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## The French experience in Public-Private Partnerships

This contribution deals with the French experience in Public-Private Partnerships (PPPs), with a focus on the reform implemented in 2004 (and subsequent years), which introduced the Partnership Contract (PC), a public-payment PPP covering social infrastructure projects.

### 1-Public-Private Partnership contracts in France

#### I-1 A diversified scope

Today, PPP contracts in France are often categorized as concession arrangements (or “user-pay PPPs”), and PCs and equivalents (or “government-pay PPPs”).

Concessions are arrangements under which a commercial public service (usually provided through the use of a dedicated equipment) is transferred to a private company to be financed and operated over a long period, under the control of the administration. The company is directly paid through user fees and bears the demand/traffic risk.

Government-pay PPPs are arrangements which entitles a public procuring authority to grant to a private partner a global mission to design (fully or partly), build, maintain, operate and finance public assets and public services over the long-term against a payment made by the public sector and spread through time. More precisely, government-pay PPPs are characterized by at least three elements: (i) the construction or refurbishment/transformation of an asset, (ii) the maintenance, and/or operation of the asset and (iii) all or part of the financing of the asset. In such PPP contracts, payments from the public sector to the private partner are subject to the compliance of performance requirements (respect of deadlines and costs, availability and quality of services KPI, environmental provisions, etc.) mentioned explicitly in the contract. In government-pay PPPs, the public service (e.g. health, teaching) is still provided by the public sector.

	Public works contracts	Partnership contracts and equivalents	Concessions
<b>Term</b>	Short term	Long term	Long term
<b>Private financing</b>	No financing	Pre-Financing	Financing
<b>Scope</b>	Design, construction	Design, construction, maintenance, operation	Design, construction, maintenance, commercial exploitation
<b>Service</b>	Service provided to administration	Service provided to administration	Service provided to users
<b>Payment</b>	Public	Public or mixed	Users (with possibility of subsidies)
<b>Risk transfer</b>	Limited to construction	Construction and performance	Construction, performance and demand/traffic risk

France has a long tradition of public-private cooperation in infrastructures. Canals and bridges were built using concession arrangements in the 16th and 17th century. Railway, metro, water and power infrastructures followed in the 19th century. In the second half of the 20th century, concession arrangements spread to motorways, urban transport, waste management and district heating. Aside from concessions, government-pay PPPs went through a gestation period in the late 1980s and the 1990s and their use significantly increased with the new legislation passed in 2004 that introduced the PC. This contribution focuses on PC which is the most used government-pay PPP contract.<sup>1</sup>

## I-2 Key drivers for the reform

From 1980 onward, public sector was no longer able to handle an ever-increasing demand for non-commercial public services, both quantitatively and qualitatively. This resulted in delaying investments in sectors such as health, education, prisons or transportation networks and in the deterioration of infrastructures. Thus, there was a need to extend PPPs to non-commercial services that are non- or only partly-financeable by end-users. This led to the establishment of the PC with a view to speed up the delivery of infrastructures while limiting immediate financial burden on the public sector – since PPP financing schemes may have a deferred impact on government debt and deficit.

Another rationale for introducing the PC was to modernize and improve the performance of the public sector by:

- (i) optimizing the allocation of tasks between private and public sectors – in PCs, the public sector focuses on what it does best (the provision of the service), while outsourcing support functions to the private sector;
- (ii) sharing risks efficiently between private and public stakeholders;
- (iii) incentivizing the private sector to innovate and provide its best practices.

<sup>1</sup> Government-pay PPPs include the PC (the generic and universal toll) and other types of contracts, more limited in sectoral scope or access to a given category of public authorities such as *Bail Emphytéotique Administratif* (BEA), *Bail Emphytéotique Hospitalier* (BEH), *Autorisation d'Occupation Temporaire du domaine public* (AOT), *Contrat de bail avec clause de rachat anticipé* (LOA). For more details on the French PPP regulatory framework, see the joined document: “PPP units and related institutional framework – France”.

Moreover, PC is a sound alternative to public property and privatization *without jeopardizing the public service mission of the Public Authority, which remains unchanged.*

PC also allowed facilitating the transfer of competences to local levels of government or autonomous agencies (“*de-centralisation*”) by giving them new means of handling newly transferred responsibilities in infrastructures – e.g. roads.

Finally, the introduction of the PC has been a mean to foster competition by ensuring a broader access to new actors in some sectors – as required by some EU market regulations.

### **I-3 Outcomes of the reform**

Subsequently to the new legislation passed in 2004, France has become one of the most buoyant markets in the world for “government-pay PPPs

Between 2005 and 2013, close to 600 government-pay PPP transactions reached financial close, of which about 200 PC. Contracts signed over that period represent a cumulative capital investment of approximately €17 billion, and will generate future flows of payment of over 40bn€ in the coming years, putting France at forefront of EU market, immediately after the UK, by volume of PPP Capex according to EIB data<sup>2</sup>. Nevertheless public-payment PPPs remain a niche market compared to public investments in the range of €65 billion per year.

Government-pay PPPs involve both central (e.g. line ministries, companies with a public mission, health trusts, universities) and sub-national (e.g. regions, municipalities) government levels. They are used across many economic sectors (e.g. transport, health, justice, education, urban equipment, environment, energy efficiency, telecommunication, culture). Government-pay PPPs come in a variety of sizes, from small-scale (administration of buildings, street lighting, road works, etc.) to huge projects (multi-billion euros high speed lines projects).

A recent academic study suggests that over 80% of government-pay PPP projects reach construction completion & delivery within the expected time frame. In over 90% of cases, the budget overrun for the public authority is below 3%. Very few contracts have been resiliated (4 to date) due to unsatisfactory performance and whatever refinancing has occurred has been shared between public & private partners ( no windfall gain for the private partner), as is compulsory under the CP act.

## **II- Reasons for the success**

First of all, PCs are supported by a well-established institutional framework. They are regulated, mostly by the 2004 PPP Law amended and complemented in 2008 and 2009. These regulations introduce the PC and define its scope.

PC regulations introduce and define the basic functions of the *Mission d’Appui aux Partenariats Public-Privé* (MAPPP) which is a central PPP unit. MAPPP has three main functions:

- It acts as a PPP project gate-keeper (in prescribed cases) through the validation of preliminary project evaluations prepared by procuring authorities before launching a tender;
- It provides support to public sector entities in the preparation, negotiation and monitoring of PCs. This entails preparing analytical tools, guidance and standard contractual clauses; and

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<sup>2</sup> See EPEC :Market Update Review of the European PPP Market on [www.eib.org/epec](http://www.eib.org/epec)

- It provides information to all market players & stakeholders and promotes the good use of PCs.

A procuring authority can opt for a PC if at least one of the three following fundamental conditions is met: (i) the project is complex – complexity arises in particular when the public procuring authority is not able to define an efficient financial or legal structure for the project *ex ante*; (ii) the project is urgent; or (iii) the PC arrangement provides value for money – this criteria is assessed through a comparative analysis with alternative procurement methods.

PC regulations also deal with the tendering procedures for PCs, in particular the competitive dialogue. They define the public authorities that can make use of PCs, and define the basic terms of a PC (e.g. duration, risk sharing, payments to the private partner, dispute resolution).<sup>3</sup>

Beyond the regulatory framework, other factors are likely to explain the success of PCs and equivalents:

- A key feature of the French PPP market is the structure of the domestic contracting industry. France hosts three of the twelve largest contractors worldwide – i.e. Vinci, Eiffage and Bouygues. Besides their renowned technical and project management abilities, the three “majors” have built up a significant experience;
- France enjoys deep and sophisticated banking and financial markets. The diversity of funding instruments and products provided by diversified stakeholders facilitate the financing of all types of PPP – whatever the sector, the size or the risk of the project ;
- French authorities promoted two initiatives to support the financing of PPP projects as part of an economic stimulus package during the GFC. In early 2009, the French government established a guarantee scheme for priority PPP projects in particular as a response to the financial crisis and paved the way to a greater recourse to institutional investor debt financing of PPP projects in complement to traditional bank financing..

## II-1 Challenges and prospect for the future

The French PPP market has performed well to date despite the financial crisis. Future performance will largely be dictated by its ability to meet a number of key challenges.

By far the most significant challenge is that of the financing of projects. The effect of the current crisis on the liquidity of the banking sector and on the pricing and maturity of financings endangers the value for money of PPP projects. 2013 has seen the first senior debt financing of PPPs , both at the national and local level by way of private placement to institutional debt funds. Other options are pursued to address this issue consisting in new sources of long term financing on the capital markets, in mobilizing public co-funding or refinancing, and in collecting user-fees whenever possible.

Another issue deals with the budgetary sustainability of projects. Indeed, the public budgetary constraint is stronger than ever at central and local levels. This situation requires being more selective upstream before launching new projects. Correspondingly, a budgetary sustainability assessment is now required for central government projects before launching a PPP tender .

The French PPP market has also witnessed so far a growing number of legal challenges, mostly upon contract award. This often leads to protracted negotiations between the procuring authorities, the private project company and their financing partners (banks) in particular regarding the assumption of the risk of early contract cancellation on legal grounds.

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<sup>3</sup> The document mentioned earlier “PPP units and related institutional framework – France” also describes the PC regulatory framework in more details.

A comprehensive audit of the instrument focusing on procedures, control and results has just been performed. It concludes that PC is a useful tool to manage public procurement. In order to improve the instrument, the audit recommends to streamline the legal framework, to reinforce the value-for-money assessment, and to better protect public interest (by centralizing the reporting and the follow up of all contracts, systematizing *ex post* performance assessments, generalizing the value for money assessment to select & prioritize all large government projects).

Besides, the development of PPPs in France has raised a certain amount of criticism, in particular from independent architects and small/medium size contractors and companies, largely fuelled by the *de facto* dominance of the major contractors.

### **Some lessons learned from the French experience**

First, PCs must be chosen for the right reasons. It should not be seen first as a financing instrument. Indeed, in most cases, private financing is more expensive than public financing. Moreover, *in fine*, infrastructures/equipment are financed by public funds. PCs should be seen first and foremost as a procurement/management mode for public equipment/services.

Second, PCs may first appear to relieve public funding issues by spreading the impact on the government debt and deficit over the long run. However, this can lead to governments accepting higher fiscal commitments and risks under PPPs than what would be consistent with prudent public financial management.

PCs are structures that are complex to assess, conduct and control. On the public side, they require reinforcing governance and skills in procurement, contract negotiation and management, performance monitoring, dialogue with the private sector, etc. Indeed, while PPPs can contribute to a better project analysis and bring innovations from the private sector, responsibility for planning and project selection primarily remains with the public sector. The advantages expected from transferring global responsibility to the private sector (e.g. efficiency in managing and maintaining infrastructure) also depend on effective PPP contracting and procurement by the government. Finally, PPPs often need to be complemented by other measures to improve infrastructure performance. These measures can include increasing fiscal resources for infrastructure, better decision-making and project selection & prioritization by the public sector, and improved regulation and governance.

PCs and related regulations are difficult to implement, it is recommended to start with small projects. It is also suggested to set up a central unit that is a one-stop window for public & private stakeholders allowing for experience capitalization.

Finally, it is worth mentioning that CPs are particularly well suited to finance sustainable development projects. CPs are long term global contracts (including the construction, the maintenance, the exploitation and the transfer of infrastructures in good working condition), highlighting notions such as global lifecycle cost of a project. They are structured so as to incentivize the private partner to build good quality and cleaner infrastructures taking into account issues such as the quality of the material or energy efficiency; all the more so as these requirements are mentioned in the contract and used among the weighted criteria retained to select the preferred bidder. CP is also an appropriate scheme to finance the upgrading and adaptation of existing (brownfield) infrastructures, as in a recent project signed end of 2013 to modernize dams on the French Waterways network.