Negotiations took place and led to significant tariff reductions for certain categories of users. The losses of corresponding receipts were compensated by State grants attributed to the concession's holder.

✓ Motorways M3/M30 (Budapest-Miskolc-Ukrainian border)

An invitation to tender relating to planning, construction and operation of the motorway, based on a concession, was launched by the government. During the autumn 1995, the government declared that this invitation to tender was unfruitful. It then decided to let a public company build the motorway. The principle of toll was maintained. Regardless of the fact that construction and operation were in the hands of the public sector, protest actions against tolls were also organised.

✓ Motorways M7/M70 (Budapest towards Zagreb and Ljubljana)

The concession procedure engaged by the government was stopped by fear that the financial capacity of the potential investors was not sufficient with regard to the investment plan considered. The existing motorway sections are modernised by the State by means of a conventional form of public financing. These investments have then to be taken into account as a contribution of the State to a new concession relating to the continuation of the construction of the motorway. Moreover, the State is prepared to attribute further subsidies to the concession contract, in order to make the project acceptable for private investors.

✓ Bridge on the Danube and related expressway

A concession contract was concluded in 1993 for the construction of a new bridge on the Danube and of a related expressway. Traffic forecasts indicated that the State should be heavily involved in the financing of the project in order to make the project interesting for private partners. For this reason, the concession contract was suspended. The State must now find a solution to carry out the project, the technical planning of which is finished. Two alternative solutions are elaborated: one with a conventional financing of the State and the other with a PPP.

✓ Recent developments

The new government learned the lessons from the PPP experiments. It approved in 1999 a programme of 2.7 billion dollars to complete the national motorway network during the ten years to come. The program which concerns the construction of 600 km of motorways, must be implemented by the government itself, mainly on the basis of loans. It has been envisaged to create a national motorways company for the co-ordination and the administration of the program.

5.1.2. Motorways in the Czech Republic: refusal of PPP ²⁶

In 1993, the Czech government adopted a long-term program for the construction of motorways and expressways. At that time, 389 km of motorways and 291 km of expressways existed already. The program provided that the overall length of the network should reach 2160 km by 2010.

The motorway D5 German border-Pilsen-Prague was finished in 1997 and was opened to traffic. At the beginning of the Nineties, the possibility was envisaged of a motorway financed by the private sector. Calculations emphasised however that profitability would be assured only on the basis of very high tolls. This would have led to a refusal from the part of potential motorists.

Since at that time (1993) the financial resources of the State were sufficient, the government decided to finance himself the construction of the motorway towards the German border. The same solution was selected for other projects of motorways and expressways. An additional argument in favour of this solution was the availability in the Czech Republic, of public works companies with sufficient know-how to build motorways of international standard.

Since 1996, in complement of public finance, loans were also contracted from international financial institutions. The State granted a guarantee to these loans.

Tolls were however introduced for the motorways and expressways. The level of tolls is however much lower than in the countries of Western Europe. Their acceptability has been, because of that, more successful than in Hungary.

Other motorway projects (D8 Prague-Dresden; construction of the Prague-Mirosovice section of D1, construction of the expressway R35) are implemented with the same technique of financing.

5.1.3. PPP for motorways in Poland ²⁷

The Polish motorway program envisages the construction of 2 600 km of new motorways over a twenty year period. The implementation of the program implies investments of an amount of 10 to 15 billion dollars, partly in the form of traditional financing (budget of the State and loans), but mainly (2300 km) in the form of PPP (especially in the form of Build, Operate, Transfer).

The implementation of the programme has already started. At the beginning of the year 1999, invitations to tender for five concessions were launched for various sections (A1 Gdansk-Torun 152 km; A2 Oewiecko-Poznan, Poznan-Konin, Konin-Strykow 362 km in total; A4 Katowice-Krakow 61 km). In parallel, other sections of A1 and A2 were built on the basis of conventional financing (State, Phare, EIB, EBRD).

The National Agency for the Construction and the Operation of Motorways (ABiEA) has the responsibility for the implementation of the motorway program. The existing motorway network amounts to 247 km.

In the framework of a PPP/BOT procedure, the government concludes concession contracts with private partners, with a duration of 20 to 30 years. The private partner has the task to prepare the motorway plans, to organise the financing, to carry out construction and to ensure maintenance.

These PPP projects comprise various factors of risk:

- the acceptance by motorists to pay tolls;
- the difference between the loans contracted in hard currencies and refunding (tolls) realised in Polish currency;
- the insecurity which prevails in the field of interpretation of the tax legislation.

For all these reasons, the private partners requested the Polish government to take a part of the risk, in particular during the period which follows immediately the construction of the motorway, when traffic is still modest. The Polish government examined various alternatives in this field (inter alia, the "cross-subsidy method", the direct participation of the State in motorway construction as well as the creation of a guarantee scheme). The ministry of Finance pays great importance to the motorway program and concluded for this reason an agreement with the World Bank relating to a kind of insurance of the political risk. AbiEA also took a part of the risk.

5.1.4. Attempts of PPP projects in Russia ²⁸

The Russian administration of road construction prepared a project of law for the attribution of concessions in the motorway sector, in particular in the region of Moscow. Because of existing difficulties to attract private capital towards the construction of new motorways, it is planned to attribute concessions for the maintenance and operation of existing roads and motorways. Tolls should be perceived.

5.2. Other fields of infrastructure

5.2.1. PPP for the construction of a new airport terminal in Warsaw ²⁹

At the end of the Eighties, the Polish ministry of Transport decided to increase the capacity of the airport of Warsaw through the construction of a passenger terminal (3,5 / 4,5 million passengers per year), of a freight terminal (60 000 T of freight per year) as well as of catering facilities (15000 meals per day).

An international invitation to tender was organised which concerned, beside the technical aspects, also the method of financing. A consortium comprising a building company and a German bank became concession's holder. The total cost of the project was covered in the following way:

- 20% by "Polish Airport" (owner and operator of the airport) and through contributions of "LOT Polish Airlines" (principal user of the airport);
- 80% by long-term loans of the German bank, having to be refunded for 2/3 by "Polish Airport" (passenger terminal) and for 1/3 by LOT (freight terminal and catering facility).

The loan of the bank, amounting to 221.7 million marks was concluded in 1990. Loans guarantees were granted by the Polish government and by another public body. The refunding of the loan began in 1993 and finishes at the end of 2000. It is consolidated by the revenue that "Polish Airport" perceives from Western airline companies for air traffic control. The new terminals and the catering facility were opened in 1992.

5.2.2. PPP in the field of water supply, sewerage and sewage treatment in the CEEC ³⁰

At the beginning of the transition period, a considerable need for modernisation of the systems of water supply, sewerage and sewage treatment existed in most CEEC. In many cities and regions of the CEEC, companies were set up in the form of PPP for water supply and sewage treatment, in which large West European companies are shareholders. These are for instance Lyonnaise des Eaux, Hyder, Anglian Water, Vivendi, RWE, SAUR etc.

Cities and regions where water supply, sewerage and sewage treatment are ensured by companies in the form of PPP are for instance:

- in the Czech Republic: Brno, Ostrava, Karlsbad, North Bohemia, South Bohemia;
- in Hungary: Kaposvar, Szeged, Pecs, Budapest;
- in Poland: Gdansk, Poznan;
- in Bulgaria: Sofia.

The administrative structures of these companies are very diverse. In most cases, they are nevertheless managed directly by the West European companies:

- in Hungary: control by the respective West European companies is envisaged explicitly in the concession contract in two cases (Pecs and Budapest), although these companies do not have the majority of shares in the company's capital. The exception is Kaposvar, where the West European company does not exert any management function;
- in the Czech Republic, the control of the board of directors by the West European company is obvious in the case of Pilsen and Karlovy Vary. In Brno, Ostrava and in North Bohemia, the distribution of the seats within the board of directors is equal. The only case where a West European company is in minority within the board of directors is that of South Bohemia.

In several cases, it is envisaged in the concession contract that the public sector (generally the municipality) must compensate for possible trading losses of the company constituted in the form of a PPP. This is in particular the case with Pilsen, Pecs and Szeged.

The case of Sofia currently illustrates the volume of investments to be carried out. The city of Sofia concluded in 1999 a concession for a fifteen years period (with the possibility of a ten years additional prolongation) in the field of water supply, sewerage and sewage treatment. Existing utilities were obsolete and more than half of the drains had to be replaced. The investment plan amounts to more than 150 million dollars. The concession relates to 49% of shares in the company's capital of the body responsible for hydraulic networks in Sofia. 49%.44 of shares remained in the hands of the municipality of Sofia and 2% were acquired by EBRD, which had an advisory function in the transaction.

5.2.3. PPP in other sectors

In several cases, PPP projects are implemented in the field of waste collection and processing. In Bulgaria, for instance, the town of Ruse concluded a concession for a duration of fifteen years with a German company in the field of waste processing. The volume of investments amounts to 15 million dollars. In the same way, the town of Dobrich launched a concession for a combined program of waste treatment/ heat and energy production. In Estonia, the city of Tallinn concluded a concession in 1999 for 65% of the capital's shares of the municipal company responsible for waste collection and processing.

Examples of PPP projects in the railway sector are not frequent in the CEEC. In this context, it is worthwhile quoting the adoption of a law by the Estonian Parliament on 23 February 1999 concerning the privatisation of the railway company. In the field of passenger transport, the concession's holder has to invest an amount of 8 million dollars. In the field of freight transport, the government gave its agreement to a 50 year concession (with a possibility of extending it by 25 years). Given the fact that the transport volume of freight has become three times bigger from 1992 to 1998, the interest of the private sector in this concession was considerable.

Some PPP examples in the field of urban public transport can also be found. In this respect, the public transportation company of Budapest (BKV) concluded a concession with private partners for a five year duration for the operation of various bus lines.

In the field of urban development, projects are carried out by private operators who are bound by contract to provide facilities and services (for instance local transport infrastructure, water supply and sewage treatment) to the local authorities. Specific PPP projects are also being implemented. In this respect, a large German foundation is associated to a partnership program "Cities of changes", which pursues the goal of building a network of interested cities in the CEEC in order to implement exchanges of experience in the field of city planning within the market economy, of new social challenges, of housing for the disabled groups, of youth unemployment etc.

6. Procedural proposals for the implementation of PPP with a particular attention to the CEEC³¹

6.1. Lessons from experiments carried out in the CEEC, in particular in the field of motorway construction

In short, available experiments as regards motorway construction in the CEEC show that financing based on a PPP currently requires considerable financial State participation, in particular during the first years of project's development and implementation, when the loan refunding pressure is highest and income lowest.

Private financing of motorway construction is confronted in Central and Eastern Europe with many obstacles: low degree of confidence from the part of foreign investors, weakness of national capital markets, slow progression of incomes, traditional management methods of

public institutions as well as modest purchasing power of motorway users. Under “normal” market conditions, the risk relating to possible changes in policy and to insecurity in legislation should be dealt with by the public sector, whereas the risk relating to the traffic volume should be dealt with by the private sector. Under the real conditions prevailing in the region, the concession’s holders attempt to let the government take a significant share of the commercial risk.

The recent Hungarian experiments illustrate best the existing problems. They clearly show that motorway users were not sufficiently prepared to the financial consequences of an increase in the quality of service. Protests originated in the government’s behaviour, which largely gave up its rights of control in order to accelerate the motorway program. This was criticised by the population.

The recent Hungarian experiments also showed that the macro-economic context plays a considerable role in the success of PPP. In this field, there is still a significant gap between Western and Eastern Europe. In Hungary, financial State participation in infrastructure projects in recent years became necessary to ensure their acceptability by the population.

In the case of very high State financial participation in the form of direct investments or of granting guarantees to compensate for risk, the question can be put why the government does not build and operate himself the motorway. In this way, the profit would be saved which, if not, is allocated to the concession’s holder. The examples of the Czech Republic and of the M3 in Hungary show that this question is justified. This also led to the revision of the motorway policy in Hungary. Assuming a regular increase of traffic, resulting from the general economic evolution and from increasing purchasing power of the motorway users, the financing of the motorways through PPP can prove in the medium and long range to be a viable solution. The financial participation of the government would have in consequence capacity to be reduced in time.

Recent experiments in the CEEC also show that beside motorway construction, PPP are confronted with less problems in sectors such as water supply and sewerage systems, waste collection and processing, urban public transport, etc. This suggests the impression that PPP procedures should be able to develop in a selective way in the CEEC during the years to come, if certain prerequisites are ensured, which will be examined below.

6.2. Recommendations for an effective design and organisation of PPP procedures, with a particular attention to the CEEC

A successful implementation of PPP requires a certain number of prerequisites from the part of the administrations of various levels, which will be examined hereafter.

6.2.1. Creation of a clear and efficient legal framework

The aim and objective of a national legislation relating to PPPs consist in the attribution of new powers to the various administrative levels, to ensure that these new forms of partnership with the private sector, which go beyond the traditional contracting of work, can develop.

Legislation on PPP can take the form of a general and multi-sector law (“Omnibus Bill”) or that of a sectoral law (for road construction, town planning, municipal networks, etc). Specific laws for individual projects should in general be avoided. Legislation on PPP should in particular create a clear legal situation in relation to the conditions of property, to the taxation framework and to the treatment of potential conflicts of interests. It should also establish an acceptable operational framework for the acceptance of risk-related responsibility by the public sector.

The existence of a clear legal framework is a significant prerequisite for motivating the private sector in entering PPP, because it contributes to the reduction of the political risk. This is of particular importance in the countries of Central and Eastern Europe, because the private sector still is rather hesitating there as regards PPP.

6.2.2. Careful preparation

The preparation phase of PPP projects plays a key role. The success of a project generally depends on a careful and thorough preparation. During the preparation, the following aspects play a significant role.

a) Adaptation of the organisational structure of the project to local conditions

There is a great diversity of PPP models. PPP can take various forms from the simple commercial operation to complete privatisation. A significant attention should be paid to the specific adaptation of the PPP concept to the territorial and temporal conditions. Many problems faced by PPP originate in the fact that the partners copied solutions worked out for other PPP and therefore did not take sufficiently into account the particular context.

b) Complementarity and compatibility of objectives

First of all, it is necessary to clarify the aims of the respective public and private partners and to investigate in how far these objectives are complementary and compatible. This requires a detailed debate between the public sector and the private sector on the respective intentions related to the project, for instance between the various potential private partners during the phase of invitation to tender. The implication of the private partners at an early stage of the preparation phase of the project contributes considerably to its success.

c) Selection of the private partners by the public sector

The selection of the private partners must in general proceed within the framework of a procedure of invitation to tender. Beyond the formal aspects, qualitative criteria must also be taken into account.

What is decisive for the economic success of a PPP, are the strong points that the private partners bring into the co-operation model and the extent to which these strong points are necessary in the sphere of activity considered. Possibilities have therefore be found to lead the potential private partners to reveal their qualities. Voluntary options mechanisms can contribute to it. In this case, various alternatives are offered to the private partner, for which his margin of profit is related to the degree of achievement of the objectives and criteria. On this basis, the level of his potential commitment and productivity can be measured.

Moreover, the public sector must be informed of the potentialities of opportunist behaviour when it plans to co-operate with a private partner. Suitable criteria should be elaborated, in particular in the determination of the terms of invitation to tender. In this respect, the public sector should pay attention to the problems likely to result from asymmetrical information.

d) Organisation of democratic control and creation of acceptance by the population

The introduction of PPP requires a political debate in particular to ensure that the political actors and the citizens accept these methods, when users contributions are charged. From the municipal policy point of view, the most significant factor of success of PPP models is their economic aspect, mainly reflected in the level of users' contributions. Moreover, PPP models must be able to show in a plausible way in which fields (for instance economic or technical) they contribute to increasing the effectiveness and to improving quality in the achievement of the tasks.

The possible exploitation of third parties and the problems of lack of democratic control should be avoided by means of an adapted organisation of the “collective consumption unit”. For this purpose, dialogue mechanisms should be built so as to ensure a great proximity to the consumers and citizens and, in so doing, the possibility of expression of their preferences.

e) Creation of specific instruments aiming at facilitating the preparation of PPP projects

The Western examples show that various instruments can facilitate the PPP projects. These are in particular:

- instruments for the financial evaluation of PPP. These instruments, such the “Public Sector Comparator” (PSC) in the United Kingdom, “Publiek Private Comparator” (PPC) in the Netherlands or the cost-benefit analyses in France make it possible to determine if a solution in the form of a PPP has financial advantages compared to conventional solutions.
- creation of an information and co-ordination office on the PPP This makes possible the comparison with projects of PPP already carried out as well as the preparation of recommendations and concrete directives for the success of the PPP.

6.2.3. Efficient implementation of PPP projects

a) Careful structuring of the PPP contract

PPP contracts must in particular define the characteristics of the project, the respective responsibilities and the treatment of potential conflicts of interests. The possibility of an opportunist behaviour from the part of the private partners should be anticipated and counteracted by specific provisions in the contract. This can for instance be regulated by provisions constraining the private partner to deposit in advance a guarantee or by incentive measures, like for instance a participation in the profit agreed between the public and private partners. Specific contractual provisions can also be envisaged for the event of opportunist behaviour from the part of the private partners.

PPP contracts should relate to all most important aspects of the PPP project but should also allow a certain degree of flexibility, innovation and profitability. The main characteristics of the tasks to be fulfilled, but not all the technical details, should be fixed by contract.

b) Development of relations of confidence between the partners

Strong relations of confidence between the partners are an essential prerequisite for the success of PPP. The public sector must behave as a reliable partner with regard to the private partners, because these are facing substantial financial risks originating in the long range contractual binding effects and in specific provisions of the contract.

c) Acquisition of competence and modernisation of the public sector within the context of PPP

It is essential, within the framework of PPP, that the public sector gains competence. It must learn how to affirm itself through a skilful control of negotiations in imperfect markets. It must in particular gain economic competences in order to identify which variables have a role to play and to be able to estimate the consequences of contractual provisions. The public partners must be able to gain knowledge in the formulation, control and implementation of the contracts and recognise the fact that this generates costs (transaction costs). The acquisition of competences is equivalent to a cultural change. The larger the complementarity between the public sector and the private sector, the more efficient will be the modernisation of the public sector.

d) Effective fulfilment of the leadership function by the public sector

PPP models must be designed in a way enabling the fundamental leadership in the achievement of tasks to be preserved, which is requested both by the provisions of public law and by reasons of public acceptance. One should not come to the point where the public authority becomes fiscally bloodless and has to rely almost exclusively on the private sector. The public sector must exert its leadership function with regard to PPP in order to affirm the development of infrastructure and public services as a component of the national, regional or local policy.

e) Use of public financial contributions as a lever for mobilising private financing

PPP projects financed exclusively by the private sector are relatively rare. The majority require part of the financing coming 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 and services concerned. This explains why PPP projects in the countries of Central and Eastern Europe require a relatively high share of public financing. Public financing within the framework of PPP, in particular when it is modest, has a particular function to fulfill. It should be used as a lever for the mobilisation of more significant private resources. This leverage function can be exerted in several manners: for instance by means of the attribution of public guarantees to the loans required by the investments or through the financing by the public sector of the costs of feasibility studies notably.

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The study serves the purpose of underpinning the “Guiding principles for sustainable spatial development of the European continent” adopted at the 12th session of the European Conference of ministers responsible for Regional Planning of the Council of Europe Member States (CEMAT), held in Hanover in September 2000. They aim to identify regional planning measures which may enable the population in all the member states of the Council of Europe to achieve a better standard of living. This is an essential prerequisite for stabilizing democratic structures in the towns, cities and regions.

The countries of Central and Eastern Europe, which became members of the Council of Europe, exhibit substantial infrastructure deficits which cannot be overcome with public funds. The study shows that Public Private Partnerships (PPP) can be a suitable tool for carrying out spatial development measures. Public Private Partnerships are not a substitute for an efficient administration at local and regional level.