

*Local and Regional Democracy*

**Good Practice in the Relationship  
between Local/Regional Authorities  
and the Private Sector  
("Public-Private Partnerships (PPP)")**

**GOOD PRACTICE IN THE RELATIONSHIP  
BETWEEN LOCAL/REGIONAL AUTHORITIES AND THE PRIVATE SECTOR  
("PUBLIC-PRIVATE PARTNERSHIPS (PPP)")**

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The contributions provided by 19 member states during the preceeding survey were compiled by the Secretariat in close cooperation with the Rapporteur on PPP, Mr Marc Vanolst, Committee member from Luxembourg.

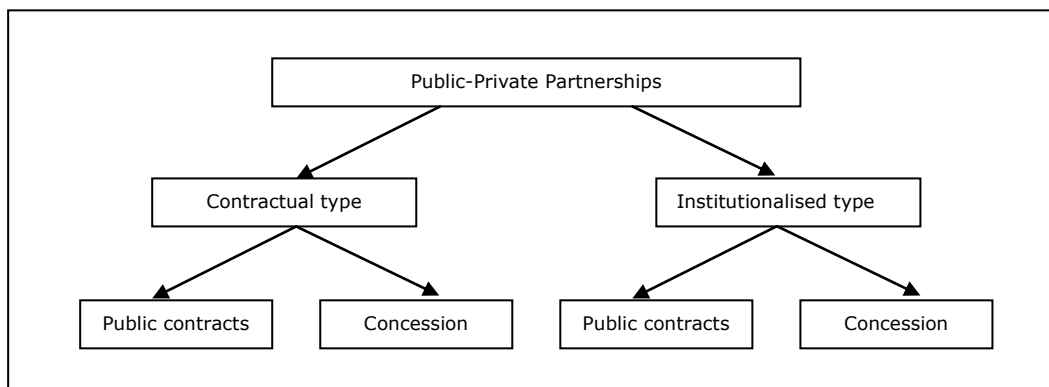
## I. Definition and legislative framework

*Recalling the definition proposed in the context of this survey*

*In legal literature, the definition of the "Public-Private Partnership" covers all **forms of co-operation** between public authorities and the private sector (enterprise and non-profit). In other words, we can speak of public-private partnership whenever private and public partners co-operate in producing a good or service<sup>1</sup>.*

*There are two types of PPP: contractual partnerships and institutionalised partnerships, in the context of which mixed institutions are set up including public and private capital.*

*Public-private partnerships cover two types of interaction between the public and the private spheres: **public contracts** and **concessions**. The main difference between the two can be found in the financial relationship between the public authority, the private partner and the citizens as users of an infrastructure or a service. Under a public contract, the public authority pays the private partner, whereas in the context of a concession, users pay their contributions directly to the private company (fees, entrance tickets, transport tickets etc.).*



*Partnerships can take more traditional or more innovative forms. Indeed, it is the setting up of new forms of partnership that gives rise to the present renewed interest in the subject. Contrary to more traditional forms, new partnerships allow for negotiations, notably concerning the division of roles and risks between partners, as well as on the questions of the property of the goods involved and of the length of partnership.*

*Different forms and types of interaction can be found in constellations that vary from one partnership to another and from one country to the other. The Public Finance Initiative (PFI) in the United Kingdom is an example of one type of partnership. Under this arrangement, which is also in use in other countries, the private sector provides the design, construction, financing and operation of a facility based on the specification of results enunciated by the public sphere.*

<sup>1</sup> The present survey is based on a relatively wide definition of "public-private partnerships", meant to comprise all national definitions which might sometimes be more limited. The European Commission's view emanates from the following statement: "The term public-private partnership ("PPP")" is not defined at Community level. In general, the term refers to forms of co-operation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service." (Green paper on "PPP" of the Commission, Brussels 30/04/2004, COM(2004) 327 final)

*Public-private partnerships can be set up at all administrative levels. The present survey focuses on partnerships between local authorities and private actors. The regional level is not taken into consideration, unless it has the role of a regulatory authority as central authorities (otherwise) have (e.g. in federal states).*

#### *Definitions of PPP used at national level*

In general, national replies on the definition of Public-Private Partnership (PPP) seem to agree to a common definition as outlined above, while still retaining national traits and thereby painting a varied picture of PPP in Europe. Over half of the responding member states would, by and large, agree to the definition proposed and notably to the distinctions between contractual and institutional partnerships on the one hand, and between different modes of financing through public budgets (public contracts) or through the beneficiaries and the fees paid by them (concessions), on the other hand.

A few countries further comment on the definition proposed, for example, by pointing out the fact that co-operation can also be set up outside the legislative framework for public contracts, which implies an obligation to call for public tenders (Belgium Flanders).

Several countries indicate that there is no generally approved definition of PPP, but that national legislation nevertheless provides a basis for a common understanding of the term (Bulgaria, Serbia, Slovenia). In some cases, national legislation seems to directly transpose European Union Directives concerning public contracts and concessions, sometimes leading to internal contradictions: Luxembourg, for example, indicates that national legislation does not recognise concessions for public services, which nevertheless have been successfully implemented in practice. Municipalities themselves would have to make sure they respect European rules in this field.

Denmark indicates that the term of PPP is generally used in a narrower sense than in the broad definition proposed. The term of "public-private co-operation" would be the one used for all different kinds of co-operation existing between the public and the private sectors. The term of "public-private partnership" would be used for the particular type of partnership that is referred to as the PFI model here above and which is also called the BOOT model (BOOT=build, own, operate, transfer ; see also other models below under "types of PPP"). This model is also referred to in the international literature as the infrastructure approach (infrastructure covering both social infrastructure, such as schools, and 'hard' infrastructure such as roads). In Denmark PPP is seen as a method of combining finance, design, construction, maintenance and operation of a building or road in the same tender. Typically, the private party would build, own and operate the building or road for a period of 25-30 years.

Sweden mentions that there is no obligation in PPP arrangements for users to pay their contributions directly to the private company. The company takes a financial risk, but does not have to be involved in the practical arrangements. The remuneration could also be paid by the contracting authority, provided that it is proportionate to the degree at which the service is being used ("shadow toll").

This, in fact, illustrates one of the basic criteria of distinction between public contracts and concessions, as defined above.

Switzerland indicates, following a comprehensive national study on the matter, that PPP does not designate all forms of collaboration between public and private sectors, but that forms of collaboration could vary beyond the proposed definition.

Moldova's definition of PPP emphasises the duration of the partnership (long term contract in general) as well as its aim (activities of public interest) and respective capacities of each partner (in order to distribute resources, risks and benefits).

It can therefore be concluded that the definitions proposed can certainly serve as a common basis in order to facilitate an international exchange of ideas on the subject matter, but that national specificities have to be kept in mind when comparing situations at a European level. While little objection is made to the above definition, specific national understandings of PPP can sometimes be wider or narrower than the concepts proposed above. Nonetheless, all PPP contracts, regardless of national definitions, can be traced back to the distinction between public contracts and concessions, which is the basic notion in the EU definition presented above.

### *Legislation on PPP*

As far as legislation is concerned, the European picture obtained from the present survey is relatively homogenous. Most member states indicate that there is no specific legislation providing specific rules for PPP, but that rules are provided under current competition, public procurement legislation or accounting rules (all countries responding to the questionnaire). Additionally the legislation regulating the activities of local authorities may also set restrictions for municipalities (or intermunicipal structures) in their collaboration with private partners (Luxembourg, Sweden, United Kingdom). Two countries (Estonia and the United Kingdom) make explicit reference to International Financial Reporting Standards (IFRS) and the International Financial Reporting Interpretations Committee (IFRIC) as a main source of reference for general accounting rules which are also applicable to PPP contracts.

Only one country (Slovenia) has set up specific PPP legislation, although there have also been discussions on the drafting of a new PPP law in Latvia, while Estonia plans to review the need for such legislation in the near future. Additionally Romania has had experience of legislation in this field. In their response, the country points out that Romania used to have a specific law governing PPP contracts, but that this law has been repealed, as it was found to constitute a significant barrier to successful collaboration between the public and the private sector. In Belgium (Wallonia) a proposal for a regional decree was submitted to the Parliament for approval, aiming to define PPP in a general way, and to create a special Commission to guide and inform the administration. The content of such a decree, which must also be discussed at the federal level, will not, however, constitute a derogatory clause with regard to federal regulation on government contracts (applicable to the great majority of PPP of the contractual type). Any specific regulation on PPP would hence require legal modifications at the federal level in Belgium.

The United Kingdom's standardisation of PFI contracts may to some extent represent an example of specific PPP regulation. Although PPP arrangements are commonly governed by general law, they are also supported by specific accounting, financial, contractual and administrative requirements, including those set out in the Treasury's (HMT) Standardisation of PFI contracts. There is no specific law governing local authorities and their ability to enter into PPP contracts, but the Local Government (Contracts) Act of 1997 does clarify the powers of local authorities to enter into contracts, including the arrangements necessary for PFI and other PPP contracts, in contrast to many other member states where this is left to the discretion of the local authorities themselves.

Additionally, some countries have regulations concerning PPP under the current legislation on public property, investment or public budgets (Lithuania, Portugal). Only two countries (Bulgaria, Italy) clearly indicate that, depending on the type of PPP, specific legal provisions may apply, such as legislation on energy, regional development,

cultural heritage, waste collection, water supply, etc. In spite of only two countries expressly mentioning this aspect, one could, however, imagine that specific legislation would contain similar provisions on public-private co-operation in some of the other countries as well.

In this context, Finland stresses the importance of two general issues that would in all probability also be valid for most of the other countries: municipalities must have the institutional competency to deal with PPP activities, and the basis of contracts with private partners must also be in line with current business regulations.

The need to develop current legislation and to establish a new and clearer legal framework on PPP is expressly mentioned by several countries (Latvia, Lithuania, Serbia, Switzerland). Legal review is a process which is currently underway in Bulgaria, Lithuania, Serbia (in order to meet EU accession criteria), and is strongly supported by the European Union. Better harmonising with international and EU standards is directly referred to as the main reason for engaging in this type of legal review (Serbia).

The legal aspects of PPP therefore reflect an extremely complex picture, with provisions for PPP to be found in various types of legislation, from a more general level to a more specific one. Only in very few cases have specific legislation on PPP been established. This, however, remains a work in progress in many countries, where a comprehensive approach is being developed.

This results in a situation where persons or institutions wanting to engage in PPP projects, have to consider various legal sources in order to ensure that projects are implemented in a lawful way.

#### *Types of PPP practised in member states*

As well as there being a certain Europe-wide consensus on the definition and a shared common understanding of PPP, there are also many similarities to be found in types of PPP implemented in the different countries. By agreeing to the general definition of PPP as proposed above, a majority of countries would also subscribe to the distinction of types of PPP, including "contractual" and "institutional" partnerships again split up into public contracts and concessions.

Different emphasis on these various types of partnerships is, however, visible in practise.

- In Belgium (Brussels Capital) for example, only PPP of the contractual type (and here mainly of the public contracts type) are used. Greece also indicates that PPP of the contractual type are the most commonly used form and that prior to recent legislation (of 2005), PPP of the institutionalised type had to be ratified by the national Parliament. Similarly, in Estonia, a few projects using PPP have been implemented at the local level, although none have been implemented at the national level. These contracts are all of the contractual type and both forms – public contracts and concessions – have been used.
- While agreeing to the general definition, Finland specifies additional types of public contracts. This is made in accordance with the role assigned to each partner in the project development process (BLT = build-lease-transfer; BOT = build-operate-transfer; BTO = build-transfer-operate; DBFO = design-build-finance-operate; IPPP). Ireland uses a quite similar distinction where the most common forms (DBO=design-build-operate; DBOF=design-build-operate-finance) are assigned to the fields where they are most commonly used (water/waste-water services and waste management respectively) complemented by an additional form of PPP (development PPP) used for the regeneration of social housing and the development of greenfield sites owned by the local authorities. Similar distinctions can also be found in Denmark, where PPP projects follow the particular definition presented above, i.e. the narrower "infrastructure approach" and so-called BOOT model (build, own, operate, transfer). To date, all

PPP projects in Denmark have followed this model.

- Denmark also has a similar model called *samlet udbud* in Danish, where experiments are conducted with public ownership. This particular model may also be referred to as a DBO (design, build, operate) model. It is typically a 15 year contract on the design, building and operation of a building. The project is publicly financed and publicly owned. The experiment with this model is, however, thus far very limited.
- A wide range of PPP types can also be found in Moldova according to the following main "forms": service rendering/works fulfillment contract, fiduciary administration contract, renting/lease contract, concession contract, and civil partnership contract are the main categories. Similarly to other countries, and depending on the level of the private partner's involvement, the following "schemes" of implementation of PPP contracts can be identified in Moldova: DBO (design-build-operate), BOR (build-operate-renew), BOT (build-operate-transfer), BTO (build-transfer-operate), LDO (lease-develop-operate) and ROT (rehabilitate-operate-transfer).
- As mentioned in the working definition established at the beginning of this report, the Public Finance Initiative (PFI) in the United Kingdom is an example of a type of partnership under which the private sector provides the design, construction, financing and operation of a facility, based on the specification of results enunciated by the public sphere.
- The most dissimilar types of partnerships are used in Portugal, where the following forms of contractual partnerships are known: concession contracts (for public works and public services), continuous supply contracts, services provision contracts, management contracts and collaboration contracts (applicable when using equipment or infrastructure not held by the public partner).
- A certain number of member states would add another level of differentiation to the types of PPP by listing the different fields where PPP arrangements are used. These include area development, construction and maintenance of buildings, drinking water supply, sewage infrastructure, etc.; fields that seem relatively similar between different countries.
- Italy distinguishes partnerships according to their use in practice: contractual partnerships are mainly used for the construction of infrastructures while institutional partnerships are commonly used at local level, notably for the management of public services.
- Switzerland makes a unique distinction of PPP where a "PPP of acquisition" and a "PPP of execution" are known and notably used in a legal context.

In making these distinctions, aspects of PPP are highlighted that may be representative of other countries and which may be worth examining in more depth.

Generally, it seems that the definition and criteria of distinction put forward for PPP do very much depend on the context in which the subject is debated.

#### *General view of "good practice" of PPP*

At a very general level, it is stressed that the ambition of PPP is to combine the best of the public and private sectors with an emphasis on value for money and delivering quality public services (Ireland, Latvia and the United Kingdom).

When asked about "good practice", all responding countries rapidly come up with examples of national (motorways) or local projects (schools, leisure equipment etc.) which have been implemented under PPP contracts (also see relevant chapters below). There are no legislative or regulative measures being considered as particularly good practice.



Few countries consider the question of which type of PPP could be considered as “good” or “better” practice than others. Belgium (Wallonia) tries to draw conclusions, and suggests the that a contractual type PPP seems to correspond to a definition of good public governance, as this type of arrangement allows control to remain fully with the public institution. Similarly, the United Kingdom considers PFI contracts to be “good practice” given their governance and support arrangements, established and managed by the Treasury (HMT), Partnerships UK (PUK) and relevant Government Departments, and their track record in the United Kingdom.

Several countries mention the fact that there is limited knowledge and no clear picture of “good practice” yet, because many PPP projects implemented under new legislation are in the middle of contract award procedures (Greece) or that there is no national institution centralising information on PPP projects under implementation and providing for appropriate analysis (Lithuania). Better supervision and follow-up of these projects is therefore advocated (Sweden). Other countries already guarantee a follow-up of “good practises” and propose to render more detailed information available to interested parties on their request.

Generally, there seems to be a common understanding that “good practise” can be found in all types of PPP projects. Several countries clarify the use of the term PPP by forwarding evaluation criteria used to identify a “good practise”. Generally considered as “good practises” are projects providing efficient “value for money” (VFM) gains (Latvia), and projects which respect the prescriptions of law (contract security, notification, diverse formalities, application of the competition principle, etc.; Monaco). The presence of systematic controls also seems to be considered an important factor for project quality. Portugal provides the most detailed list of criteria for a national understanding of “good practice”. Examples of “good practice” are projects the results of which meet the expectations for outputs (as defined beforehand) and where there is a relative gain in VFM, compared to traditional publicly funded projects. In order to obtain these goals, preliminary assessments of the economy, efficiency and effectiveness, as well as an analysis of the financial sustainability of projects is believed important.

## **II. Current debates and challenges**

### *Current debates*

Almost all respondents indicate, to a greater or lesser extent, that PPP is a widely debated topic in their country, and that it is an issue of great interest for various reasons.

Most countries indicate that they use PPP as a means of controlling budgets when investing in new infrastructure, or embarking on other major civil engineering or development projects (Austria, Belgium (Brussels Capital, Flanders and Wallonia), Denmark, Estonia, Greece, Italy, Romania and Slovenia). Another reason for using and encouraging PPP is for the public sector to access private sector expertise – both management skills and technical expertise (Belgium (Brussels Capital and Wallonia), Luxembourg and Romania). PPP is seen as a means to increase efficiency in developing and executing projects, introducing a competitive component to the delivery of public services, by letting private partners compete for contracts. As such, it is seen as a way of “spending wisely”, making sure that the taxpayers’ money is used in the most efficient way and delivering value for money (VFM – Ireland and the United Kingdom).

In Belgium (Wallonia), PPP contracts are increasingly considered as viable options, in particular for co-financing large investments at the regional level. Local authorities have also begun to show an interest in the advantages that partnerships with the private sector can bring. This new environment seems favourable to investors who see an increase in the development of PPP projects. Thus, for example, currently subsidies for sporting facilities and certain public buildings are granted only on the condition of an envisaged

acquisition once the facility is in place, so that the private partner takes a risk only during the limited period of construction of the building.

PPP contracts are commonly used for large infrastructure projects where local, regional, or national public bodies may find it difficult to obtain funding to cover the entire costs of a project (Austria, Belgium (Brussels Capital, Flanders and Wallonia), Bulgaria, Estonia, Latvia, Luxembourg, Serbia, Sweden). PPP is then used as a way of sharing risks and responsibility, while also spreading the costs of a project over time, through a more spread out re-payment of loans (Belgium (Flanders, and Wallonia), Bulgaria, Finland, Slovenia and Sweden).

For states whose administrative and financial capacities are still to be further developed, notably those of local authorities, PPP contracts become a way of implementing projects which would otherwise not have been possible. Many Eastern and South Eastern European countries are experiencing an urgent need for the modernisation of the country's infrastructure, but the lack of public funds makes such modernisation projects difficult without the help of the private sector under PPP contracts.

In those situations, PPP projects become the response to the lack of administrative and financial resources, by providing private sector funding for large infrastructure modernisation programmes and the like (Bulgaria, Latvia and Serbia).

Within this context and in contrast to those general considerations, the debate in the United Kingdom differs slightly from that in other member states, in that it refers specifically to arrangements under the PFI initiative; the debate therefore becomes more specialized in nature. In summary, the debate covers aspects such as the increasing level of support grants for PFI projects (over the long-term), and the problems and challenges at regional level regarding an analysis of the evolving needs of the public sector and greater need for private investment in public infrastructure. There is an increased interest by local authorities in entering into institutionalized public private partnerships, and the government wishes to build upon the techniques and successes learnt in PFI and to apply these across a wider procurement spectrum in their continual drive to ensure value for money by public sector procurers. Another issue, which is very much discussed, concerns the impact of International Financial Reporting Standards (IFRS) on PFI contracts.

While the above debate to some extent seems to focus on the technical matters of how to improve public service delivery through PFI or other PPP contracts, another question raised by other member States, is whether PPP contracts are always beneficial to the public sector. Many countries have concluded that the viability of a PPP project and the gains to be made there from will depend on the size of budget and the project in question. It is understood that PPP contracts are generally suitable for bigger projects, while smaller projects may be equally well carried out by the public partner alone (Austria, Luxembourg, Slovenia). Because of this question of relative gains, many countries point to the need for evaluation of PPP projects, before jumping to the conclusion that PPP contracts are always and necessarily beneficial for the public domain (Austria, Belgium (Flanders), Luxembourg, Portugal and Switzerland). In Romania this debate has focussed on the negative consequences of the above-mentioned PPP legislation, which has since been repealed. In Estonia the question has been whether risk sharing under PPP contracts is equitably established, which has led to an urgent debate on updating accounting standards and government statistics to obtain an accurate picture of the public sector fiscal balance.

The value for money (VFM) approach is pointed out by several countries (Ireland, Latvia among others). The Irish delegation in particular, stresses the fact that local authorities in Ireland are expected to consider all types of procurement options in order to deliver services in the most efficient and inexpensive way and not to blindly pursue PPP contracts for their own sake.

In general however, the attitude to PPP among the countries responding to the questionnaire is rather positive. It is believed that, as a general rule, PPP contracts are a good way of delivering public services. Because of this positive attitude to PPP, many countries actively seek to promote PPP contracts by providing support and information to local or regional authorities wishing to pursue PPPs, and by bringing the subject of PPP onto the agenda (Bulgaria, Italy, Latvia, Lithuania and Serbia). In conjunction with this, there is also the question regarding what institutions should deal with PPP contracts. Many countries are in the process of establishing new institutions or "task forces" at the national level for dealing with PPPs at national, regional and local level (see examples of national action below).

However, domestic debates do not only recount positive 'stories' of PPP, and a theme which is common to several of the member states is the debate over the changing role of public authorities. Should the public sector fund and deliver public services or should their role be confined to only funding those services? Hinting at the political and ideological question of whether PPPs are the right method at all for delivering services, some countries still consider that they have some way to go before arriving at a possible consensus over PPP schemes as sensible and justifiable vehicles for providing public services (Belgium (Flanders), Bulgaria, Greece, Slovenia and Switzerland). Norway stresses this ideological dimension of the debate by emphasizing that PPP can also become problematic in terms of democratic control. When service provision or maintenance is delegated to a third party, the electorate inevitably loses some of its control over how those activities are carried out. The question then becomes whether what is lost in terms of control is gained in terms of efficiency.

### *Present problems or challenges*

In addition to these ideological difficulties and, in particular, the question of whether PPP is the 'right' method for delivering services or not, most of the difficulties mentioned by the respondent member states are of a more practical nature – technical, legal or other. In the replies from member states, several common problems or challenges of Public-Private Partnerships are found.

Among the drawbacks of PPP, countries often mention the difficulties associated with various forms of PPP contracts and their compatibility with the legal (national, regional or local) framework (especially Estonia, Finland, Greece, Italy, Latvia, Lithuania, Norway and Sweden). A specific example of legal contradictions (and in this case a dispute) is put forward by Estonia: the country's Accounting Board issued new Generally Accepted Accounting Principles (GAAP) in February 2008, stating that a majority of infrastructure objects (roads, waterworks, schools, hospitals, etc.) should be recorded in the public sector entity's balance sheet as assets or liabilities. The local authorities are now considering taking the Accounting Board to Court over the new regulation, as it decreases local authorities' possibility to borrow investment.

While some countries find that the existing legal framework is inadequate for regulating PPP contracts, other countries find that the absence of a framework decree make PPP contracts fall outside the current legal framework altogether (Belgium (Wallonia) and Lithuania). In the first case it occurs that current regulations can even create unnecessary bottle-necks in project management, and that a change of legislation is therefore needed to allow for a full range of PPP contracts (Portugal). Belgium (Wallonia) emphasises the fact that certain provisions regarding government contracts would need to be modified to support PPP arrangements rather than hinder them, in particular with regards to risk-sharing and longer term partnerships.

Similarly, problems arise in Italy at the first step of tendering, where a high number of litigations on procedures used for contracting out services or public work is encountered. In this case, the country speaks of an "administrative risk" arising from the complexity of the national legal framework and producing difficulties for public administration.

Efforts are made across the board, to update legal provisions regulating PPP, although the process is quicker in some countries than others. This depends on the complexity of the existing legal framework and the scope of different types of PPP under the current regulation, etc. In the European Union member states the driving force behind legal change has been pressure from the EU. Some countries are still struggling to comply with new competition rules and procurement directives (Italy, Luxembourg, Portugal, Sweden). Norway stresses the fact that legal developments are not exclusively focussed on PPP, but initiatives to accommodate new working methods are dealt with at the general level of competition laws and regulations. This is most likely a common trait among member states, although only Norway expressly mentions it.

However, facing the challenges of PPP contracts, it is not only the legal framework which needs to be modified, but the administrative adaptation of the public sector is also a concern of many countries. Those countries fear that the lack of administrative capacity and legal and financial expertise within the public sector may make PPP a suboptimal arrangement (Bulgaria, Finland, Greece, Latvia, Portugal and Romania). It is particularly feared that a lack of legal expertise may lead public authorities to enter into unfavourable contracts where they face unnecessarily high costs, or high financial risks. The financial sustainability and long-term budgetary implications of PPP is therefore brought into question.

Local authorities in particular, but also regional authorities are sometimes considered to be lacking expertise in some or all of the above fields – legal, financial, administrative, as well as lacking experience and practical know-how. A de facto lack of authority in some countries adds to the problem, by making it difficult to exercise efficient control over PPP deals. Additionally, Bulgaria points out that, at the level of some local authorities, officials still hold an "erroneous interpretation of PPP", believing that PPP is every initiative by public authorities involving the private sector.

Belgium (Wallonia) also notes that PPP projects involve extensive preparatory work, most often provided by external consultants, requiring very specific competences and a substantial investment in terms of time and money. This aspect becomes all the more significant when considering the fact that the local authority must not be fully reliant on the private partner, because of its accountability to the general public. Furthermore, certain PPP projects are implemented for budgetary reasons only, a situation which is clearly highly undesirable, considering the fact that pre-financing by a private partner is often more costly than direct financing by the local authority. Prior cost-benefit analyses should therefore be carried out systematically.

Many countries also mention coordination problems, both between public and private sectors, and between different levels of government, as well as problems of delivery of services. Although PPP is often seen as the solution to efficiency problems a focus merely on formal procedures and inputs can lead to inefficiencies in PPP projects. As an example regarding financial procedures, Denmark had to solve a particular problem of VAT (value-

added-tax) in PPP projects. Additionally, PPP can sometimes lead to price increases for the users of public services, if price controls are not agreed on beforehand. Bulgaria also mentions environmental risks associated with badly managed PPP projects.

Similarly, corruption and lack of transparency seem to be problems in some countries, and questions of property ownership may cause problems in some regions or provinces that enjoy local self-government. Two countries report problems of this sort (Bulgaria, Serbia), but are both currently working on fighting corruption and establishing open and equal procedures for private companies competing for contracts. Bulgaria also states environmental risks resulting from badly managed PPP projects.

In terms of feed-back, a few 'negative examples', draw attention to the problems and difficulties associated with PPP contracts. Difficulties, such as joint enterprises in which the municipality only maintains residual shares after privatisation, and problems of control over concession contracts (as raised above) stand out as the most serious challenges. Romania also points out that there may be an internal contradiction with regards to local PPP projects, where short electoral cycles and high turn-over may lead local governments to prioritise small PPP projects with immediate results over long-term strategies.

In addition to this, the United Kingdom points out some questions which are more specifically linked to PPP at the sub-national level, such as: issues of appropriateness for infrastructure funding and delivery at regional and sub-regional level across local authorities (PPP structures and arrangements); the capacity of local authorities to develop and procure PPPs on an informed and value for money basis, and to achieve efficient and effective delivery; the type of institutionalized partnerships that are possible and the range of appropriate roles for local authorities and the private sector as well as the role of national government and its agencies to support and fund such partnerships.

### **III. Action at national level**

#### *PPP action at national level*

Most countries are currently pursuing some PPP activities at national level. Many countries (Greece, Italy, Latvia, Luxembourg, Moldova, Portugal, Slovenia and the United Kingdom) have adopted or drafted new legislation in order to match international or – in the case of EU member states and accession countries - EU standards. New business regulations or competition laws have been introduced in Belgium (Flanders and Wallonia), Denmark, Estonia, Luxembourg, Switzerland and the United Kingdom in order to accommodate PPPs. In terms of legal developments, an example which stands out in comparison to the others is Slovenia which has implemented a PPP Act, representing a whole new legal framework for PPP contracts. In Estonia and Latvia discussions on the need for this type of specific PPP legislation are ongoing.

Other than the legal developments, most countries recognise at least one of the tools in the proposed list of task forces, networks, conferences, etc. Many countries have set up Task Forces at national level to coordinate PPP activities (Austria, Belgium (Flanders), Bulgaria, Greece, Italy and Serbia). In all countries concerned, this Task Force, or another public body, organises seminars, conferences, training and competency networks (Belgium (Flanders), Bulgaria, Denmark, Greece, Italy, Latvia, Portugal, Sweden, Switzerland and the United Kingdom), to bridge the information gap which usually exists between the public and the private sector.

Ireland has a Central PPP unit in the Ministry of Finance; in Estonia the establishment of such a unit is under consideration. In Denmark, a Ministerial Working Group is currently working on a broad strategy for public-private co-operation, and a National Action Plan for PPP was published in 2004, with a view to promote the use of PPP projects. In the United Kingdom, the establishment of the new Homes and Communities Agency (HCA)

constitutes an important tool for the promotion of PPP, and the existing Partnerships UK (PUK) also continues to play an important role.

Additionally some governments have established Information Centres or similar entities to provide local and regional authorities with information on PPP projects, (Belgium (Flanders and Wallonia), Bulgaria, Denmark, Greece, Ireland, Latvia). Denmark specifies that they provide web-based information on PPP. Academic research has been carried out in Portugal, research by the local and regional authorities association has provided useful feedback in Sweden, and in Denmark a Market Research study is being conducted for the years 2005-2010.

In addition, Italy has some PPP Monitoring Centres, and Bulgaria runs a project focusing on the role of PPPs for innovation policy. Co-operation between state agencies and international organisations has also proved useful in Latvia and Lithuania. Financial incentives are mentioned by Denmark where 'pools' of money provide funding for various PPP Pilot projects. In the United Kingdom, Local Housing Companies, Eco-towns and joint venture arrangements are envisaged as possible pilot projects.

In addition to the incentive-creating tools and the legal developments mentioned above, only the United Kingdom brings up the issue of increased financial resources for PPP projects as a means to support such activities. Since 1997, the government has significantly increased levels of public investment, which in cash terms has meant a public sector net investment rise from £5.4 billion (~ €6,4 billion) in 1996-1997 to £25.8 billion (~ €30,4 billion) in 2006-2007.

Economic support measures may also exist in other countries but are not brought up in the replies provided by member states.

#### *"Good practice" at national level*

As PPP is mainly considered as a tool for project development at local level, only a few examples are given for "good practice" at national level.

At the national level examples, such as the Technical Unit of Project Finance Task Force in Italy, are seen as "good practices", having promoted change both at the national and local level. In Serbia, a new Task Force for drafting laws has proved efficient in creating the initial sparks for domestic debate. Task Forces have also proved efficient in Austria, Belgium (Flanders), Bulgaria, Greece, Italy and Serbia. In Italy, a prize in the area of culture has been established by the Federation of Local Public Services, for successful schemes for management of the cultural heritage, and was once awarded to a PPP project. As mentioned above, the United Kingdom considers PFI contracts to be "good practice" given their established governance and support functions and its first-rate track record. The results of PFI experiences to date are considered to be both positive and significant.

Generally, at the national level, PPP seem to be used in a majority of cases for large-scale infrastructure projects. Several successful examples are cited: the Östregion Motorway project in Austria (where the public sector comparator showed 15% gain for public sector), the renovation of motorways in Belgium (Wallonia), the so-called Oosterweel connection – a toll tunnel and bridge – at the port of Antwerp (Belgium Flanders), and the construction of the Attiki Odos Motorways, the Athens International Airport and the Rion-Antirion Bridge, the latter all being in Greece.

#### **IV. Information on Public-Private Partnerships at local level**

##### *Data or studies on the use of PPP at local level (percentages, experience, results)*

Replies provided by member states concerning PPP action and experience at local level generally show that there is not much information available on and no systematic follow-up of local projects. More than half of the 16 responding member states indicate that there are no studies or data available on local action, that there is no follow-up done at national level, or that it is too early to provide information, because research is still ongoing and many projects are still in early stages of implementation.

The countries operating a monitoring scheme of PPP projects are notably: Belgium (Flanders) where several research projects are underway in collaboration with national universities; Latvia, where feasibility studies investigating PPP opportunities have been carried out in various fields (district heating, education, municipal street networks and housing); and Monaco where requirements for information and training are carried out in co-operation with the French National Centre of Local Authorities' Staff (*Centre National de la Fonction Publique Territoriale - CNFTP*).

The only country undertaking systematic research in the field of PPP is Italy, where surveys are carried out both through public and private research schemes. Amongst the most important initiatives are cited the Monitoring Centre of the Authority for Public Contracts and the Monitoring Centre on Project Financing of the Technical Unit of Project Finance set up in co-operation with the Ministry of Economy and Trade and the Association of Chambers of Commerce (*Unioncamere*).

However, although specific research may not be carried out regarding PPP, Norway points out that a survey on the organisational forms and working methods of municipalities and counties, which is carried out every four years, also covers PPP activities to some extent. This may be the case for several member states.

As far as the percentage of local authorities making use of PPP arrangements is concerned, replies provided by member states are quite varied and start from "very low percentages" (Finland) going up to the use of PPP arrangements by all local authorities (Italy), by passing a few examples where reasonable use is made of PPP (90 municipalities implementing PPP projects in Greece - but over 250 having expressed an interest; about 40 PPP in water management and 14 local public enterprises in Portugal). Generally, as very often no systematic follow-up is made by national authorities, there is very little information available on percentages of local authorities having experience of PPP contracts. The only country providing a clear figure on the use of PPP at local level is Slovenia, where 65% of the local authorities used PPP arrangements to deliver various services to citizens in 2007. Following a survey carried out in Norway this year (2008), it results that 16.5% of the municipalities and counties have made use of PPP contracts. According to the figures of the United Kingdom around 80% of higher-tier local authorities (counties, unitaries, etc.) have entered into PFI contracts.

Because of the very low level of follow-up assured by member states, only a few indications are made about results of first experiences with PPP arrangements. Only Slovenia, where schemes seem to be followed up to some extent, expresses the fact that first results of experience with PPP are satisfying and that expectations have been met, especially when it comes to service concessions. Italy, the only country amongst respondents where PPP development is monitored in detail, comments on the fact that both successful and unsuccessful experiences are encountered, although results are generally satisfying.

### *Fields where PPP is used at local level*

Many fields are cited for use of PPP arrangements at local level and are repeated in different parts of this report. Amongst the main fields, the following are named by responding member states (without assigning the selection of fields to particular countries):

- Area development
- Construction and renovation of collective infrastructure and public buildings (schools, sports equipment (sports halls, swimming pools, etc.), cultural equipment (theatres, concert halls, congress centres), hospitals, police stations, etc.)
- Social housing and infrastructure (retirement homes for the elderly)
- Transport infrastructures
- Utilities: energy and water supply, sewage, waste collection and treatment.

### *Objectives and reasons of local authorities for making use of PPP*

Some of the objectives and reasons for public authorities' making use of PPP are already described at a general level, under the notions of current debates and problems or challenges above. They may, therefore, only be briefly recalled here. Amongst the main reasons for making use of PPP are cited:

- Various budgetary and financial reasons:
  - o Possibility of private funding outside the financial administration of the municipality
  - o Possibility of making investments earlier than initially planned
  - o Financial security given by agreed prices
  - o Need to balance local budgets in accordance with the internal stability pact, aimed at fulfilling EU macroeconomic parameters
- Use of the experience and know-how of the private partner
- Time economies to be made in the realisation
- Quality objectives and gains
- Reallocation of limited resources / overcoming financial shortcomings
- Flexibility of action and circumstances
- Added value and efficiency
- Redistribution of risks
- Complementarity of public and private partners
- New approaches to service provision / innovative and rapid solutions

The notions most regularly and clearly presented by member states' replies as important criteria of PPP are the ones of financing, know-how, efficiency, quality and risks.

### *"Good practice" at local level*

As the view is rapidly directed to the local level when speaking about "good practice" in the field of PPP (the local level being the one where most projects are implemented), respondents to the present survey give various examples of "good practice projects" under different items of the questionnaire.

It does not seem useful to establish a full list of these examples, given the fact that they do not entirely reflect the reality of PPP projects in respective countries, but rather to highlight a few of these examples standing for "typical" approaches or possible general conclusions to be drawn.



Standing out in the questionnaire is, for example, the success of PPP projects in the area of public construction, housing regeneration or area development. As such, PPP contracts seem to be particularly suitable for this kind of projects. Quite a few successful examples are listed by member states (the renovation of schools in Belgium (Wallonia); a joint venture at the Kuninkaantie Lukio High School in Espoo, Finland; housing regeneration and development schemes in Ireland; the renovation of public buildings and cleaning up of public spaces in Bulgaria, to name just a few).

Some countries describe projects following an approach which could be considered as quite "innovative". A private company in Finland, using the school buildings of the Kuninkaantie Lukio High school in the evening, has enabled an investment in state-of-the-art education and sports facilities. In Ireland, a majority of housing regeneration and development schemes have been realised through a contract whereby the developer is given usage of a part of a building site, for the provision of private housing for sale on the open market and, in return, agrees to construct social and affordable housing for the local authority on the rest of the site.

Again in Ireland, the service delivery is outsourced to a contractor who builds water treatment plants and operates them for a substantial period of approximately 20 years. The contractor is paid by the local authority, but user charges are recouped from non-domestic water users. Most local authorities have water sector projects under this form of PPP. Waste management is administered through concession contracts where the operational costs incurred by the contractor are recovered through user charges.

This last example stands for a PPP characteristic that could be considered as typical: very often PPP arrangements allow local authorities to enter into relatively long-term partnerships with private partners, even though the private perspective is normally strongly influenced by shorter depreciation periods.

## **V. The impact of the European Union in the field of PPP**

As could have been expected, the influence of European Union activities on national PPP policies has been felt strongly in EU member and accession countries, while it is limited or non-existent in non-EU member states, such as Monaco, Norway and Switzerland. While Monaco does not comment on any aspects of EU developments in this field, Switzerland points out that they follow EU activities closely and draw inspiration from them, as far as they also reflect Swiss national interests. In Norway the impact is even higher and the domestic Law on Public Procurement is very much based on the rules in the European Union, although not exclusively. Norway also has agreements with other international organisations and individual countries and this is reflected in the recent guidelines on Competition Exposure.

Legislative action within the EU seems to be the greatest source of influence in this field, and is considered to have an impact on national legislation by a majority of countries (Austria; Belgium (Flanders and Wallonia), Finland, Italy, Latvia, Luxembourg and Sweden), representing a clear marker for PPP activities (Belgium /Wallonia). It is particularly the new EU Procurement Directive, together with EU Competition Law, which are mentioned most frequently. In Latvia and Luxembourg, the Procurement Directive has been directly transposed into national legislation, and rules surrounding invitations to tender under EU Competition Law are having a particularly important impact in Belgium (Belgium/ Flanders). According to their narrower definition of PPP, Denmark considers that the EU does not have a great impact on PPP in the construction sector, but also confirms that there is much influence of the EU procurement rules (competitive dialogue) on traditional procurement in construction projects. This may be due to Danish regulation already being in compliance with EU legislation in the construction sector, and it could be interesting to examine if this also applies to other countries and their experience with EU legislation.

However, not all legal initiatives at EU level are well received by the member states. The United Kingdom draws attention to the fact that the EU Competitive Dialogue (CD) process (which has been the most influential EU initiative in the United Kingdom) is not regarded as fitting well with current PFI arrangements. It is considered that CD allows for no material changes in scheme, scope or costs at the Preferred Bidder stage, which is generally regarded as a procurement restraint in terms of time, complexity and cost, by both public and private actors. So while the underlying rationale of the CD initiative (to ensure equitability of treatment of bidders throughout the procurement process) is appreciated, the means of arriving at this aim is subject to greater questioning. However, these issues and the fit between CD, PFI, planning and other statutory consents are currently under review, which shows that EU initiatives are, nonetheless, influential in promoting change in EU member states.

On the other hand, other than the pure legal influence of European Union initiatives, Portugal also draws attention to the EU as an important standard setting body. The Commission's Green Paper on PPP, as well as other interpretative communications are mentioned as important sources of inspiration and change by Italy and Slovenia. Participation of national experts in seminars and conferences also provide countries with additional motivation and ideas in the field of PPP.

Lithuania expressly states that it supports the establishment of the European Union Expertise Centre for PPP (EPEC), which will provide a database, and collect information about PPP projects from member states to identify good practices and provide support to other member countries (see also reference below concerning future exchanges in the field).

Other European projects, providing both expertise and finance in the field of PPP, also prove important. Initially a programme for accession countries, aiming at institutional and capacity-building as well as investment financing, the PHARE programme now continues to provide support for various projects in the newer member states. Under EU framework of the PHARE program, Bulgaria mentions that it has used European Union funding to implement numerous PPP programmes in the areas of urban planning, waste management, water services, protection of the environment, landscaping - planting and arrangement of leisure parks and tourism, among others.

Within this context, efforts to comply with EU standards can be a driving force in "countries striving for EU membership" (Serbia), where efforts are made to harmonise the legal framework, but also to establish transparent PPP procedures and an economically efficient procurement system, based on principles of open and equal competition.

All in all, European Union impact therefore seems considerable, particularly, but not exclusively, in EU member states. Observing EU developments within the EU provides a great source of inspiration, and brings new ideas to the table, even in those countries who are not part of the European Union.

## **VI. Interest in future exchanges on the issue**

Among the respondent countries there appears to be a general positive attitude towards a continued exchange of experiences and ideas on PPP within the CDLR and LR-GR committees. While Monaco and Switzerland clearly express that they do not envisage any in-depth study on the subject, most countries agree to an informal exchange of ideas. Monaco expresses satisfaction with the current study and does not, therefore, consider further studies necessary. In Italy, the Department of Regional Affairs, which was the department respondent to this questionnaire does not have the institutional competence to deal with questions of co-operation in the field of PPP, but refers to the Technical Unit for Project Finance (the Italian Task Force on PPP) for further exchanges on the subject.

While not directly opposing any CDLR/LR-GR activities, the aforementioned countries count as something of an exception among the respondent countries, who generally welcome further work in this field. Most countries seem to think that it would be important to have a platform for discussion of the advantages and disadvantages of PPP at a level of transfrontier co-operation.

A continued informal exchange of information on PPP is actively supported by Austria, Belgium (Flanders), Bulgaria, Denmark, Finland, Greece, Luxembourg, Moldova, Portugal, Switzerland and Serbia. Among the seminal topics would be an exchange of examples, experiences and know-how (Bulgaria) and examples of good practices at the local level (Greece, Finland). Luxembourg and Portugal both point out that EU activities in the field of PPP seem to focus on the national level, while ignoring the local level, and they would therefore like to see an in-depth study on the administration of PPP at the local level, highlighted by relevant examples.

Interest in more specific topics is also expressed by some countries. Below is a list of topics which have been explicitly supported by various respondent countries:

- Legal and regulative framework, as well as information on conditions for the successful implementation of PPP projects (Belgium Wallonia)
- Forward-funding of infrastructure by the public sector (United Kingdom)
- Transmission of legal know-how and adjustment of national legislation to become more 'PPP friendly' (Belgium Wallonia)
- Provision of legal and institutional support at local/regional level (Greece, Latvia, Moldova)
- Study of good practices (Finland, Sweden), especially at the local level (Greece, Latvia, Moldova)
- General overview of PPP projects and the types of PPP used in member states (Denmark, Moldova)
- Institutional partnerships between public and private sectors (United Kingdom)
- Institutional partnerships across local authorities and with national government and agencies (United Kingdom)
- Study on PPP at the local level (Luxembourg, Moldova, Portugal)
- Study on public partnerships between central and the local administration (Portugal)
- Capacity development at the local/ regional level (Greece, Latvia, Moldova, Sweden)
- Supervision and follow-up on PPP projects (Slovenia and Sweden)
- Operation and functions of methodological guidance centres (Lithuania)
- Information on different ways of financing PPPs (Moldova, Sweden)
- Accessing private capital for long-term investment in infrastructure with payback over the medium and long-term (United Kingdom)
- Financial assessment of projects (Lithuania)
- Risk assessments, risk management (Moldova, Slovenia)
- Appropriate distribution of risks (Lithuania)
- Examples of various tools for the promotion of PPP projects (Lithuania, Moldova)
- Effective application of the EU Competitive Dialogue to long-term regeneration and development initiatives and their procurement and funding (United Kingdom).

However, as pointed out by Luxembourg, before progressing to any further studies or other activities in the field, a common working definition of PPP, or at least a clear delimitation of aspects to be looked at, would need to be established. Because of the use of various definitions of PPP, the project currently would need further guidance with regard to a common understanding of PPP (Luxembourg).

Additionally, there are several parallel initiatives that are currently being carried out in the field of PPP, including activities by the European Commission, the United Nations, the World Bank and the OECD. In this context, Denmark particularly mentions the recent launch of the European PPP Expertise Centre (EPEC) by the European Investment Bank and the European Commission (inaugurated on 16 September 2008 in Luxembourg). The Centre is designed to strengthen the organisational capacity of the public sector to

engage in PPP transactions and will allow member and candidate states to share experience, expertise, analysis and action. Henceforth, it would therefore be important to ensure that any CDLR/LR-GR activities undertaken do not overlap with, or contradict initiatives by the European Commission (proposal of Sweden), or the standards of other international organisations (proposal of Belgium / Flanders).