



Republic of Bulgaria
ECONOMIC
AND SOCIAL COUNCIL

O P I N I O N

on

CONDITION AND PROSPECTS OF PUBLIC-PRIVATE PARTNERSHIPS

(own-initiative opinion)

Sofia, 30 November 2007

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The Action Plan 2007 of the Economic and Social Council stipulates the development of an own-initiative opinion on “Condition and Prospects of Public-Private Partnerships”

The president of the ESC has assigned the development of the opinion to the Standing Commission on Economic Policy.

Prof. Nansen Behar – Council’s member of the Employers’ Group – has been appointed Rapporteur.

The drafted opinion has been submitted by the Commission concerned for approval by the Plenary Session.

At its Plenary Session of 30 November 2007 the Economic and Social Council approved this Opinion.

I. INTRODUCTION

An economic system of “mixed type” has its own specific mechanisms. This specifically refers to the economies in transition from centralised to market economic structure. Such a specific mechanism under these conditions is the public-private partnership /PPP/, which is a collective name of a whole complex of forms of cooperation between public institutions and private economy. However, in the contemporary environment of technological progress this cooperation is built on new basis. In the centre are situated services such as financing, planning /at national and municipal levels/, control, maintenance, etc., which earlier have been provided by governments and now – by the complex of activities called PPP.

Projects under PPP are characterised by investments and risk shared between governments and private partners. This coordinated joint activity is conducted along the entire chain of services, production and delivery of a product. The purpose is to reduce budget expenses and to achieve high quality of services. The idea behind the PPP is that each partner should focus in their activity on the things they do best. Traditional regulative activities carried out by the state are transferred on private companies which finance, design and operate available assets. The financial risk is shared and managed, including by means of concluding long-term contracts – from 20 to 30 years. Tender procedures and the contracts signed afterwards are for services related to certain economic or social activities, which together with contract duration are also an impetus to fulfil the commitments made properly.

However important and useful means of implementing projects PPP may be, it should not be used at all costs but only where there exist the necessary conditions. Suitable sectors where PPP is used are those where traditionally the state is involved /water sector, transport infrastructure, education, healthcare, social work, etc./. And vice versa, there are sectors where PPP is inapplicable, e.g. some subsectors of light industry, retail trade, etc.

The application of PPP forms is effective when it is combined with the programme approach. In the preliminary assessment of the opportunities for PPP realisation both partners who set their expectations and possible benefits in the so-called 'preliminary assessment should take part. On the basis of the preliminary assessment the decision is taken as to the specific PPP forms acceptable for both parties.

PPP forms are developing very dynamically in the EU countries. More and more often the agreements concluded in those countries are long-term, e.g. concession contracts, which bind public and private interests and also contribute to risk sharing.

With Bulgarian accession to the European Union, the opportunities to apply the PPP forms have increased. That is why what is needed is not only deeper knowledge of the structures and potentialities of our economy but also improving the national legislation in that field. Its further harmonisation with the legislations of the other EU Member States is necessary. Training of specialists for activities under PPP is something essential and of great necessity. Specialists, who should be aware of the international practice in PPP, who should select the most appropriate forms of cooperation between the public and private sectors and what is of vital importance – who would be able to make the preliminary and final assessments of the expected and

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actual results of PPP. Last but not least, specialists, who could contribute to public institutions and private business community complementing one another when formulating their strategic interest.

This opinion of the ESC raises basic questions and problems of PPP and presents some proposals for the general implementation of the process of 'public-private partnership' in our country. The ESC will continue to develop analyses on specific issues related to the development of PPP. In this respect the Council is planning to submit a "sectorial situational analysis" /case studies/ on the main issues in sectors with realised public-private partnership or with potential for its realisation /water sector, power engineering, transport infrastructure, education, healthcare, environment, etc./.

II. ESSENCE OF PUBLIC-PRIVATE PARTNERSHIP

In the recent years, the EU has become more active in the implementation of projects in the public sector by means of cooperation between the public and private sectors. It is aimed at building and operating infrastructure and services such as waste management, water supply, etc. The necessity of investments through cooperation between the public and private sectors arises due to the limited financial resources of the public sector and its difficulties in providing quality public service. Different forms of PPP are used more and more widely because they are an efficient instrument to satisfy public needs providing services of high quality and at a price acceptable for society.

For Bulgaria the public-private partnership is a new non-traditional approach for the government, administration and business community, which

regardless of the existing legislation is yet to be used efficiently to improve the quality of public services and infrastructure.

With its EU accession, Bulgaria faces investment projects whose implementation requires observation of European legislation, but also searching for financial resources for the provision of public services by the private sector.

Increase in the applicability of PPP is due to the state aspiration to reduce budget expenses and to achieve high quality of services as a result of investment by the private sector and good risk sharing.

Public-private partnership presupposes rights and responsibilities that include sharing risks, expenses and assets. Within PPP there is a common bond between the strengths and advantages of each of the participants to achieve synergy effect, which should allow both sides to accomplish effectively their common goals, observing their mutual interest and benefit.

Public-private partnership is not defined by the European legislation, but there is consent on some characteristic features, which are indicated in the Green Paper of the European Commission regarding:

- the great duration of projects under PPP;
- relations of cooperation between the public and private sectors in the different stages of a PPP project;
- financing by the private sector (full or partial);
- role and responsibilities of participants;
- risk sharing between public and private partners, i.e. transferring the risk to the private partner.

What is meant by public-private partnership is the cooperation between the public authorities and the private sector in outsourcing activities and services to the private sector on the basis of different partners' expert knowledge (the MCC/023/2007 r.

business community, state and local administration, financial institutions), and usually the public body conducts monitoring and control, whereas the private sector is directly involved in the actual provision of the services in the public sector. The specificity of PPP is that it concerns projects of public importance or public services. PPP is characterised by two main features:

- a) subject of PPP is building/operation of a project of public importance or provision of a public service and
- б) shared risk between the public and private sectors.

There are different definitions but they are part of analytical or popular materials. The lack of a legal definition refers to Bulgarian legislation, as well as the legislations of the Members States and that of the EU. Only recently in Greece and France for example there have been adopted regulations which use the notion of PPP and give it a legal definition.

In the PPP methodology developed by the Ministry of Finance, PPP is a long-term partnership between the public and private sectors for a project implementation or provision of service of the public sector and/or of public interest with sharing expenses, benefits and risks and with mutual benefits for both sides.

Typical of PPP projects is that the responsibility assumed by the state and the private sector is a long-term provision of a public service and not a one-time deal. It is through PPP that financial resources are drawn from national and international sources and the capacity of central and local administrations to manage investment and infrastructure projects is enhanced.

After all that has been said, we can summarise that PPPs are agreements between the state and the private sector to build public infrastructure and

implement communal projects and provide services (social, healthcare, education, training, defence, etc.).

Public-private partnerships are business relations which are formed between the private sector and the authorities, often with the purpose of employing the resources and/or the expertise of the private sector so as to support the provision of assets and services to the public sector.

A PPP project has two main aspects: a business aspect and a legal one.

The business aspect is in mobilising financial resources to provide the necessary long-term material assets, the services themselves (equipment and other assets), as well as the floating capital through the whole project life cycle.

The PPP is a **contract agreement (the legal aspect)** and is defined by legislation so as to regulate the relationship between the state and the private partner. On that account, the juridical form of PPP can fall under the scope of the Concession Act, Procurement Act or Obligations and Contracts Act. The contract can be short-term with subcontractor with small capital expenditure and long-term (concessional), which can include designing, building investment projects with the provision of a set of services and financing the complete construction and operation of assets.

In the relationship of public institution and private partner we can differentiate between outsourcing and public-private partnership. Outsourcing is a contract with providers from the private sector for the provision of services to state structures or directly to citizens on behalf of the state. It allows the public agencies to take advantage of the specific technical expertise of the private sector, of the better management of the personnel and to achieve potential expense savings. The ownership on the assets and

investment obligations remain within the public organisation. Whereas the public organisations try to benefit through outsourcing, this course of action cannot solve main issues related to their management or expenses, if they are badly functioning structures.

Public-private partnership refers to designing, building, financing, maintaining and exploiting/operating (DBFMEO) infrastructures and assets by the private sector, activities traditionally executed by the public sector. Usually it is a single private company, which takes the responsibility for providing public capital assets for the “entire life cycle”, mostly for 20 to 30 years. The public-private partnership can be considered a specialised form of outsourcing with the essential difference that the private partner bears the responsibility for funding the project.

The most common organisational form of PPP is a long-term grouping (joint venture) in the public sector with the participation of the state and private companies for the provision of high-quality public services. Taking the best of the public and private sectors, PPP provides additional resources for investments in the public sector and efficient management of those investments. The point in outsourcing is that the public authorities try to improve efficiency, customer service, to become more competitive and to employ the best practices in reducing expenses. For instance, often governments in order to improve quality and reduce expenses for services form state trade companies to perform state functions, such as compensation payments, licensing, etc. Such functions can be delegated by the state through PPP to private companies operating on market principles, which will lead to managerial efficiency, provision of more efficient services and reducing bureaucracy.

III. FORMS OF PUBLIC-PRIVATE PARTNERSHIP

The form of PPP is defined by the scope and parameter of the activity, of the commitment, financing and risk sharing between the state/public institution and the private sector.

The basic model of concluding a contract by which the activity and public service is transferred to the private partner is “**Design-Build**”. The private sector designs and builds infrastructure in compliance with specifications for implementation approved by the public sector and often the price is fixed and the risk of over-expenditure is transferred to the private sector.

PPP forms are various and are defined by the risk shared between the partners, financing and manner of payment of the private partner. Risk sharing is a key factor and influences the agreement between the partners on the remuneration, investments, responsibilities.

The following forms (managerial mechanisms), employed by different countries in the realisation of PPP, are distinguished:

- **Turnkey Projects and Services:** the state public structures provide the project funding but they engage a private partner to design, construct and operate the facility for a specified period of time while the public partner maintains ownership of the facility.
- **Wrap Around Addition:** a private partner finances and constructs an addition to a public facility and operates it for a specified period of time or until it recovers the investment plus a reasonable rate of return.
- **Lease-Develop-Operate** or **Buy-Develop-Operate:** the private partner leases or buys the facility from the public authorities,

expands it or modernises it, operates it under a contract. The private partner is expected to invest in the improvement of the facility and is given a specified period of time in which to recover the investment and realise a return.

- **Build-Transfer-Operate:** public institutions conclude a contract with a private partner to finance and build a facility. Once completed, the private partner transfers ownership of the facility to local authorities. The state consequently leases the facility back to the private partner for a long period of time, during which the private partner has an opportunity to recover the investment and realise return.

- **Build-Own-Operate-Transfer:** a private company finances, designs, builds and operates the facility for a fixed period, and afterwards the ownership is transferred back to the public sector.

- **Build-Own-Operate:** the private partner finances, builds, owns and operates a facility or service in perpetuity.

IV. STRUCTURE AND MECHANISMS OF PUBLIC-PRIVATE PARTNERSHIP

Public-private partnership offers higher level of services at more competitive price and provides the financial resources for the respective public services or construction of projects of social importance. In this way the state, applying PPP, provides the citizens with services of better quality under the conditions of limited budget funds.

The public and private partners should at the very beginning have mutual understanding of their roles, benefits, responsibilities, risks and expenses. If this mutual understanding is not built at the beginning, PPP could be
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doomed to fail. That is why both sides should know that the different roles and responsibilities should be assigned to that partner who would tackle best each of them.

The logic behind a PPP is that both the public and private sectors have unique characteristics from which advantages follow related to certain aspects of providing the service or building and operating the investment project.

Most successful from the practice of European countries are those partnerships which have used the strengths of public and private sectors and the risks are shared appropriately according to the capacities of the partners.

The role and responsibilities of the partners are different with the different projects and initiatives, but the state continues to bear the responsibility for the service provision and project implementation. The appropriate assessment of the optimal risk sharing between the public and private sectors is of vital importance for the successful implementation of PPP projects. The current Concession Act gives a possibility for groupings to participate in the procedure for providing concession. When the participant who has been named concessionaire in the procedure is a grouping, which is not a trader, the participants have to establish a new company to conclude a concession contract.

Profit lies at the heart of PPP for the private sector, and for the public sector – good quality of service and improving the well-being of the population. PPP is just a market approach and does not replace strong and efficient management on behalf of the state. On all accounts, the state continues to bear the responsibility for providing services and implementing projects in a way that protects public interest.

In PPP participate different number of companies with different interests, that is why it is also very important what kind of organisational structure will be created. Mostly in practice special groupings are established for the purposes of PPP – a company concessionaire, which is a consortium from shareholders of companies participating in the implementation. With this type of PPP the partners establish a new legal entity with the special purpose of implementing the project, which enters into contract relationships with other companies – subcontractors on the project. Sharing risks and responsibilities between the sides is defined mainly through shares distribution.

After its establishment, the new legal entity (mostly in the form of a company or joint venture) enters the necessary agreements to implement the project. The grouping is an independent legal entity. In Bulgaria the concession contract is the contract between the government and the consortium formed especially for this purpose. The practice in Bulgaria shows that the form preferred is the joint venture between the state and private entrepreneurs. At the level of municipality the public partner participates mostly with property and after the infrastructure project has been completed, the facility built and assets are operated by the concessionaire/operator.

Another option used is when a PPP project is implemented like a contract (commissioning contract) between partners of the public and private sectors.

V. GENERAL CONCLUSIONS FROM THE PRACTICE OF USING PPP

Bulgaria should take advantage of the experience of the European countries, which have established rules for applying PPP.

The state's motives for PPP usually have to do with difficulties in providing budget funds and with the necessity of cutting expenses. Funding from the private sector should be decided upon according to the specificity of the project. The participation of the private partner shouldn't be underestimated, but the project has to be equally attractive to both sides. Private partners assess their participation because for them it is not only benefit but also risk, which traditionally have been at state's expense.

The experience of other countries shows that PPP functions best when there is clear political commitment on the part of the state or local authority. The basic problem of applying PPP in Bulgaria is precisely the lack of sufficient political will and public consent. It is the lack of political will that leads to political and closely related business interests dominating the PPP process.

Bulgaria is facing the challenge of absorbing resources from the European Social Fund, especially in regard to investment projects to be implemented through PPP. In order to implement those projects successfully, it is necessary to explain to the community that the private partner does not only have benefits but is engaged for a long period of time to maintain and manage a public property to the benefit of society. For that reason the PPP projects should be monitored and controlled by society. The control over the implementation of a PPP project is essential and it should be independent and exercised through all project phases.

To have a PPP effective for the economy and the general good, it is necessary to establish an appropriate legal, administrative and institutional framework, as well as an adequate mechanism of management and coordination.

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PPP agreements usually require that the participating parties (the public sector – principal and the private sector – contractor) assume the responsibility and risk for the use of assets over a long period of time. To expand the field of application of PPP in different sectors of economy it is necessary to consider the issues of capacity of the state structure and its administration to manage and regulate PPP and the willingness of the private sector to take risks and to secure financially the implementation of projects through PPP. These issues arise due to the lack of sufficient capacity of the state and local administration to formulate public-private partnerships that are attractive to the private sector and to set clear enough technical and financial parameters for their implementation.

Adopting the necessary normative framework encourages the public-private partnerships as an instrument for more effective and stable implementation of projects (infrastructure and/or provision of services) and mobilisation of human and financial resources outside the public sector. These actions at national level have been focused on the preparation of major infrastructure projects.

The managerial units in municipalities apply the principles of PPP in providing services on the basis of the Concession Act and Public Procurement Act.

A register of public procurements with the Public Procurement Agency has been established and a national concession register is operating.

So far, regardless of the efforts made by the state and single state administrations (Ministry of Economy, Ministry of Finance, Ministry of State Administration and Administrative Reform, etc.), there is no clearly formulated policy on PPP. The methodological instructions on PPP by the Ministry of Finance present in a systematic way the steps of realising PPP ИСС/023/2007 г.

and describe the mechanism of preparing and implementing infrastructure investment projects through PPP.

Central and local authorities do not have sufficient capacity to formulate such policies on public-private partnerships that are attractive to the business community from the perspective of return, marketing and utility. For the time being, PPP is being initiated by the state mainly through outsourcing, where balance is sought between the protection of public interest and the incentive for the private business community. Actual PPP where the business community participates with its own funding and assumes the risk are still sporadic cases.

Therefore, it is necessary that the state formulates an integrated policy on PPP, in which it should attract the private sector, observing the market mechanism and mutual benefit. It would be useful in that line to create a strategy on PPP bound with a detailed plan for its implementation.

VI. ENHANCING PPP EFFICIENCY

Implementing an integrated policy on PPP presupposes a public discussion with the participation of the business community and civil society organisations. The normative framework for realising a PPP through concession and outsourcing has been created and methodological instructions on PPP have been developed.

When a state/public institution decides to choose a PPP, it should approach carefully and consider the potential benefits, the type of PPP and risk sharing. The potential benefits are savings in expenses, shared risk, enhancing the quality of service, increasing the profits, more efficient implementation, economic benefit and that is why an entire national policy on PPP is needed.

Savings in expenses are accomplished when the private partner reduces the expenses for the operation and maintenance through savings in the scope, uses innovative technologies, better management. It is good when the risk is shared, especially when there are environmental requirements to be observed with an investment project. The willingness for taking risks in building and operating a public project depends also on the expected return. That is why the price which the parties to the contract will want is related to the risk level.

The state or local authority entering a PPP does not give up the opportunity to pursue its policy, to regulate and control the provision of service and building of the public project. How far public authorities establish control depends on the contract and the PPP form. Pursuing state policy in the field of PPP and creating a good institutional mechanism of management, coordination and control will allow avoiding cases of contract termination, substitution of the expert team and of collective labour disputes. The problems identified on applying PPP refer to the administrative capacity, sharing responsibilities in the management and control on behalf of the state structures involved in the PPP management.

Practice so far shows problems from the two sides of the PPP – the public administration and the private sector – in the phases of project implementation (designing, the phase of tender procedures, contracting and implementing).

The public sector uses public-private partnerships to give incentives to the private sector to work more efficiently and effectively in providing public services and activities. The capacity of local authorities to manage and implement PPP projects is not well developed yet.

PPP projects that are being implemented at the moment have no unambiguous public evaluation. This is due to the lack of a quality evaluation system regarding the services provided by the private partner. To accomplish this task, it is necessary to define strict quality criteria, which should be considered when selecting a partner and written down in the contract itself for the service provided. In this way, if the end result does not meet the commitments made, the contractor may be asked to pay penalty.

For instance, in the cases of outsourcing the provision of services through PPP the public administration still remains responsible for the service in question in the eye and mind of society. For that reason, it is important to establish a system for monitoring and control over the service also in the period after it has been granted to the private partner.

With PPP there is always a real chance of accusing central and local authorities of corruption in partner selection and organising the tender. Accusations can be limited by clear procedures and transparency of relationships with the private partners.

To achieve publicity and transparency of the PPP, it is necessary to work out a system of public monitoring of PPP with appropriate indicators for assessing economic efficiency, based on the approach of benefits and expenses.

Very often the internal policy and priorities of administration or business interests influence the choice of PPP, its management and implementation, as well as the final assessment. Therefore, we recommend creating an appropriate system for independent monitoring of the implementation of PPP projects with the participation of civil society organisations.

PPP is a new approach of business relations where the participants are the state and local authorities. The lack of sufficient understanding regarding the
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concept of public-private partnership – how it is implemented and what are the benefits, advantages, which it can bring to the private and public sectors – impedes the application of PPP. The lack of instruments for measuring the quality of project implementation in accordance with the expenses is the main obstacle for the public administration to play its role in respect to PPP, especially when the public administration tends to treat in a different way services provided within a PPP contract and those provided by itself.

This is due to the fact that the concept of PPP is new to the Bulgarian public administration, especially to regional and local authorities, as well as the business community.

It should be stressed that it is common for municipalities to outsource social services and activities to companies or NGOs. But the benefit of outsourcing to the private partner and the improvements that can be achieved in the public sector have not been realised yet. The potentials in this field should be used more actively, especially in employing new forms, such as outsourcing.

There are cases when local administration tries to maintain the existing level of employment in the public sector and considers that more important than making improvements which can be achieved as a result of a successful PPP project. This is due to the slow change of the status quo, i.e. replacing a traditional approach of providing services with a non-traditional one, such as PPP.

In some cases problems arise already while defining the project for public-private partnership. The administration should set the scope and parameters of the project, but the methodology of PPP is quite complex and this makes it difficult for both sides, especially the business community, if the technical assignment is not well and clearly formulated.

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The administration should interact more actively with the business community with the purpose of developing a PPP project. Sometimes the wish of each party to protect their interests gives rise to conflicts and mistrust. The experience with PPP projects is insufficient, which causes indecisiveness both in private partners and administration. Both sides should demonstrate their commitment to cooperation, since PPP is a long-term strategy.

The successful implementation of PPP projects often requires the obligatory forming of consortium of private partners, since very rarely a single operator is capable of addressing independently and adequately the required specialised service due to the long duration of the project, the necessary guarantees and financial requirements. At the same time the consultancy market in Bulgaria is not ready yet to offer specialised services, necessary for each phase of a PPP project.

VII. DEVELOPING PPP PROJECTS

Applying PPP requires improving the capacity and level of knowledge of administration and business community. In this respect it is appropriate to develop specialised training programmes and the trainers should meet criteria defined by the Institute for Public Administration and European Integration or by another independent institutional structure.

Pretty serious is the problem of consulting municipalities, companies and non-governmental organisations, which participate in the implementation of public-private partnership projects, respectively investment projects and outsourcing a service.

The efforts of the business community and the state can be united in the developing of PPP projects where rules are introduced to be followed by the ИСС/023/2007 г.

consulting firms. Right now in the country there is an indefinite and amorphous market of consulting services. That is why the ESC proposes defining rules and requirements for the consulting firms in the field of PPP, adopted both by the state and the business community.

As of now, PPP are not regulated by the EU legislative framework. The EU sticks to granting concessions and conducting management by institutional PPP companies – joint ventures.

Most European countries apply the Concession Act when implementing a PPP project (build-operate-transfer). This act is used for PPP in transport, water supply, waste management, construction of highways, bridges, tunnels, parking lots, stadiums and sports grounds.

VIII. LEGAL REGULATION OF PPP

In the European countries PPP is an established business approach, based on legally regulated contract relations, where the private sector is active and offers projects to the public administration.

In an opinion on the Green Paper, the EESC states that the public-private partnership is a flexible and dynamic economic method of catalysing certain economic, social and environmental objectives, such as sustainable development, opening jobs and social integration. PPP is a suitable form, which promotes the development of the public and private sectors and respectively there should be consensus between the business community and the state on a united and good policy on PPP.

Following a discussion and a survey among its members, the EESC admits the necessity of establishing a European Agency on PPP, which should be a centre for exchanging good practices and expert solutions.

The analysis of the existing practices in Bulgaria shows that most probably in the short term and in the medium term the PPP projects will be implemented on the basis of the existing normative basis regarding public procurements, concessions and contracts for joint activities.

The common objective of the *EU Green Paper on PPP* is to give rise to a discussion on the application of the European law on public procurements and concessions in the context of the phenomenon of PPP. The European law on public procurements and concessions is neutral in respect to the choice of the Member States to provide a certain public service themselves or to outsource it to a third party.

The term public-private partnership (PPP) is not defined by European law. Roughly speaking, the term refers to those forms of cooperation between the bodies of public authorities and the business community and the purpose is to provide resources, to perform construction works and renovation, management and maintenance of infrastructure or provision of a service.

The Green Paper considers the phenomenon of PPP from the perspective of the European legislation regarding public procurements and concessions. The European law does not provide for no special rules concerning PPP. The truth, however, is that each act (regardless of its being based on a contract or is one-sided) should be studied in the light of the rules and principles laid down in the Treaty establishing the European Community, especially as regards the principles of freedom of settlement and freedom of delivery of services (art. 43 and art. 49 of the Treaty). The rules of the internal market, including the rules and principles regulating public procurements and concessions refer to any economic activity, i.e. any activity which consist in delivering services, goods or performing a job in the market, even if these services, goods or jobs are meant to provide a “public service” as defined by ИСС/023/2007 г.

the national legislation of the Member States. The principles laid down in PPP are transparency, equality in relationships, proportionality and mutual recognition. Moreover, there are detailed provisions, which are applied in the cases included in the directives regulating public procurements. These directives in their essence are aimed at protecting the interests of operators registered in a Member State, who wish to provide goods and services to contracting public bodies of another Member State and in this way to avoid both the risk of preferences, which would be given to some of the national participants in the tender, and the possibility for the public body to be influenced by considerations different from the economic ones.

The rules applicable in the selection of a private partner first result from the type of contract relations in which this party enters with the party-principal. According to the secondary law of the Community, every non-gratuitous contract concluded in writing between a principal and an operator, whose subject is performing construction works or delivering a service, is formed as a “procurement of construction works or services”.

“Concession” is defined as a contract of the same kind – public procurement, but unlike it, for work performed or service delivered the contractor acquires the right to operating the structure or service, as well as the right to payment.

The Green Paper distinguishes between:

- PPP of purely contracting nature, where the partnership between public and private sectors is based solely on contract relations, and
- PPP of institutional nature which includes cooperation between the public and private sectors within a single economic operator.

This distinction is based on the observation that the diversity of PPP in the Member States can be reduced to two basic models. Each of them raises specific issues related to the application of the European law on public
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procurements and concessions and are subject to a separate analysis, suggested further down.

In terms of the *Green Paper* the institutionalised PPP presupposes creating a new subject, owned both by the public and private sectors. Therefore, the common economic operator has the job of guaranteeing the provision of activity or service for the benefit of society. In the Member States the public authorities sometimes resort to such structures, in particular for the administration of public services at local level (for example, water-supplying services, services related to waste collection, etc.).

The direct cooperation between the public and the private partner in a structure which is a legal entity allows the public partner through its being among shareholders and in the board of directors of the joint venture to maintain a relatively high level of control over the development of the project.

An institutionalised PPP can be established by means of founding a business project, owned by the public and private sectors, or in cases when the private sector undertakes the control of an existing public enterprise.

The European Parliament supports the application of the Public Procurement Act in selecting a private partner, as well as in outsourcing procedures.

The necessity of transparency and public control of the procedures of public-private partnership is considered to be of vital importance to the interests of citizens and investors.

In addition to the EC Treaty, rules for PPP are included in the following directives:

- Directive 2004/18 - on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts
- Directive 2004/17 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.
- Directive 92/13/ - on coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

In Bulgaria there is no specialised legislation, in contrast to Greece.

PPP is regulated by the following acts: Public Procurement Act; Concessions Act and Rules for Applying the Concessions Act; State Property Act; Municipal Property Act; Obligations and Contracts Act.

In view of the analysis made so far the ESC states that PPP is applied in accordance with the current legislation but experience is still lacking both on the part of the state and on the part of the business community in the implementation of investment and infrastructure projects.

IX. CONCLUSION

Following the analysis on general conditions and the normative framework for developing and implementing PPP projects, **THE ECONOMIC AND SOCIAL COUNCIL ASCERTAINS THE FOLLOWING MAIN PROBLEMS:**

- The responsibility for implementing PPP projects is shared between different ministries. There is no necessary institutionality for the management, coordination and control of PPP projects in the different sectors of economy. Regardless of the fact that in the last years certain capacity has been built at local level for granting public services to a private partner, it is still insufficient.
- There is no complete national policy for the improvement of the quality of public services through PPP.
- The expert capacity of the state and local administration, of the business community and of consulting firms is insufficient for a good and effective (operative and financial) developing, planning and managing of projects – investment and infrastructure ones, regardless of the training conducted under PHARE. It would be of particular use if complex measures are proposed regarding the improvement of the whole education process – planning, inter-disciplinary programmes of higher education institutions of construction, economics and law, with focus on practical issues and preparation of qualified experts on carrying out efficient PPPs.
- Society's negativity towards PPP and carrying out activities in the public sector by the business community is a result of non-transparency and insufficient publicity of the procedures for acquiring capital assets and lack of information and accountability for the activities performed in compliance with preliminarily set quality and quantity indicators.

Solving the above problems would lead to expanding the application of PPP and activating the participation of the business community, as well as to

changes in the negative attitudes of population towards some of the forms of PPP.

In this respect **THE ECONOMIC AND SOCIAL COUNCIL BELIEVES THAT FURTHER ACTIONS AND SOLUTIONS ARE NECESSARY IN THE FOLLOWING MAIN DIRECTIONS:**

1. Forming and following a clear national policy in the field of PPP. Developing a development strategy for PPP together with a detailed action plan, which should involve specific steps along these lines. Organising public discussions on developing and implementing this policy by the state with the participation of all stakeholders.
2. Supporting and advancing the business community in initiating such cooperation, formulating public-private partnerships attractive to the private sector. The analysis of the current situation defines as a dominating practice the initiation of PPP by the state through outsourcing.
3. The executive power should provide a list of priority projects planned for 2007-2013 which could be implemented through PPP. In this way the priority sectors for the state would emerge clearly and the state would make a serious commitment to their support.
4. Developing systems for public monitoring of PPP in all project phases. This system should assist the assessment of project's economic efficiency on the basis of adopted indicators. The ESC considers a guarantee for success of a PPP the wide support in society, in view of which the Council recommends the

participation of the social-economic partners in this process as a guarantee for its transparency, independence and efficiency.

5. Formulating clear quality criteria, which should be considered in the selection of the partner and written down in the contract itself for the service provided. In this way the protection of interests of the state and service users shall be guaranteed.

6. Introducing a unified approach in treating different services, when they are provided by the business community and respectively by the state. The principle of equality should go hand in hand with the economic benefit to both parties. The desire of each party to protect only its interests provokes conflicts and mistrust, which should be overcome.

7. Improving the work and coordination of institutions responsible for the development of PPP in Bulgaria. The state and local administration should formulate clearly the technical and financial parameters of implementation of public-private partnerships to facilitate the work of all parties.

8. The ESC insists on developing a specialised training on PPP by sectors, which should be monitored in a centralised way (for example by the Institute for Public Administration and European Integration or by a non-governmental organisation) to enhance the capacity of those working in the field.

9. The ESC takes a stand for studying the experience of leading countries in the field of PPP and supports the idea for exchanging good practices and expert decisions at European level. Using companies with experience and consultants in the process of creating PPP is extremely useful and important, but an analysis on

the consultancy market should be conducted to guarantee quality of service.

10. The ESC believes that there are potentialities in PPP development especially as regards to the so-called outsourcing of social services and activities. The ESC recommends that the state should pay more attention to this type of activity, having in mind the benefit of outsourcing to the private partner and the improvements which can be achieved in the public sector.

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