

ELEMENTS CONCERNING THE INSTITUTIONAL FRAMEWORK OF PUBLIC-PRIVATE PARTNERSHIP

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Abstract

Studying collaborative relationships between the public and private sectors concurs to the knowledge of contribution in promote economic development, regeneration of urban and rural areas, through the participation of a wide range of actors belonging to central/local governments, private actors.

The institutional system where the public-private partnerships evolve, offers to governments, the possibility to make their contribution in drawing up sustainable agreements through creating new institutional structures that provide a framework conducive to coherent policies formulation and experience development in project management. The institutional framework of the public-private partnership develops regulatory instruments through which it exercises its influence in the development of partnerships.

The state establishes units of Public-Private Partnership type, their role being to make their contribution in solving problems regarding PPP - designing partnership projects in a wide range of areas and implementing their goals. These units can contribute with information in formulating national policies and practices, thus, supporting government in developing partnerships.

The paper presents aspects of the institutional framework where Public-Private Partnerships form and evolves and elements whereby it takes part in their development – the institutional instruments and Public-Private Partnerships Units - the opinions of different authors concerning the influence which the institutional framework exerts on public-private partnerships.

Keywords: *Institutional framework, Public-Private Units, institutional instruments, Public-Private partnerships, Institutions.*

Jel Codes: *H41; H42; H44, E021.*

1. Introduction

The analysis of collaboration between the public and private sectors is important from the perspective of knowing the contribution made in promoting economic development, regeneration of urban and rural areas, in the context of the participation of a wide range of actors belonging to central/local governments, private actors.

Public-private partnerships are forms of co-operation between the public and, respectively, private sectors, in order to achieve infrastructures or services by that it assumes to optimize the experiences of the two entities. Their objectives belong to a wide range of economic and social activity, having political support and being the object of authorities' preoccupations at supranational, national, local level (McQuaid R.W. 2005, CEC-1996, Leach et al. 1994)¹.

PPP is based on a contract between the public and private sector through which the private sector contributes with financial resources and projects and the public sector is responsible for delivering services to the

population, respecting the needs of individuals and contributing to standard of living rise. (UNECE, 2008).

2. Defining elements

Public-private partnerships evolve into an institutional system of which governments makes their contribution to accomplish sustainable agreements, by: creating certain institutional structures that provide a framework favourable to coherent policies drawing, transparency, fair distribution of risk, leading towards sustainable development and clarity of legislation regulation. (Delhi, V. S. K., Palukuri, S. & Mahalingam, A., 2010).

Scott (2008) defines the institutions as "symbolic frameworks that create shared meanings and controls that provide order to social action"². Governments, through their authority, may impose different structures such as rules, regulations and procedures (Scott, 1987), which become means or instruments whereby they

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¹ Ronald W.McQuaid quotes pe CEC - 1996, Leach et al. 1994, in "The theory of partnership Why have partnerships?", in "Public Private Partnership Theory and practice in international perspective" Osborne P. Stephane ed., pag. 9;

² Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Scott, W. R. (2008) in "The Complex Interplay between the Institutional Context and PPP Project Outcomes" Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, p.4;

pursue to implement the objectives formulated (Scott, 1995; Henisz et al., 2012)³.

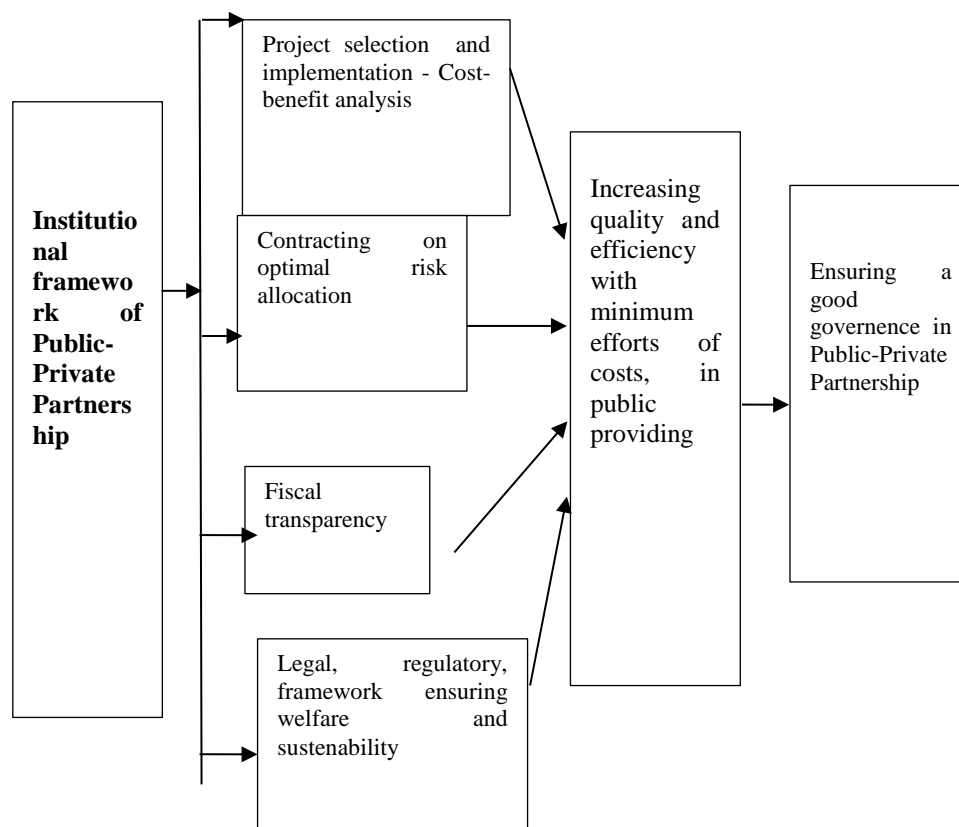
In the *Guidebook on Promoting Good Governance in Public-Private Partnerships*, institutions are defined as “the bodies setting formal rules (property rights, rule of law etc.) while taking into account informal constraints (beliefs, traditions and social norms) that shape human interactions”⁴ (UNECE, 2008).

The institutional framework of which public-private partnerships are developed is oriented towards the formation of new institutions and the development of

experience in project management (UNECE, 2007). The institutions may be *formal* - legal and regulatory frameworks, coherent policies, institutions conducive to public-private partnerships (such as PPPs Units with coordinating role) and *informal* - forums where the public and private sectors meet to clarify the misunderstandings that may arise in the projects. A favorable institutional framework that emphasizes transparency and public interest, contributes to increase accountability and a better understanding of partnerships.

Schematically, the institutional framework of public-private partnership is expressed in Figure no. 1:

Figure no. 1 Elements of the institutional framework of Public-Private Partnership



Source: adaptation from Jomo KS, Anis Chowdhury, Krishnan Sharma, Daniel Platz (2016), „Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for purpose?“, Department of Economic & Social Affairs DESA Working Paper No. 148 ST/ESA/2016/DWP/148 February 2016, http://www.un.org/esa/desa/papers/2016/wp148_2016.pdf

3. Institutional regulatory tools

Various authors demonstrate in their studies the influence that institutional framework exerts on public-private partnerships (Delhi et al., 2010), through regulatory instruments, called by Mahalingam et al. (2011) "*institutional capacities*": "legitimization, trust

and capacity"¹. A delimitation of the institutional environment is achieved by this arrangement and the institutional capacities favourable to PPP development are highlighted.

"**Legitimacy** is a generalized perception or assumption, that the actions of an entity are desirable, proper or appropriate, within some socially constructed system of norms, values, beliefs and

³ Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Scott (1987), Scott (1995); Henisz et al., (2012), in “The Complex Interplay between the Institutional Context and PPP Project Outcomes”, Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, p.4;

⁴ United Nations Economic Commission for Europe (2008), “Guidebook on Promoting Good Governance in Public-Private Partnerships”, United Nations New York and Geneva, p.13;

¹ Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Mahalingam et al. (2011), Delhi et al. (2010), in “The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, Proceedings Editors Amy Javernick-Will and Ashwin Mahalingam, p.4, p.5;

definitions”²(Suchman, 1995). The willingness of public and private actors to engage in PPPs is encouraged by formal specific relationships. It is characteristic of PPPs because private sector actors are involved, in services delivering, which are provided by the public sector. (Jooste et al., 2011).

Mahalingam (2011)³ shows the ways whereby governments can ensure the legitimacy nature:

- existence of clear reasons for drawing up Public-Private Partnership agreements;
- orienting the political will towards encouragement of the formation of PPPs;
- formulation of effective communication strategies, by governments, whereby to ensure all stakeholders information.

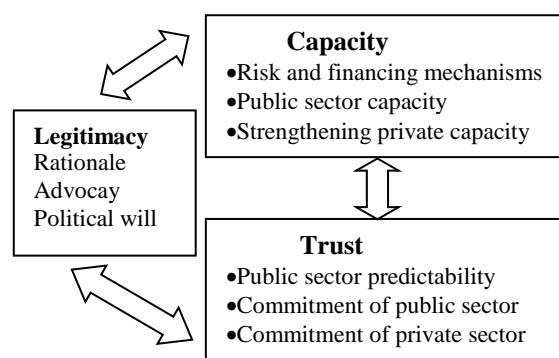
"**Trust** is a disposition and attitude relating to the willingness to rely on the actions of other actors under the condition of contractual and social obligations, with a prospective for collaboration"⁴ (Smyth & Pryke, 2008). Sitkin (1995) and Zucker (1986)⁵ note the mutual consolidation of trust and formal relationships that influences cooperation in a partnership.

"**Capacity** to undertake PPPs will strengthen the ability to structure and govern PPP projects, being essential for PPP development"⁶ (Mahalingam, 2011). It calls on the public partner, the adoption of new roles, the acquisition of experience and qualification in many areas, leading the government policies directions, namely⁷ (Mahalingam, A., 2011):

- *building the capacity of public sector* to know the internal structure of PPP; providing certain professional training programs such as workshops; knowledge of the project; providing a rough guide;
- *ensuring some risk-allocation and financing procedures*, for the efficient management of PPP projects;
- *increasing the potential of the private sector* by tenders development under competitive and cooperative conditions.

A schematic representation of *institutional capacities* is presented in figure no. 2.

Figure no. 2 Institutional abilities of the Private-Public Partnership



Source: Julieta Matos-Castano, Geert Dewulf, Ashwin Mahalingam (2012), quote Mahalingam et al. (2011) in „The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, 2012, Proceedings Editors Amy Javernick-Will and Ashwin Mahalingam, p.6, http://doc.utwente.nl/81186/1/Matos_Dewulf_Mahalingam%5B1%5D.pdf

In order for a public-private partnership to be successful, it is important the existence of an appropriate and stable institutional framework that avoids arising unforeseen risks for private investors in partnership projects.

4. Public-Private Partnership Units

In order to solve PPP problems, project and implement their objectives, the state intervenes establishing *public-private partnership units*, the definitions given to this notion highlighting the role and contribution which they make in the achievement of these agreements:

- “Any organization designed to: promote or improve PPPs [...]; [and] has a lasting mandate to manage multiple PPP transactions, often in multiple sectors.”⁸. (World Bank and PPIAF, 2007)
- “Any organization set up with full or partial aid of the government to ensure that necessary capacity to

² Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Suchman, M. C. (1995), in “The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, Proceedings Editors Amy Javernick-Will and Ashwin Mahalingam, p.5;

³ Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Mahalingam (2011), in “The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, Proceedings Editors Amy Javernick-Will and Ashwin Mahalingam, p.5;

⁴ Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Smyth & Pryke (2008) in “The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, Proceedings Editors Amy Javernick-Will and Ashwin Mahalingam, p.5;

⁵ Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Sitkin (1995) and Zucker (1986), in “The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, p.5;

⁶ Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Mahalingam, A. (2011), in “The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, Proceedings Editors Amy Javernick-Will and Ashwin Mahalingam, p.5;

⁷ Julieta Matos-Castano, Geert Dewulf and Ashwin Mahalingam (2012), quote Mahalingam, A. (2011), in “The Complex Interplay between the Institutional Context and PPP Project Outcomes” Working Paper Proceedings Engineering Project Organizations Conference Rheden, The Netherlands July 10-12, Proceedings Editors Amy Javernick-Will and Ashwin Mahalingam, p.5;

⁸ Emilia Istrate and Robert Puentes (2011) quote World Bank and PPIAF (2007) in “Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units” Project on State and Metropolitan Innovation, p. 6;

create, support and evaluate multiple public/private partnership agreements is made available and clustered together within government”⁹. (OECD, 2010)

– “A PPP unit is a public entity (government, public/private corporation, or nonprofit) that supports other government agencies to procure projects through a PPP process; it is not the procuring agency”¹⁰. (Istrate E. and Puentes R.)

PPPs units have a continuous character and support the government in procuring public-private partnership projects in a wide range of areas or specific areas. In relation to PPPs, which relate to the outsourcing of government provision of public goods and services, the PPP unit is “a way to delegate operational responsibilities regarding the provision of government services”¹¹. (Istrate E. and Puentes R.)

PPP units can support governments by setting up and supplementing information, policies and practices formation at national level, in the field of PPPs (for example, Partnerships British Columbia din Canada; UK Treasury’s PPP Policy Team in the United Kingdom). These units can be established and coordinated with the actors involved in the PPP program at different governmental levels: federal, central, departmental, sectoral or ministerial. Much of the PPP units are set up in the Ministry of Finance or Treasury. (Randolph, S. 2010)¹²

Units constituted at federal-level coordinate the governmental levels (state, local) and those constituted at central level coordinate PPP units within ministries. Examples of such PPP Units are found in various countries of the world, at different levels, central or federal:

- Ireland’s Central Unit PPP coordinates the Interdepartmental Group on Public-Private Partnership formed of all PPP Units existing in different ministries and representatives of other agencies, with concerns in this direction (Istrate E. and Puentes R., 2011)

- PPP Units located in a resort ministry, often, in the department responsible for infrastructure policy, such as: Danish Enterprise and Construction Authority of the Ministry of Business and Economic Affairs (OECD, 2010).

- PPP Units represented by corporations, for example, The German national PPP Unit, Partnerships Germany (ÖPP Deutschland AG) - PPP Units in Germany constituted as mixed corporations (Istrate E. and Puentes R., 2011, Bernhard Müller)¹³. The form of

PPP Units establishment in corporations is reasoned by the political independence, high flexibility to changes on the PPP market, enhancement of possibilities for experienced labour force attraction (Ed Farquharson in Farrugia, Reynolds and Orr, 2008)¹⁴, regardless of form; the sources of funding derive from the public budget (government, agency, ministry).

Through their functions, PPP Units support the government in overcoming the difficulties it faces in accomplish some programs regarding PPP (World Bank and PPIAF, 2007), such as: weak incentives in procurement field, low coherence at governmental agencies level, lack of qualification and experience, insufficient information. To this end, PPP Units intervene through various actions, to remedy the governmental level-related problems regarding the PPP proposals, such as:

- *Overseeing the selection of PPP projects* PPP Units can follow project proposals regarding compliance with the evaluation criteria of the required documentation to prove the eligibility of the projects. (OECD, 2010).

- *Following the fulfillment of criteria set up in a project.* (World Bank and PPIAF, 2007).

- *Participation through assistance and guidance* in case of insufficient experience for PPP coordination. Due to the complexity of public-private partnership contracts, the role of the public sector is to monitor the private sector consultants to ensure the achievement of the general public interest. By holding the required qualifications, a Public-Private Partnership unit can provide support to the public sector, through the experience of specialists who have had concerns in the field, to streamline the processes of PPP procurement and make negotiations more effective. (Ahadzi M. and Bowles, G. 2004; World Bank and PPIAF, 2007; Monteiro, R., S. 2005; Emilia Istrate and Robert Puentes, 2011)

- *Contribution to the reduction of transaction costs* as well as the timing of making documentation for PPP procurement contracts, both for the private sector and the government. The variety of governmental laws and regulations, different from one state to another, leads to high costs of transaction in making PPP agreements. The PPP Units contribute, by developing standardized documentation, to guide public partners in managing PPP contracts and contract compliance with standardized principles and public interest.

- *Dissemination of information* regarding the

⁹ Emilia Istrate and Robert Puentes (2011) quote Organization for Economic Co-operation and Development OECD (2010), in “Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units” Project on State and Metropolitan Innovation, p.6;

¹⁰ Emilia Istrate and Robert Puentes (2011) “Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units” Project on State and Metropolitan Innovation, p. 6;

¹¹ Emilia Istrate and Robert Puentes (2011) “Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units” Project on State and Metropolitan Innovation., Brookings-Rockefeller, p. 9;

¹² Emilia Istrate and Robert Puentes (2011) quote Randolph, S. (2010), in “Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units” Project on State and Metropolitan Innovation, p. 15;

¹³ Emilia Istrate and Robert Puentes (2011) quote Müller, Bernhard (2009), in “Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units” Project on State and Metropolitan Innovation, p.9;

¹⁴ Emilia Istrate and Robert Puentes (2011) quote Ed Farquharson in Farrugia, Reynolds and Orr (2008), in “Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units” Project on State and Metropolitan Innovation, p. 9;

opportunities to get involve in Public-Private Partnerships with the government. In both the developed and developing countries, the PPP Units can serve as instruments to encourage the interest of *investors, private partners*, to engage in PPP, by providing information concerning the PPP policies, programs and future opportunities (for example, Flemish PPP Knowledge Center provides information about the PPP policies and possibilities of their development) (World Bank & PPIAF, 2007)¹⁵. An increase in the success of PPP Units may result in a grouping of the PPP Unit, based on the functions they perform in.¹⁶ (Farrugia, Reynolds and Orr, 2008)

- Review Units – performs quality verification and expresses its views on potential PPP projects;
- Service Agencies have additional functions to the quality control one;
- Exelence Centers provide information concerning the research achieved on PPP and the experience of the best practice in the field.

The above reveals that the Public-Private Partnerships Units operate in various ways to overcome the problems that the state encounters in making Public-Private Partnership agreements. The complex nature of the PPP projects, the lack of experience required to manage PPPs, that may lead to difficulties in their correct assessment and to inappropriate risk sharing, are arguments for setting up PPP Units towards assist governments with the development of the capacity to address the PPP projects, complying with the public interest.

The role of the PPP Unit undergoes changes, diminishing along the way, due to the maturing of PPP

programs during their evolution period and to the experiences gained by the governmental agencies.

5. Conclusions

Public-private partnerships have emerged as a result of the problems that the public sector faces, in terms of high costs, required both by delivering certain infrastructure services and by the maintenance of the existing ones such as damaged schools and hospitals, water treatment systems, modernization of public infrastructure. Through partnership, the public sector aims to increase efficiency, attract and use additional resources, towards carrying out various activities.

Infrastructure development plays an important role in economic growth and poverty reduction, a phenomenon that has generated a steady increase in demand for investment in this area. Public-private partnerships are one of the key elements for improving service delivery and diminishing existing gaps, the transfer of development, maintenance and operational risk to the private partner, representing in the long run, a real potential for achievement of certain superior quality results over the traditional ones.

Building internal policies needed for PPPs, leading projects towards cost streamlining, exchanging experience and good practice between states and within states among different administrative levels is a significant factor of development some viable, effective projects that meet citizens' needs.

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¹⁵ Emilia Istrate and Robert Puentes (2011) quote World Bank & PPIAF (2007) in "Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units" Project on State and Metropolitan Innovation, p.9;

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