

EPPPL

EUROPEAN
PUBLIC PRIVATE
PARTNERSHIP
LAW

REVIEW

Articles

Conducting Competitive Dialogue for PPP Projects –
Towards an Optimal Approach?

Michael Burnett

When Inter-Municipal Cooperation Meets
EU Internal Market Law:
The Story of a Troublesome Relationship

Micaela Lottini and Michele Giannino

UK Planning Act 2008 –
A New Regime For National Infrastructure Projects

Robbie Owen

Integrating Building Performance in
PPP Management Decisions

Andreas Pfnür and Sonja Weiland

Public Private Partnerships in the Provision
of Healthcare and the Scope of Competition Law

Kyriaki M. Raptopoulou

PPP in Poland: A Second Attempt to Create
a Legislative Framework

Dawid Sześciło

Country Reports

Albania · Denmark · Portugal · Romania · United Kingdom

THE LEGAL PUBLISHER

lexxion

BERLIN

changing technical specifications in this legal framework as the development of ideas progressed throughout the partnership.

The final website was developed in open source and won international recognition as best national example of e-government at the World Summit Awards.

3. Modern hospital wards

The project is a partnership between one of the five Danish Regions, a regional hospital and private companies identified through a procurement process with the purpose of optimizing work procedures and to develop and purchase new hospital beds.

The Region and the hospital aimed towards an innovation model which would both address public procurement procedural requirements and ensure continued development and user involvement to enable creation of innovative solutions. This has been done by using the procurement procedure competitive dialog where suitable private company candidates were selected to participate in the PPPI through a prequalification and dialog phase prior to start of the PPPI. The hospital had the option to co-develop new functions and adjustments to the products as well as an ongoing option for up scaling the purchasement of products from the private partner.

III. Challenges

Public and private partners in recent PPPI have pointed towards a number of challenging issues in the innovation process.

Public partners have pointed to the issue of how to engage small suppliers in a procurement process with high implied use of resources. Private partners have pointed towards a risk of loss of valuable knowledge which may become known to competitors in a procurement process. They have also highlighted that many public authorities have a conservative interpretation of the procurement rules which may in some instances limit the possibility to cooperate on development and innovation.

Both private and public partners have emphasised the need to break down communication barriers between the public and private sector and that adequate funding opportunities are vital in PPPI.

However, both sides have also emphasised that setting up a legally valid procurement model and finding a procurement process which adequately

addresses the transfer from development to deliveries have been time consuming obstacles.

Many have expressed the need for a model PPPI and procurement process tailor made for development and innovation projects. This would enable the partners to focus on the creative aspects of the partnership while being assured that the project takes place within a suitable legal framework compliant with the existing EU procurement rules.

Suggestions for such a model PPPI would most likely not only be relevant in Denmark.

If it is to be ensured that public development and innovation is not choked by public bodies following procurement procedures which are specifically aimed at value for money and lowest price it is worth considering whether either the Commission or the Member States on at least national level should draft more specific guidance to the local authorities on innovation and development procurement. If not, the unforeseen consequence of a rigid or misunderstood use of the procurement directives may now and in the long term be the loss of competitive advantages in innovation on an EU wide level.

*Martin André Dittmer
Camilla Christiansen
Gorrissen Federspiel Kierkegaard*

Portugal

General Election and Expected PPPs

The general elections in Portugal that took place on the 11 September were preceded by a relevant debate where one of the main topics concerned the political and economic measures to be taken in order to overcome the internal difficulties in part due to the effects of the global crisis that we are still living in.

Such debate was mainly focused on the importance and need of large public works in order to stimulate the economy. As one can imagine, right wing political parties considered that it would be more important to stimulate the economy with a tax cut and small public works distributed by the Portuguese territory as the country should not continue to borrow money from the exterior; on the other hand, left wing political parties considered that Portugal should focus on large public works (e.g. new airport or high speed train), in order to not

only stimulate the economy and create jobs, but also to overcome a historical infrastructure deficit.

The winner of the elections was the Portuguese Socialist Party with 36.6 %. Therefore, the Portuguese Government will continue to be led by the Prime Minister José Sócrates. Nevertheless, the cabinet will suffer some changes, namely, there is a new responsible for the public works, transports and communications sector, Mr. António Mendonça, who is known to be an apologist of big public projects.

The political program that the Socialist Party ("PS") presented to the electors has two key proposals: (i). some initiatives to defeat the crisis, continuing the modernization of the country and of the economy and (ii). some initiatives to strengthen social politics, meaning, the social State.

In order to boost up the economy and to promote the employment, the Socialist Party plan comprises five basic lines of action: to advance with modernizing public investment, to support the "PME" (SMEs), to internationalize the economy, to sign a Pact for Employment and to strengthen the partnership with the social sector.

Naturally, in this country report, we will focus on the so called "modernizing public investment" whose main goals are to ensure goods and services to the general population such as accessibilities, production and distribution of energy, schools, hospitals, social equipments, services of water supply and sanitation. In this context, the Government defends that the modernizing public investment means more welfare, more competitiveness, more employment and more economic activity, realized by the State or by private entities.

Therefore, the Government proposes the following programmes: (i) to complete the modernization of the school park; (ii) to modernize health units; (iii) to build or to rehabilitate social equipments; (iv) to build and to modernize several infrastructures, namely, related with energy; broadband networks of new generation; water supply, sanitation and treatment of waste; logistic and transport lines, including "transeuropean" transport lines.

Furthermore, in order to approach Portugal to central Europe, it was proposed to affirm the railway freight as the preferred portage by land.

Moreover, the Government proposed to execute the high speed railway program, binding Portugal to Europe by railroad, materializing the lines "Porto-Vigo" and "Lisboa-Madrid" until 2013 (the latter in-

cludes a third bridge over the Tagus river that crosses Lisbon) and the line "Lisboa-Porto" until 2015.

Furthermore in the transport area, it is also expected that the new Government will promote the construction of the new Lisbon Airport.

This project, that will be one of the main in Europe, will probably also imply the privatization of the public company ANA that is in charge of the management of the Portuguese airports.

To finalize the transport sector, it is also likely that the new cabinet will launch more road projects (motorways) in order to conclude the Portuguese Road Plan and that it will continue with the logistic program that entails several PPP projects for logistic platforms.

Despite the importance of the transport sector, a large investment in the social areas is also expected, that is to say in the health sector and in the education sector. In the health sector one should remember that the PPP program launched several years ago is yet far from being terminated; the investment in schools is already a program launched by the actual Prime Minister and consists in the rehabilitation of 330 schools until the end of 2015 and, therefore, comprises a comprehensive public investment.

Although the will of the new cabinet so as to execute all the programs abovementioned is strong, it is also true that the Government will have to negotiate with other political parties its intentions, in particular, the more significant infrastructures, once the Socialist Party does not have, alone, a majority in the Portuguese Parliament. This said, a new wave of PPPs is expected for the next years.

Pedro Melo

Diogo Duarte de Campos

PLMJ – Law Firm

Romania

Romanian PPP and European Funding

1. Introduction

A universally acknowledged definition of Public-Private Partnership (PPP) has not yet been created, therefore we shall enumerate the most agreed-upon: "A *Public-Private Partnership is a contractual agreement between a public entity and a supplier from the private sector. Through this agreement, the abilities and assets of each sector (private and pub-*