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Redaktor techniczny: Barbara Łopusiewicz

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Anna Pyka

Uniwersytet Ekonomiczny w Katowicach

EXECUTION OF INVESTMENT PROJECTS BASED ON THE PUBLIC-PRIVATE PARTNERSHIP MODEL IN POLAND IN THE PERIOD 2009 TO 2011

Summary: Since 2008 Poland has had new legal regulations that have completely changed the cooperation conditions for PPPs (the regulations significantly improved the popularity of the public-private cooperation model). The article aims to assess the popularity of PPP models in Poland in 2009-2011, taking into account the difficulties in PPP. The timeframe accepted for this analysis (2009-2011) will allow us to evaluate the influence of the introduction of the legal changes with respect to PPP in Poland on the execution of investment projects based on that model of public-private cooperation.

Keywords: public-private partnership, the difficulties in PPP.

1. Public-private partnership – introduction and theoretical background

Public-private partnership (PPP) is a model of cooperation between the public and private sectors that allows public entities to carry out investment projects without having to contribute their public-sector funds. The attractiveness of this model comes from the cooperation of public entities with the private sector, although each of the parties involved in a PPP model has a different objective (the public entity aims to satisfy the social needs and the private entity to maximise its profits). Thanks to the cooperation between the public and private sector it is possible to increase the effectiveness of public services by sharing risk and taking advantage of the private sector's experience. With PPP, the private sector provides the source of capital so that public funds can be used for other purposes. On the other hand, what the public sector can offer to its private counterparts is the certainty of long-term cash flows from public sources.

Most academic literature on PPPs addresses the respective roles of the public and private sectors. Rosenau [Rosenau 2000a (ed.), Rosenau (ed.) 2000b] described the role of the profit motive in public service provision (in the US context) especially where accountability is critical, cost-shifting presents problems, the timeframe is long, or societal normative choices are more important than costs. Theoretical

models tend to use the incomplete-contract approach. In particular, Hart et al. [Hart, Shleifer, Vishny 1997] suggest that the common emphasis on competition in choosing between private and public provision is misplaced. Instead, they assign a critical role to the residual control rights that cannot be contracted. Another contribution to this literature is by Besley and Ghatak [2001, pp. 1343-1372], who examine the importance of the extent to which the public sector, and the private firm with which it contracts, care about the public services produced by an asset. They show that, regardless of how much is invested by each of these parties in the production of a service, the party that cares more about the outcome should own the asset. A number of papers analyze the behaviour of the private investor, in particular by focusing on the maximization of private benefit under incentive schemes [Laffont 2000; Laffont, Martimort 2002; Laffont, Tirole 1993; Martimort, Pouyet 2006]. Bennett and Iossa [2002] analyse the circumstances in which the bundling of construction and operation is desirable, and the optimal allocation of ownership between the public and private sectors. The critical factors in this model are the sign and size of any externality across stages of production, the market value of the facility and the effect of firms' investment on social benefits. Spackman [2002] reviewed whether off-budget financing *per se* is less of a burden on the economy than public financing. The other issue reviewed by Spackman was how private financing affects the cost of risk.

Although many countries use PPP arrangements, Galilea and Medda [2010] observed different ways of adopting this approach due to different cultural influences and traditions in the planning and management of public works, deficiencies in legal and institutional structures, and different degrees of political awareness and acceptance of the PPP concept. Hammami, Ruhashyankiko, and Yehoue [2006] highlight the potential significance of a country's past experience in PPPs in attracting further PPP projects to that country. However, we observe that there is as yet no empirical evidence showing how this experience may (or may not) affect later PPP outcomes. Finally the literature devotes special attention to the difficulties in PPP agreements between the public and private sector [Grout 1997; Hart 2003; Laffont 2000; Laffont, Martimort 2002].¹

The article aims to assess the popularity of PPP models in Poland in 2009-2011, taking into account the difficulties in PPP described by Grout [1997], Hart [2003], Laffont [2000], Laffont, Martimort [2002]. Unfortunately, it is not possible to test the statements made by Hammami, Ruhashyankiko, and Yehoue [2006] highlighting the potential significance of a country's past experience in PPPs in attracting further PPP projects to that country, due to the fact that since 2008 Poland has had new legal regulations² that have completely changed the cooperation conditions for PPPs (the

¹ Private banks are seen as the party that always wins, even if a project fails, or if the government and the private company have to renegotiate the PPP [Estache 2004].

² See the Public-Private Partnership Act of December 19, 2008, Dz.U. of 2009, No. 19, Item 100 as amended; the Construction Works and Service Concession Act of January 9, 2009, Dz.U. of 2009, No. 19, Item 101.

regulations significantly improved the popularity of the public-private cooperation model, which will be discussed later on). That is why it is hard to assess and compare the PPP market from before (as it was virtually non-existent) and after 2008 (when the PPP Act was amended). However, the timeframe accepted for this analysis (2009-2011) will allow us to evaluate the influence of the introduction of legal changes with respect to PPP in Poland on the execution of investment projects based on that model of public-private cooperation.

2. The PPP market in the context of legal changes concerning PPP and the global economic situation

A breakthrough in the development of the Polish PPP market was the new Public-Private Partnership Act of December 19, 2008. At the same time, the Construction Works and Service Concession Act of January 9, 2009 was put into force. The acts eliminated the strict administration requirements and the obligations to prepare various project analyses. They also got rid of the obligation to define risk categories together with the closed list of projects that could be carried out in the PPP model, and allowed to choose the partner based on criteria other than the price [Pyka 2009, pp. 233-243]. What those changes did to the PPP market was that, in the three years from their implementation, 14 new PPP contracts were signed. To compare, under the previous PPP Act of July 28, 2005 not a single project got to the stage of finding a partner and signing the final contract.³

The growth of the public-private partnership is correlated with the economic situation. A period of economic growth fosters investment, while an economic crisis spurs aversion to investment risk on the private side, and a limited capacity to finance capital expenditure on the public side. On the other hand, the crisis forces the public and the private partners to seek and apply new solutions, in particular with respect to financial instruments. Table 1 below presents a list of announced PPP procedures as well as the number of planned, announced and executed PPP projects. As Table 1 shows, in the period 2009-2011, 125 PPP proceedings were announced in Poland.⁴ They were connected with 101 projects, of which 14 got to the execution phase. The number of projects was smaller than the number of proceedings because some projects, for various reasons, were announced several times. The biggest number of

³ Among the reasons for such a situation are: excessive restrictiveness of regulations, PPP limitations concerning the type and projects and the partners, expensive and time-consuming obligation to carry out preliminary analysis, unfavourable political climate (lack of willingness of the public authorities, fear of corruption charges), lack of knowledge and skills. What also played an important role was the incomplete legislation process – only a year after passing the bill a specific regulation was issued describing the types of risks connected with the execution of PPP project. See [Herbst, Jadach-Sepiolo, Marczevska 2012, p. 23].

⁴ Poland's share in the European PPP market is estimated to be 1.7 per cent, while for Spain it is 11 per cent and UK, the leader, accounts for 53 per cent; <http://www.portalsamorzadowy.pl/raport/nik-pomaga-zniesc-bariery-w-partnerstwie,41119.html> (20.01.2013).

proceedings in the PPP formula was announced in 2010 – 61, 25 more than in the previous year. In 2011, 28 proceedings were announced for 26 projects.

Table 1. Number of PPP projects in 2009-2011

	2009	2010	2011	Total 2009-2011
PPP procedures announced*	36	61	28	125
Number of projects announced**	27	48	26	101
Number of projects in execution***	2	8	4	14
Number of planned projects	19	39	24	82

* Announced proceedings mean proceedings communicated to the public by posting in the Public Procurement Bulletin/Dz.Urz.Ue/BIP; **Announced (reported) project is project mentioned specifically in the proceedings announcement; ***Project in execution is a project that has been announced, the private partner has been selected and the final contract has been signed (unconditional – after the financing for the project has been confirmed by financial institutions) with the private partner. In this case the date determining the qualification of a project as executed in a given year, is the date of signing the final contract and not the date of announcing the proceedings.

Source: own materials based on the [*Partnerstwo... 2012*, pp. 114-115; Herbst, Jadach-Sepiolo, Marczevska 2012, p. 25].

An analysis of the conditions presented in the announcements shows that what the public entities expect from their private counterparts is, first of all, the financial potential that guarantees safety and, expressed in the amount of actual funds or credit capacity (that condition was specified in all of the 19 announcements that had been analysed and which led to choosing a private partner) or an insurance policy, a condition mentioned in 11 cases. Another condition stipulated in the vast majority of proceedings was the professional support meaning to have persons that are able to carry out the contract (16 out of 19 analysed projects), knowledge and experience (15 projects). An important aspect is also the certifications, permits, confirmations and concessions that a given partner should possess (indicated in nine cases) [*Partnerstwo... 2012*, pp. 16, 115].

One can see in Table 1 that the biggest number of projects went into the execution phase in 2010 – 8 in total. In 2011 four projects were started, in 2009 – only two. Based on the information from Table 1 it is possible to illustrate the growth of the PPP market in Poland in the years 2009-2011 (see Figure 1). The data from Table 1 on the number of prepared PPP proceedings suggest that the lower number of projects that entered the phase of announcement and execution in 2011 resulted to some degree from the greater awareness of public entities of the rules connected with PPP. As time went by, the public entities realised that there were more specific aspects, for example, connected with risk sharing, that had to be respected in the

procedures, and they paid more attention to the project planning and preparation phase. This should translate into a bigger number of projects executed in the future [*Partnerstwo... 2012*, p. 11].

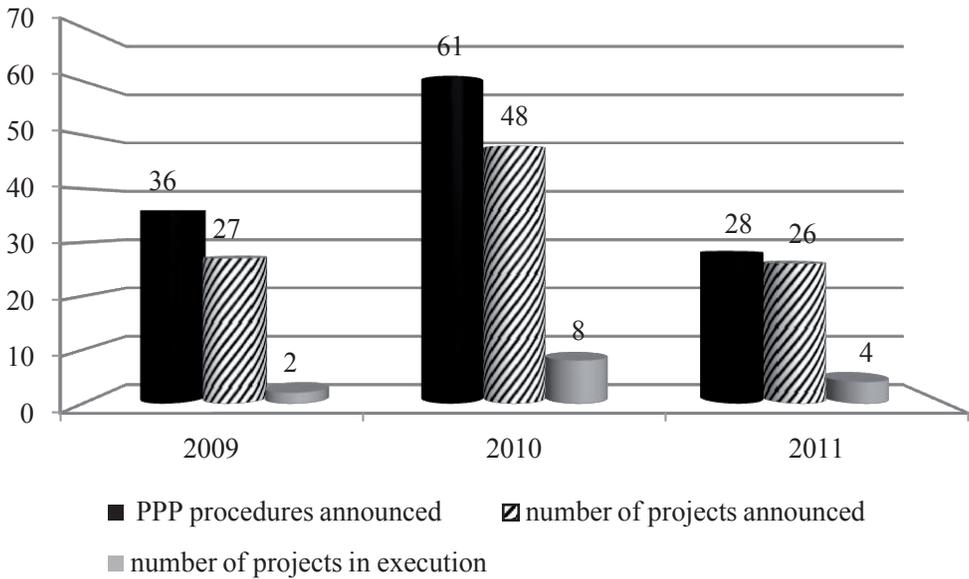


Figure 1. The growth of the PPP market in Poland in the years 2009-2011

Source: own work based on information from Table 1.

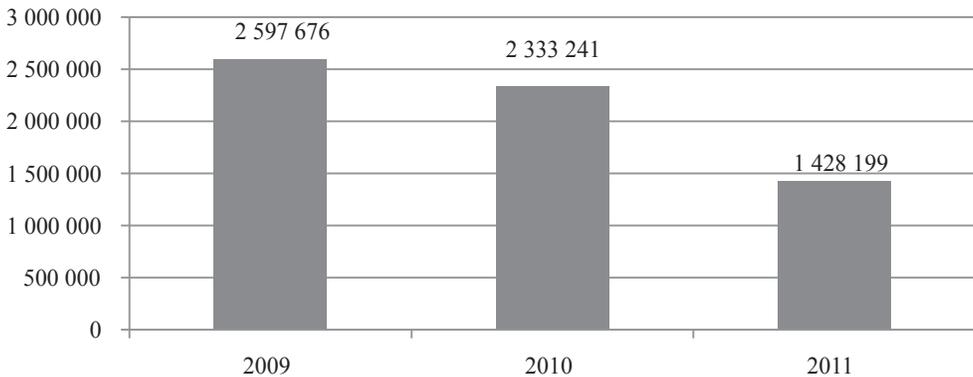


Figure 2. Value of PPP projects announced in Poland in 2009-2011 [in thousand PLN]

Source: own work based on [*Partnerstwo... 2012*, p. 118].

The total value of projects announced in the years 2009-2011 (86 projects) and whose budgets were published budgets was PLN 6.36bn net. For 15 budgets,

the official documentation did not specify their values. The estimated value of the announced proceedings for PPP projects reached approximately PLN 2.6bn in 2009, PLN 2.3bn in 2010 and PLN 1.4bn in 2011, 40 per cent less than in 2010.

Based on this information, one can conclude that the PPP market in Poland strongly reacts to the overall economic situation, although it needs a deepened analysis [*Partnerstwo...* 2012, pp. 11, 118]. A detailed structure value of the announced projects for specific years is presented in Figure 2.

The overall value of PPP projects from 2009-2011 that were brought to the execution phases is PLN 1.06bn net. In this case the breakdown of their values per year is presented in Figure 3.

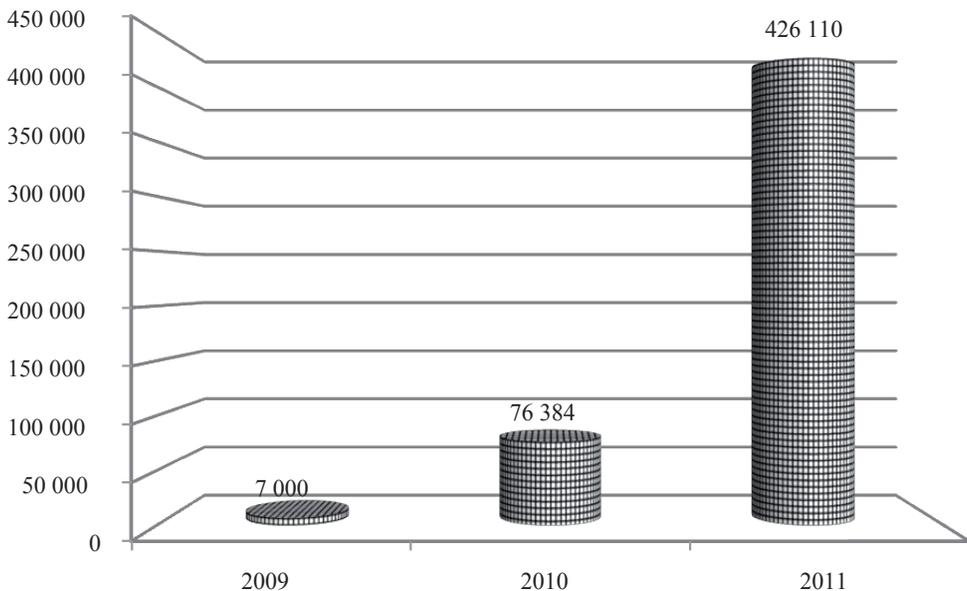


Figure 3. Value of PPP projects executed in Poland in 2009-2011 [in thousand PLN]

Source: own work based on [*Partnerstwo...* 2012, p. 118].

Analysing the data presented in Chart 2, we can see that the total value of the projects announced in 2009-2011 was decreasing from year to year, while the value of the projects executed in those years was increasing (Chart 3). The year in which the value of announced projects was the highest was 2009; the projects in execution peaked in 2011.

Based on the results of research carried out by PPPortal.pl⁵, the greatest benefit of a public-private project was the acceleration of the investment processes, the

⁵ The survey participants (43) were the participants of the Public-Private Partnership – Designing, Financing and Execution Conference organised by Collect Consulting, Lextra Legal Office and the Western Chamber of Commerce (Zachodnia Izba Gospodarcza). The conference took place on October 12,

implementation of projects with a higher level of innovation and the increased efficiency in the management of public funds. Among the factors indicated least often was the reduction of the overall project costs, the transfer of know-how from the private to the public sector and the improvement of the quality of services provided in the PPP model [*PPP – dziedziny...* 2011, p. 6].

The main barriers indicated by the private and the public parts in the Report of PPPortal.pl in 2011 were: the lack of Polish good practices (people's mentality and lack of trust in the society), the lack of uniform standards and procedures, low awareness and insufficient knowledge of PPP in the public sector, the lack of skilled staff to launch PPP projects in the public sector as well as the conservative and irrational approach of the representatives of public authorities [*PPP – dziedziny...* 2011, p. 9; www.portalsamorzadowy.pl, 20.01.2013].

3. Summary

PPP is an interesting tool for the long-term structural development of the infrastructure and services areas that combines the benefits coming from the public and the private sector. In a situation of an economic slowdown, public-private partnerships can support the public finance sphere, providing an additional source of capital. This model of cooperation constitutes a developed form of investing in the public sector in the majority of countries in the world. In Poland the mechanism has started to gain momentum [www.mrr.gov.pl, 3.01.2013].

Data from 2009-2011 show that most of the proceedings were announced in 2009, and least in 2011. Such a spread of the number of proceedings may be connected with, for example, the global economic slowdown, the changes of legal regulations concerning PPP introduced in Poland and the change in the public entities' approach to PPP. The small number of execution proceedings for projects announced in 2011 may be connected with the changing legal environment, and more specifically may be the result of the ambiguities related to debt classification rules. The lack of clear-cut rules and interpretations concerning budgetary reporting and qualification of a PPP project as a public debt, discouraged the public sector to be active in the PPP field. The lowest number of contracts was signed in 2009, which is understandable considering the novelty of the legal environment and the long preparation period for a PPP project. 2010 was the year when the highest number of projects got into the execution phase, which means contracts were signed. The most important business aspects of the PPP projects that were executed – expressed in the proceeding announcements through specific minimum and maximum conditions for the participation in the proceedings and the criteria for the selecting offers in the years 2009, 2010 and 2011 – are coherent and they depict a general trend in

2011 in Wrocław (23 participants represented the public sector, ten – the private sector, 11 participants did not specify which), [*PPP – dziedziny...* 2011, p. 7].

perceiving PPP projects by the public entities. The most important aspects – in both the lists of criteria and the conditions – are the ones connected with the economy, time and the opportunities to take advantage of the knowledge and experience of the private partner [*Partnerstwo...* 2012, p. 11, 17].

The relatively good economic situation in Poland in an era of a global economic crisis results to some extent from the presence of EU funds supporting investment projects. If the relatively high level of investments is maintained – which should be stimulated by the still very strong flow of European funds in the years 2014–2020⁶ – the public-private partnership formula may become particularly desirable in the public sector. The execution of PPP projects by local government and other representatives of the public sector will in turn have a positive influence on economic growth and macroeconomic ratios [*Partnerstwo...* 2012, p. 114].

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⁶ In the creation of the new financing prospects for Poland for 2014–2020, the priority is to preserve the structural funds. According to figures adopted by the European Commission in February 2013, Poland will receive EUR 73bn compared to EUR 69bn in 2007–2013, which adjusted for inflation means a small real increase. In this way, despite the economic crisis, an important instrument will be preserved for the country’s modernisation and the economy’s stimulation.

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REALIZACJA PROJEKTÓW INWESTYCYJNYCH OPARTYCH NA MODELU PARTNERSTWA PUBLICZNO-PRYWATNEGO W POLSCE W LATACH 2009-2011

Streszczenie: Od 2008 r. w Polsce obowiązują nowe akty prawne, które diametralnie zmieniły warunki współpracy w ramach PPP (znacząco wpłynęły na wzrost popularności PPP jako modelu współpracy sektora publicznego i prywatnego). Celem artykułu jest ocena popularności PPP w Polsce w latach 2009-2011 z uwzględnieniem barier występujących przy tym modelu współpracy sektora publicznego i prywatnego. Zakres czasowy analizy przyjęty w artykule (2009-2011) pozwoli ocenić wpływ wprowadzonych w Polsce zmian prawnych związanych z PPP na realizację projektów inwestycyjnych opartych na takim modelu współpracy.

Słowa kluczowe: partnerstwo publiczno-prywatne, bariery PPP.