

EFFECTIVENESS OF PUBLIC PRIVATE PARTNERSHIP AGREEMENT

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Annotation. Discussion around the efficacy and effectiveness of Public private partnership agreement (PPPA) has become increasingly polarised. Private enterprises now build and staff the garbage trucks. They build and operate roadways; they staff manual and electronic toll collection systems; and they plow and maintain road surfaces. Critics of PPPA that, it has been suggested that the projects pursued are ones that are perceived to be financially viable from the private sector perspective; the ethical motivation is profitability over poverty reduction; the privatisation of some services will lead to the poor being left behind because of lack of affordability; and governments' control over public services is greatly reduced with PPPA.

Keywords: public private partnership agreement; contract; termination of the agreement; effectiveness; efficiency.

INTRODUCTION

European Union (EU) has noted current estimates of dramatic shortfalls in resources required to achieve the sustainable development goals and returning public finances to a sustainable path after the worst economic crisis 2008s: because neither the public nor the private sector, each individually, has enough resources to overcome complex problems independently. Public-Private Partnerships (PPPs or 3P) are increasingly envisaged as an attractive proposition for involving the private sector in international development cooperation.

The topic “Effectiveness of Public private partnership agreement (PPPA)” provides insights in the wide variety of PPPA arrangements and the sometimes rather diffuse contractual framework under which PPPs take place.

The aim of topic is to promote implementation of PPPA, thus improving quality and availability of public services at national and regional level. Methodology or legal method is the understanding and use of professional procedure and techniques in interpreting case law, statutes, doctrines (Strauss, 2014). In article are used a systematic literature review, analysed appellate opinions typical of law school teaching materials and lawyers arguments and briefs, considerable stretches of legislative history materials, a good deal of secondary literature-largely excerpts bearing on the continuing controversies over legal act interpretation.

As privatisation became politically controversial, even in the United Kingdom, new terms were introduced. ‘Public-private partnership’, abbreviated as PPP, was created to present the same forms of involvement of the private sector as more a collaborative, technical exercise rather than an aggressive transformation of relations. A similar term, ‘private sector participation’ (PSP) has also been widely used, especially by the World Bank and others in the context of developing countries. In both cases, the term is not a legal or technically exact phrase, but rather a replacement for the old general Thatcherite use of the word ‘privatisation’. The vast majority of PPPs, for example, are not partnerships in any legal sense, but simply contractual relationships (Hall, 2003).

Other terminology does have more technical origins, and therefore specific meanings. The oldest of these is ‘concession’, which has broadly the same meaning everywhere, of a public authority assigning to a private company the right to exploit a monopoly service by charging users, usually through making investments at its own risk (“à ses risques et peris!”). More recent acronyms such as PFI and BOT (see below) also have quite precise meanings. All of these however, and more, are also covered by the vague general terms of PPP and PSP.

The different words, and the different perceptions of them, have made a common understanding more difficult. It is more helpful to re-focus on the concrete relationships and issues involved.

LEGAL FRAMEWORK OF PUBLIC PRIVATE PARTNERSHIP AGREEMENT

Work on public contracts at an EU level entails several problems. To begin with, one has to screen an abundant amount of restatement material (EU legislation, case law, ombudsprudence (the ‘jurisprudence’

of the EO), standard contracts and contract templates developed by the Commission), which coincidentally is nonetheless very ambiguous and fragmentary in nature. (Auby, 2014) What is more, there is no consensus among lawyers on how to understand this material. The same rules and clauses are interpreted in different ways by different contracting authorities, courts, lawyers, advocates general and scholars.

The research goal provides insights in the wide variety of PPPA arrangements and the sometimes rather diffuse contractual framework under which PPPs take place. Due attention is given to the motives and rationale for relying on PPPs and the expected outcomes of PPP arrangements.

A common feature of these initiatives is long term mutually beneficial institutional and organizational cooperation between public authorities and business sector through risk sharing and harnessing private sector expertise. The main aim of research is to explore legal issues concerning the reasons for effectiveness Partnerships at the international level and ascertain the development of PPPs in the context of impact upon national law.

Effectiveness of PPPA means degree to which objectives of PPPA are achieved and the extent to which targeted problems are solved. In contrast to efficiency, effectiveness is determined without reference to costs and, whereas efficiency means “doing the thing right”, effectiveness means “doing the right thing”, “thing right”, effectiveness means “doing the right thing” (<http://www.businessdictionary.com>).

Work on PPPA at an EU level entails several problems. To begin with, one has to screen an abundant amount of restatement material (EU legislation, case law, ombudsprudence (the ‘jurisprudence’ of the EO), standard contracts and contract templates developed by the Commission), which coincidentally is nonetheless very ambiguous and fragmentary in nature. What is more, there is no consensus among lawyers on how to understand this material. The same rules and clauses are interpreted in different ways by different contracting authorities, courts, lawyers, advocates general and scholars.

By Dutch Ministry of Foreign Affairs opinion, PPPs are generically defined as ‘a form of cooperation between government and business agents – sometimes also involving voluntary organizations (NGOs, trade unions) or knowledge institutes – that agree to work together to reach a common goals or carry out a specific task, while jointly assuming the risks and responsibilities and sharing resources and competences’ (Ruben, 2013). While there are many conceptual studies available that provide insights in the principles and potentials of PPPs in international development cooperation, empirical evidence that highlights the (developmental) rationale and the actual outcomes for stakeholders is still scarce.

United States Lawyers gives such definition of Public-Private Partnerships Agreement (EJCDC P3-508, Public–Private Partnership Agreement):

1. Public-Private Partnerships Agreement (PPPA) – The written instrument, executed by Public Owner and Private Entity, that identifies the parties, describes the Project, grants the concession, establishes obligations, sets forth various general terms and conditions, and designates the specific items that are Contract Documents.

2. Concession – The rights that Public Owner grants to Private Entity in this Agreement, and related obligations.

Latvian Law on Public–Private Partnership defines:

1. PPP – co-operation between the public and private sector simultaneously characterized by the following features: a) the co-operation is between one or several public partners and one or several private partners involved in the public-private partnership procedure; b) the co-operation is carried out in order to meet public needs in performing construction works or providing services; c) it is a long-term co-operation lasting up to 30 years but in the cases laid down in this Law – even longer; d) a public and a private partner pool and use the resources available thereto (e.g. property, financial resources, knowledge and experience); e) a public partner and a private partner share the responsibility and risks;

2. Contractual PPP – the type of PPP where the co-operation between the public and private sector is carried out by the public and private partner entering into and executing a partnership procurement contract or a concession contract;

3. Institutional PPP – the type of PPP where the co-operation between the public and private sector is carried out by establishing jointly a joint venture in accordance with the procedures laid down in this Law with which the public partner enters into a partnership procurement contract or a concession contract as with a private partner;

4. Public-private partnership agreement (PPPA) – a partnership procurement contract or a concession contract.

As it can be explain from Table 1. In 2009 was increase the number of PPPA.

Table 1

Statistics of PPPA in Latvia from Enterprise Register

<i>No. p.k.</i>	<i>Date to which the status is fixed</i>	<i>Status Register</i>	<i>Existing</i>	<i>Terminated</i>
1	2003-12-31	5	5	0
2	2004-12-31	12	12	0
3	2005-12-31	13	13	0
4	2006-12-31	14	14	0
5	2007-12-31	15	13	2
6	2008-12-31	16	14	2
7	2009-12-31	61	57	4
8	2010-12-31	64	59	5
9	2011-12-31	64	57	7
10	2012-12-31	65	58	7
11	2013-12-31	65	58	7
12	2014-12-31	65	58	7
13	2015-12-31	65	58	7
14	2016-12-31	65	58	7
15	2017-10-05	65	58	7

PPP has been implemented for the past **20 – 30 years** in developed countries such as United Kingdom (UK), Denmark, Canada, Holland, Germany, Spain, United States of America (USA) (Duffield et al., 2010; Buser et al., 2006; Grimsey & Lewis 2004). Countries with **active/developing PPP programs include**: Australia, Brazil, Canada, Chile, Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Malta, Mexico, Netherlands, Poland, Portugal, Slovak Republic, Singapore, Slovenia, Spain, Taiwan and UK.

Key parameters for effectiveness are adherence to budgetary provisions, timeliness in project delivery, quality of the project delivered, project risk transferability, project accountability (Akintoye et al, 2003).

PPPA is not a new term, since certain forms of it can be found in ancient times. In the present world, the growing number of countries view PPP as an alternative to a traditional public investment model and a solution for providing successful public services, developing and maintaining infrastructure, which is indispensable for the whole society. PPP is widely used in Great Britain, Ireland, the Netherlands, France, the USA, Canada, Australia and a range of other countries.

In the practice of EU countries, common PPPA involve the design, construction, maintenance and management of roads and other objects of public infrastructure, provision of waste management and heat supply etc., moreover, as can be seen from the examples above the PPPA is implemented in such sectors that require considerable investment and special technical and administrative knowledge. If these services have been traditionally provided and financed by the state or municipality, i.e. a public partner, then as a result of PPP the private capital is involved to provide these services, simultaneously sharing the risks, investments and benefits related to PPP implementation between a public partner and a private partner. The public partner can thus focus on the execution of the primary functions, i.e. planning and monitoring functions (Ministry of finance, 2012).

REASONS AND BENEFITS FOR IMPLEMENTING PPPA

A common feature in any PPPA is the realization of value for money – the acquisition of the financial usefulness of investments along with the hand-over of respective risks, promotion of innovations and efficient management of resources. Thus the determination of value for money is one of the major components in adopting the decision on PPPA implementation. Such approach is used in all countries implementing a targeted policy.

To promote implementation of PPP projects thus improving quality and availability of public services at national and regional level. Eligible activities of the Programme “Promotion of development of public-private partnership in Latvia” of the Norwegian Financial Mechanism priority “Regional policy and development of economic activities” are following:

1) Creating feasibility study for PPP project and providing training for the staff of the end-recipient and its partner(s) involved in the sub-project. Within the Programme framework of this activity the elaboration of sketch designs for a construction site will be also supported, if it is necessary for creation of feasibility study, the research related to the engineering documentation's creation and drafting of documents and permits which according to legislative acts are necessary to develop a sketch designs if the sketch designs is necessary for creation of feasibility study;

2) Establishing procurement documents for PPP project and providing training for the staff of the end-recipient and its partner(s) involved in the sub-project (Ministry of finance).

The expected contract value for the PPPA shall be determined in accordance with the Public Procurement Law (PPL).

The expected contract value for concession contracts shall be determined as the planned total payment of the public partner for execution of the concession contract. When planning the total payment the public partner shall take into consideration any available choice, any supplements to the concession contract and any third party payments, as well as the value of awards and payments if the concession procedures provide for assigning of awards or making payments to candidates. The expected contract value of the works concession contract shall include also the contract value of the supplies and services requested for execution of the works concession contract and which the public partner has intended to perform or provide for the private partner.

It shall not be permitted to divide the public-private partnership projects into parts in order to avoid application of the concession procedure or the relevant conditions of the concession procedure. For determination of the expected contract value it shall not be permitted to use the method intended for non-application of the concession procedures or the relevant conditions of the concession procedures laid down in the Law on PPP.

The expected contract value for the PPPA shall be determined simultaneously when conducting financial and economic calculations.

Financial and economic calculations (Section 14, of Law on PPP) shall be conducted in order to determine the compliance of the public-private partnership with the implementation of the particular project from the point of view of rational and efficient use of financial resources of the public person and what type of a public-private partnership agreement is to be entered into in order to implement successfully the relevant project for performing construction works or providing services taking into consideration the impact of the potential public-private partnership agreement on the amount of the long-term liabilities of the State budget and the government debt.

The Cabinet shall determine the procedures by which the type of a public-private partnership agreement is determined and financial and economic calculations are conducted, as well as the criteria for accounting the public-private partnership assets in order to determine the impact of the public-private partnership agreement on the amount of the long-term liabilities of the State budget and the government debt.

The decision to conduct of the financial and economic calculations shall be taken:

1) If the public partner is the State – the member of the Cabinet who is responsible for the field where it is planned to implement the public-private partnership project;

2) If the public partner is a local government – the council of this local government;

3) If the public partner is a derived public person (except for the local government) – the body of this public person; or

4) If the public partner is a legal person – an institution of this legal person that is entitled to take such a decision.

(4) The decision to conduct the financial and economic calculations shall be sent by the public partner to the Monitoring Institution which following the receipt of the relevant decision shall put it on the web site of the Monitoring Institution in accordance with the procedures laid down by the Cabinet.

The Competent Authorities of Latvian Republic makes they opinions of the PPP assets (Section 15, of Law on PPP) Following the conduct of the financial and economic calculations the referred to calculations shall be sent:

1) To the Ministry of Finance — in order to get an opinion on the expected impact of the conditions referred to in the financial and economic calculations on the amount of the long-term liabilities of the State budget and the government debt;

2) To the Monitoring Institution — in order to get an opinion on the assumptions and risk allocation between the public partner and the private partner in the public-private partnership agreement included in the financial and economic calculations.

In its opinion the Ministry of Finance shall specify the accounting rules of the PPP assets referred to in the financial and economic calculations that are the basis for the conclusion that the PPPA will not make negative impact on the amount of the long-term liabilities of the state budget and the government debt. Public institutions are taking a decision on Inception of the Public-Private Partnership Procedure (Section 16, Law on PPP). If it is established in the opinion of the Ministry of Finance that the potential PPPA does not make negative impact on the amount of the long-term liabilities of the state budget or the government debt, the decision on inception of the public-private partnership procedure shall be taken by:

- 1) The Cabinet if a public-private partnership agreement is entered into by the State or a derived public person acting as a public partner (except the local government);
- 2) The council of the local government if a public-private partnership agreement is entered into by a local government acting as the public partner;
- 3) The decision-making body determined in the Articles of Association of the legal person if a public-private partnership agreement is entered into by a legal person acting as a public partner; or
- 4) The relevant institution referred to in Clause 1, 2 or 3 of this Paragraph if a PPPA is entered into by a public institution or a company of a public institution within the meaning of the Law on Public Service Provider Procurements (Law on PSPP).

If the Ministry of Finance indicates in its opinion that the potential PPPA makes negative impact on the amount of the long-term liabilities of the state budget or the government debt, the decision on inception of the public-private partnership procedure shall be taken by the Cabinet.

If the State or a derived public person have a decisive influence over a capital company within the meaning of the Group of Companies Law, then the institutions referred to in Paragraph one, Clauses 3 and 4 of this Section shall take the decision on inception of the public-private partnership procedure when receiving a prior written agreement of the holder of capital shares of the relevant State or derived public person.

The institutions referred to in Paragraph one and two of this Section shall take the decision on inception of the public-private partnership procedure based on the financial and economic calculations and opinions of the Ministry of Finance and the Monitoring Institution.

If the Monitoring Institution has given an opinion that the risk allocation between the public partner and the private partner does not correspond with the concession contract, the decision on inception of the concession procedure shall not be taken.

Each public partner institution referred to in Paragraph one and two of this Section involved in a PPP project shall include the following information in the decision on inception of the PPP procedure:

- 1) PPP procedure for determination of a candidate with whom the public-private partnership agreement will be entered into;
- 2) A public partner representative;
- 3) The duration of the public-private partnership agreement ensuing from the financial and economic calculations and opinion of the Ministry of Finance;
- 4) Public partner resources – to be transferred to a private partner or in case of institutional partnership – to be invested in a joint venture;
- 5) Provisions determined in the opinion of the Ministry of Finance for the accounting of the public-private partnership assets;
- 6) In case of institutional partnership – the fact that the public partner representative will be the holder of capital shares or stocks (hereinafter – capital shares) owned by the public partner in the joint venture according to the Law On the State and Local Government Capital Shares and Capital Companies;
- 7) Other PPP implementation conditions important for meeting the public interests.

If the Monitoring Institution determines in its opinion that it is impossible to make an exact conclusion from the financial and economic calculations on whether the risk allocation referred to therein corresponds to the concession contract, the public partner institution referred to in Paragraph one and two of this Section shall take a decision on how the partnership procurement contract is to be entered into and how the partnership procurement procedure is to be applied.

The decision to enter into a public-private partnership agreement for a period of time that exceeds 30 years shall be taken by taking into consideration the condition referred to in.

If it is determined in the decision on inception of the public-private partnership procedure that a partnership procurement contract is to be entered into, the document preservation term prescribed in Section 22 of Law on PPP shall be applied to the preservation of the decision on inception of the public-private

partnership procedure, the relevant financial and economic calculations and opinions of the competent authorities.

Within the framework of the programme open call in order to apply for the co-financing available within the framework of the programme for any of programme activities in total 23 sub-projects applications were submitted amounting to 3 160 362 euro. However after evaluation of sub-project applications a decision was made to grant co-financing for implementation of 13 sub-projects Table 2.

Table 2

Therefore within the framework of the programme the following sub-projects were implemented

(source State agency “Investment and Development Agency of Latvia”)

<i>Decision No</i>	<i>End-recipient (institution)</i>	<i>Sub-project title</i>	<i>Planned sub-project expenses/ granted co-financing (euro)</i>	<i>Paid co-financing (euro/% of planned)</i>
2009-03-27 7.1-4.10/12	Ogre municipality self-government	Development feasibility study for PPP project “Construction of traffic optimization objects of Ogre municipality – motorway and pedestrian bridge over Ogre river and tunnel under the railway Riga-Daugavpils”	99 200 89 280	57 306,38 64,19
2009-09-24 7.1-4.10/17	Ogre municipality self-government	Development feasibility study for PPP project “Reconstruction of business and innovation incubator of Ogre”	85 000 76 500	26 306,99 34,39
2009-04-14 7.1-4.10/10	Ministry of Welfare	Development feasibility study for PPP project “Construction of new buildings, arrangement of existing infrastructure and maintenance of centre of social care “Kisi””	208 129 187 316	181 049,34 96,65
2009-08-20 7.1-4.10/15	Tukums municipality council	Development feasibility study for PPP project “Construction and maintenance of new sport hall in town of Tukums”	55 000 49 500	26 890,02 54,32
2009-03-26 7.1-4.10/2	Adazi municipality council	Development feasibility study for PPP project “Construction and maintenance of the administrative building of Adazi municipality council”	215 709 189 824	124 249,34 65,46
2009-04-15 7.1-4.10/11	Ministry of Environmental Protection and Regional Development	Development of Razna national park territory management infrastructure	40 000 36 000	20 418,17 56,72
2009-04-14 7.1-4.10/1	Limbazi municipality council	Development feasibility study for PPP project “Construction and maintenance of main Regional library of Limbazi”	186 300 167 670	44 739,06 26,68
2009-04-14 7.1-4.10/3	Limbazi municipality council	Development feasibility study for PPP project “Construction and maintenance of multifunctional complex of sport and wellness in City of Limbazi”	170 300 153 270	42 907,63 27,99
2009-04-30 7.1-4.10/4	Ministry of Justice	Development of procurement documentation for PPP project “Construction and maintenance of Olaine prison” and staff training	277 800 250 000	135 534,33 54,21
2009-04-30 7.1-4.10/6	Ministry of Justice	Development feasibility study and related documentation for PPP project “Construction and maintenance of custody spaces of Skirotava and Kurzeme” and staff training	277 800 250 000	186 754,98 74,70
2009-03-31 7.1-4.10/7	Riga city council, Welfare Department	Development feasibility study for PPP project “Reconstruction and maintenance of social care centre „Stella Maris” and “Mezciems” in Riga”	105 000 94 500	58 354,08 61,75

CRITERIA OF EFFECTIVENESS OF PPPA AND RECOGNITION AS INVALID OR ON REDUCTION OF THE TERM OF A PPPA

The PPPA approach has many advantages over traditional methods, but there are also many concerns. Very few people have a complete picture of the future implications of PPPA. The public concerns include use of up-front payments, concession length, and noncompete clauses, among others. Many of these concerns are legacies from the past that have been rectified as both the public and private sectors have learned and adapted (Buxbaum & Ortiz, 2007).

An application on recognition of a PPPA as invalid, on amendments to or cancellation of the provisions thereof or on reduction of the term of a concession contract may be submitted by the persons who are interested in PPPA. The application shall be submitted to the Administrative District Court where the matter is heard by three judges. The provisions of the Administrative Procedure Law shall be applied to the proceedings regarding the application and the matter, including provisions regarding the hearing of a public law contract in the court, unless this Law lays down otherwise. The application on violations referred to in Section 312, Paragraph one of Law on PPP may be submitted by the following deadlines:

(1) Within six months following the day when the PPPA was entered into,

(2) Within one month following the day when the public partner or the public partner representative informed the relevant candidate on entering into the PPPA specifying the information referred to in Section 53, Paragraph four, Clause 1 or 2 of Law on PPP, or on entering into the concession contract specifying the reasons for rejection of the application submitted thereby.

Simultaneously with submission of the application or during hearing of the matter the applicant may, in the cases and procedures laid down in the Administrative Procedure Law, ask to apply provisional regulation envisaging prohibition of certain activities related to execution of the concession contract.

The judgement of the Administrative District Court may be appealed, by way of cassation procedure, to the Administrative Matter Department of Supreme Court Senate. Other court adjudications may be appealed according to the Administrative Procedure Law. Claim on recognition of a PPPA as invalid that is not substantiated by the conditions referred to in Section 312 of PPP Law, shall be submitted to the court of general jurisdiction in conformity with the procedures laid down in the Civil Procedure Law.

The Court may recognise the PPPA as invalid, amend or cancel the provisions thereof or reduce the term of the PPPA in any of the following cases (Law on PPP Section 31.2):

1) The PPPA was entered into without application of the PPP procedures laid down in Section 17, Paragraph one of this Law;

2) The PPPA was entered into disregarding the term laid down in Section 54 of Law on PPP;

3) The concession contract was entered into disregarding the prohibition to enter into a concession contract laid down in Section 29, Paragraph five of this Law.

In the case referred to in Paragraph one, Clause 1 of this Section the PPPA may not be recognised as invalid, the provisions thereof amended or cancelled or the term of the contract reduced if all of the following conditions are observed:

1) The public partner or the public partner representative has published the notice referred to in Section 53.1, Paragraph one of Law;

2) The concession contract was entered into not earlier than 10 days and one additional working day following the day when the notice referred to in Section 53.1, Paragraph one of this Law was published on the website of the Public Procurement Bureau in Internet or in the Official Journal of the European Union in case when the contract value of a works concession is equal or greater than the contract value limits determined by the Cabinet;

3) The prohibition to enter into a PPPA laid down in Section 29, Paragraph five of this Law has been observed.

Judgement of the Court on a Concession Contract (Law on PPP, Section 31.3)

If the court finds that the PPPA was entered into disregarding the provisions of this Law and concludes that the application shall be satisfied, it may choose one of the following types of the judgements to its own discretion in accordance with conditions of Law on PPP Section 31.3:

1) Recognizes the PPPA invalid from the moment of the entering into thereof;

2) Amends or cancels the provisions of the PPPA. By this judgment the court also reduces the term of the PPPA;

3) Reduces the term of the PPPA.

When passing a judgment, the Court shall not be limited to the subject of the application and limits of the claim determined by the applicant.

If choosing the type of judgement referred to in of Paragraph one, Clause 1 or 2 of this Section the court shall evaluate which one of them is sufficiently proportional, effective and preventive in the particular case in order to ensure that in future the public partner or the public partner representative will not tolerate violations of this Law. The court shall make the judgement referred to in Paragraph one, Clause 3 of this Section only in cases laid down in Paragraphs four and five of this Section.

The Court shall not pass the judgement referred to in Paragraph one, Clause 1 or 2 of this Section if it is important to maintain the consequences of the concession contract due to public interests. Financial consequences (for example, due to delay of making a payment, change of a contractor, sanctions or other legal obligations) alone shall not be considered a sufficient basis for non-passing of the judgement referred to in Paragraph one, Clause 1 or 2 of this Section.

If a concession contract has been entered into disregarding the deadline prescribed in Section 54 of this Law or violating the prohibition to enter into a concession contract laid down in Section 29, Paragraph five of this Law, and it is found that the concession procedure until the moment when a decision was taken on determination of the winner has been carried out in accordance with the requirements of this Law, and the referred to decision has not affected the chances of the candidate, who has submitted the application, for the award of a contract, the court shall pass the judgement referred to in Paragraph one, Clause 2 or 3 of this Section. Important is question of compensation of losses.

Losses caused within the framework of administrative proceedings shall be compensated in accordance with the Administrative Procedure Law and the Law on Compensation of Losses Caused by Public Administration Institutions. Matters about compensation of losses shall be examined by the Administrative District Court composed of three judges according to the procedure of judicial proceedings. If losses have been caused outside the administrative proceedings, the court shall decide on the compensation thereof upon the request of an applicant by reviewing the relevant application and passing one of the judgements referred to in Section 31.3, Paragraph one of Law on PPP.

The duty to prove the existence of such losses and the amount of compensation rests on the applicant. Following the day when the judgment enters into effect the compensation of such losses may be claimed according to the civil law procedure (Allien & Overy, 2012). When submitting an application to the Procurement Monitoring Bureau according to Section 29 of Law on PPP, the compensation of losses shall not be claimed. Compensation of losses caused by the public partner or the public partner representative may be requested simultaneously submitting an application to the court or addressing the public partner in accordance with the procedures laid down by the Law on Compensation of Losses Caused by Public Administration Institutions (Muižnieks, 2013). The Procurement Monitoring Bureau shall not be liable for losses caused by the public partner or the public partner representative.

Expectation damages are the norm; this measure of damages requires that the nonbreaching party be placed in the position that it would have been in had the contract been completed in accordance with its terms. In the normal course of events, the nonbreaching party is entitled to the discounted present value of its projected future profits (Roin, 2013). The extensive term of many of these privatization arrangements in PPPA not only causes the amount of damages to balloon but also ensures that the calculation of the amount owed will be contentious and expensive to calculate.

CONCLUSIONS

Work on PPPA at an EU level entails several problems. To begin with, one has to screen an abundant amount of restatement material (EU legislation, case law, ombudsprudence (the ‘jurisprudence’ of the EO), standard contracts and contract templates developed by the Commission), which coincidentally is nonetheless very ambiguous and fragmentary in nature.

A major conclusion derived from this research is that PPPA evaluations focus more on resource sharing, but pay little attention to the risk-sharing and revenue distribution dimension of partnerships.

PPPA have long-lasting effects, so a long time horizon is not necessarily cause for alarm. Thus, for example, the decision to adequately fund (or not) public education can have profound, life-long effects on the affected schoolchildren.

Most publicly constructed infrastructure is expected to last for a long time. However, many recent public-private infrastructure deals run for terms that are long even by the standards of government projects. Many have terms exceeding thirty years, and terms more than seventy years are not unknown. The terms of

these infrastructure deals now found in the United States are often double those found in comparable European infrastructure PPPA.

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Summary **Effectiveness of public private partnership agreement**

Discussion around the efficacy and effectiveness of Public private partnership agreement (PPPA) has become increasingly polarised. Private enterprises now build and staff the garbage trucks. They build and operate roadways; they staff manual and electronic toll collection systems; and they plow and maintain road surfaces. Critics of PPPA that, It has been suggested that the projects pursued are ones that are perceived to be financially viable from the private sector perspective; the ethical motivation is profitability over poverty reduction; the privatisation of some services will lead to the poor being left behind because of lack of affordability; and governments' control over public services is greatly reduced with PPPAs.

Effectiveness of PPPA means degree to which objectives of PPPA are achieved and the extent to which targeted problems are solved. In contrast to efficiency, effectiveness is determined without reference to costs and, whereas efficiency means “doing the thing right”, effectiveness means “doing the right thing”, “thing right”, effectiveness means “doing the right thing”.

For effectiveness information shall be included in a public–private partnership agreement by law: 1) subject of the agreement including the amount, content, quality and manner of construction works or services; 2) financial conditions of the agreement; 3) set of rights each public partner transfers to the private partner; 4) public partner resources each public partner transfers to the private partner and the procedure for transferring such resources; etc..

A common feature in any PPPA is the realization of value for money – the acquisition of the financial usefulness of investments along with the hand-over of respective risks, promotion of innovations and efficient management of resources. Thus the determination of value for money is one of the major components in adopting the decision on PPPA implementation.