

PUBLIC PRIVATE PARTNERSHIP RISKS IN THE CONTEXT OF EMPLOYMENT

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Abstract:

The process of globalization has a direct impact on the rule of law, being accepted the idea that the state institutions can not solve social problems alone and that the private sector has an important role in solving the .

According to the legal regime of the European Union in the field of Public Private Partnerships , contracting authorities must respect the principles of non-discrimination and equal treatment, transparency , mutual recognition and proportionality .

European society is changing, being influenced by factors such as technological advances, globalization of trade and population ageing. European policies on labour employment, social affairs and equal opportunities contribute to improving the living conditions of citizens aiming sustainable growth and greater social cohesion.

This paper presents partial results obtained in the research of PhD thesis: " Regional Implications of the future of the single European labour ", author : Predonu Andreea - Monica and " Economic effects of the co - financing strategies for investment partnerships. Case of Romania ", author: Gherman Monica -Gabriela.

Keywords: *public private partnership, labour market, employment, risk development.*

JEL Classification: *J01, J08, J18*

1. Introduction

PPP is one of the main sources of economic development, job creation or maintenance of a low rate of unemployment, creating constant budgetary resources.

A Public Private Partnership properly administered and supported by a clear, consistent and transparent legislation can generate economically and socially positive results. Reality has shown that in all activities that are included partners from the private sector, they contribute to achieving results through highly qualified personnel and among the most efficient types of partnerships in the context of employment, we can mention the creation of training centers and retraining to supply the labour market with skilled labour force, coupled with the existing supply and demand.

Next, it will be presented the general issues required by law on Public Private Partnership projects. Then it will be analyzed the risks involved in these investment projects and it will be described the influence of Public Private Partnership on employment labour in the Member States of the European Union, analyzing the employment rates of labour force by age groups and sex for each state.

2. General and legal framework on PPP projects

PPP is a complex mix of tools for structural development in the medium and long term, is an association based on complementary business interest, which engages various resources. This is seen as an effective solution to implement public projects, whose development and modernization would not be possible without the contribution of the private partner in this way the pressure on the state budget is relieved, to the extent that risks are managed appropriately and transparent, and in addition, these risks should be fairly shared between the public and the private investors, according to the criterion of cost-effectiveness. However, the types of PPP projects are quite difficult to achieve if there is not a legal framework anchored in the development and operation realities of such investment projects. PPP is an important tool used in all European countries. The experience of other countries such as Poland, UK, Germany, Portugal, Italy demonstrate that PPP formula is a successful solution with benefits for all operators involved: population - through access to efficient public services, a network of modern infrastructure, and other facilities; state or local authorities - through the successful implementation of development projects for the society; investors - by optimizing the profitability.

The huge potential of using PPP projects in Romania is widely considered to be worthy, especially in the use of EU funds related to European multiannual framework 2014-2020 as structural and cohesion

funds will be allocated may help catching large infrastructure, education, health etc. Regional Development . In this context, it will have a key role and initiatives of local and regional authorities in order to promote such projects of modernization. Their assistance will improve local infrastructure and employment in the regions concerned because it will be necessary for staff personnel for the successful implementation of these types of projects. But to materialize implementation in Romania of such investment partnership models it must be provided a clear legal framework in accordance with European standards that allow flexibility and economic efficiency, eliminate duplication of public procurement legislation and mechanisms to base operational risk, bankability and transparency. Representatives of the European Commission estimated that Romania must adopt a very cautious approach in identifying the private partner and the models of PPP partnership, the payback assessments have low accuracy, especially for road infrastructure . In Romania, the partnerships of PPP are assimilated to concession contracts and in other countries such as Japan, Croatia, Philippines, China, USA , India, a large number of PPP projects were leased in a specific form that is called Build -Operate -Transfer (BOT : Build-Operate-Transfer) that means a system of financing public projects in which the private partner invests its own resources and in which the cost and profit recovery is on a long-term , based on a credit in connection with the viability of the project, not the entity loans, and credit insurance is done even with the assets of the project and not the ones of borrowed party. The object of the contract is transferred to the public authorities at the end of the concession period. From the legal perspective, Public Private Partnership differs from public procurement in that both private investors and public authorities assume all or part of the economic risk of exploitation aferent to a good or service.

PPP projects originate from the financial needs of public authorities to provide public goods or services at a high quality level. PPP is used at central and local level mainly in the UK, Poland, Czech Republic , France, Germany, Ireland, Italy, Spain, Portugal etc. and most of them have specialized units coordinating the PPP. According to Prof. Erastus Tarangul Diti , *"the state is a bad contractor and administrative bodies lack the personal interest to analyze the needs of citizens and civil employees who receive their regular salaries regardless of performance and they will not make efforts that the public service to have the best conditions, but an individual has a personal interest in the proper functioning of the enterprise."* Public Private Partnership system currently in place has been shaped since 1980 and took the form of a cooperation between local authorities and the private sector to rehabilitate industrial zones and was supported by legal regulations so as to encourage initiative. In Europe, PPP

appeared in 1992 in the UK, the PFI (Private Finance Initiative) , which supported complex and diverse projects, and this has increased the partnership initiatives, innovation and financial engineering. This type of cooperation between public and private has greatly expanded in the health system and currently over 15 % of public investment in the UK is completed with PFI contracts.

In Romania, the first forms of PPP have occurred after 1989, due to public administration reform and from the theoretical point of view is supported by public choice theory , both at central and local level, but the developing this funding mechanism has been slow and must be encouraged through effective fiscal policy. Currently, PPP is very little practiced, although the current financial problems faced by local authorities should open the appetite for using PPP, which gave very good results in other countries.

The term "public-private partnership" is not defined in EU legislation on public procurement. In general, it refers to forms of cooperation between public authorities and the private sector aimed at ensuring the financing, construction, renovation, management and maintenance of the infrastructure associated with the provision of a service. A legal and regulatory framework that supports PPP aims to facilitate investments in complex arrangements and long-PPP reduce transaction costs, ensure appropriate regulatory controls and ensure legal and economic mechanisms to allow contractual disputes.

The legal framework adopted at EU level that applies to Public Private Partnership projects is:

1. Directive no.2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services;
2. Directive no.2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public contracts for works, supplies and services.
3. Directive no.2007/66/EC of the European Parliament and of the Council amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts in the selection of the private partner;
- 4.Regulation no. 1177/2009 of the European Commission of 30 November 2009 amending Directives 2004/17/EC , 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures the award of procurement contracts in the field of public-private partnerships;

The types of PPP regulated at European level include the following approaches:

- contractual PPP, conducted solely on the basis of contractual relations;
- institutional PPP, involving joint participation in a joint venture legal entity;

Principles to be observed in all forms of public-private partnership in EU aims: transparency, equal treatment, proportionality and mutual recognition.

Most countries in Europe have a legal tradition based on civil law. Their legislation stems from a set of written rules or civil code. By contrast, in common law jurisdictions such as England, Ireland and Gibraltar, the common law (case law and precedents that rather than a civil code), which is the fundamental basis of all commercial transactions and which developed principles underlying the allocation of risk. Some countries have specific legislation for PPP projects and in other countries it is incorporated into other laws, such as the public procurement law.

Commission focuses on optimal distribution of risks between the private partner and Public, which is an important step for the success of PPP projects.

3. Risk management in PPP investment projects

Project finance theory reveals that the risks should be supported by the party from the contract that has the skills to manage them, but many PPP projects fail because the parties can not agree on the allocation of project risks and this happens because each side is trying to transfer risk to the other party.

Also, it is difficult to calculate the risks, especially in the transition economies, where growth rate is sometimes less predictable, which makes forecasting demand especially in transport sector become a difficult exercise to fulfill. The main benefit of PPP projects comes from the transfer of risk to the private sector. But such a transfer and the extent to which the private sector is ready to take it sometimes affect project feasibility .

Lenders tend to have a strong aversion to risk if they perceive more risk and will refuse even those projects that are socially desirable, which disappoints and frustrates the public sector. In this case, the governments must identify the risks at the beginning of starting this type of investment projects. A good starting point would be to use a checklist of risks that are usually applied in projects of infrastructure services.

Establishing a matrix of risk can be a useful tool for both government and the private sector, which should be used for each phase of the project, setting the preferred position of the government allocation. During the prior phases of tendering process, this can help state authorities to identify all relevant risks of the project and their allocation. During

negotiations it can act as a checklist to ensure that all risks are addressed, and after signing the contract can be a useful tool to compile a summary of the allocation of risk undertaken by contract.

Governments can use various tools such as a type of insurance to reduce the risk of force and major events that could destroy network components essential for the private state of the project. Such systems can be ensured by conducting research before issuing tenders and specifying the desired project results (taking into account government policy).

Given that the project is in the public interest, it is also essential to ensure the existence of a transparent regulatory framework. Once the project starts, the government will have to establish a risk monitoring system to ensure that services are delivered by contracted performance specifications. Consequently, this will allow payment for services provided to be checked properly while continuing surveillance will monitor whether the project is progressing according to the plan. Governments must tackle the political risk, including concerns that governments will come and will unilaterally change the rules (transition from a positive to a negative PPP approach and the cancellation of these PPP projects is a commonplace in some countries).

Another challenge to the private sector face problems in obtaining necessary planning difficulties and other approvals necessary to start projects as unnecessary bureaucracy and other interference may delay the project. Regarding the "bureaucracy", governments can interfere to solve such problems in order to facilitate starting on time of the project. Governments may change the terms of the contract because of the long duration of the project.

However, it is important before their changing that private partners are fully consulted. Similarly, a government may interfere or terminate the contract if the project does not perceive that takes place in optimal conditions. Private sector concerns can be addressed through contractual clauses that make interventions or cancellation of the contract during the development of contractual agreements to be measures of last resort. Attention should be also paid to the potential effects of the long periods, while it will also take into account the government's ability to provide basic services and ability to provide or procure ancillary services that the private sector is able to provide .

In some cases, however , PPPs can survive. For example, A1 road project in Poland survived eight changes of government during the negotiation. In case of interfering in the contract during its development, this refers only to emergency access and in the event of termination it is to ensure that *"periods are correct and that, if possible, under a termination, clearly specified and limited to defaults, so as to avoid triggering events terminating the contractual relationship. "*

Many projects, particularly in transport require massive investments in the private sector and the private sector starting here can not accept one of several commercial risks for these projects.

The public sector should provide support for a project to reduce the risk enough to stimulate private sector investment to desired levels. There are various forms of support that the government can give to a project, in order to reduce the risk to the private sector, and one such example is the collateral which may be an appropriate form of government intervention, especially to protect private sector risks can not be predicted or controlled. Indeed, many PPP contracts provide minimum guarantees of private sector income to limit exposure to demand risk.

The most common risks arising in the start-up and performance of PPP projects can be summarized in the following: risk management and operational risk, demand/income risk, political risk, currency risk, bankruptcy risk of a failure to project risk related to land etc¹.

Therefore, public-private partnerships contribute certainly to economic recovery and growth and sustainable development of the European Union. The benefits of public-private partnerships can remember the following :

- facilitating public projects, especially for infrastructure;
- sharing financial risks and reduce costs for infrastructure;
- promote sustainable development, innovation, research and development, due to competition commitments and private enterprises;
- increasing market shares of European companies in public procurement in third countries;

4. The influence of Public Private Partnership on employment labour rate

As we know, even if one of the objectives of the Europe 2020 strategy is to increase the employment rate of labour by 75%, achieving this objective in the current conjuncture is unlikely. This is due to a lack of employment and skills needing to redefine the purpose of the labour market. The same is true for Greece and Spain. Therefore, the relevant dimensions to analyze the labour market are:

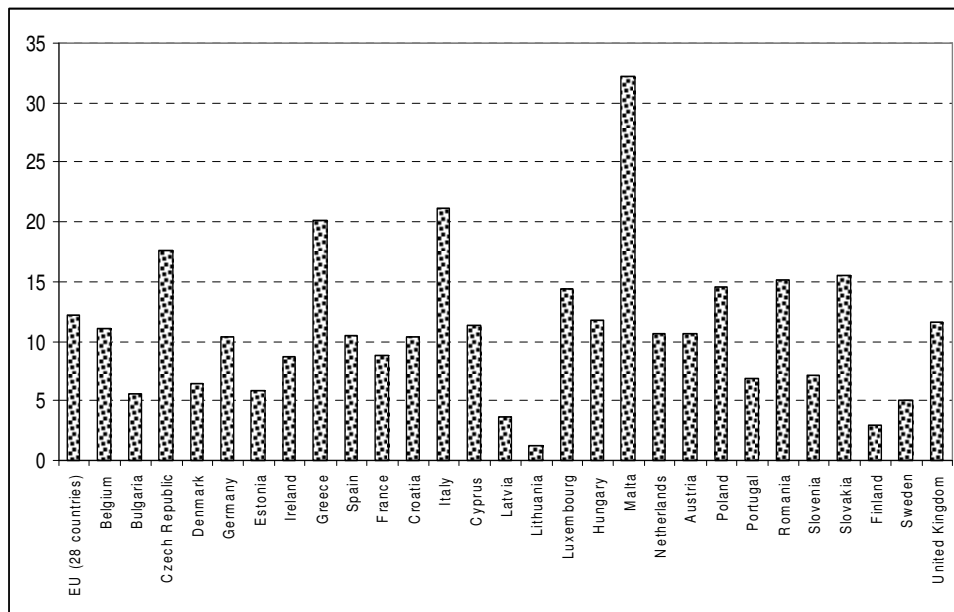
- occupation;
- sectors which are hiring people;
- geographical area, for example the regional, national or European level.

¹ Public Private Partnerships: Risks to the public and private sector, Najja Bracey, Sonia Moldovan, The Loius Berger Group, Inc.

The rising of unemployment rate in the European Union Member States and developing countries in Eastern Europe, along with technological changes lead to continuously changing requirements of the labour market. In this context, the education must be appropriate in accordance with the required jobs on the labour market.

Research bodies authorized in the Member States of the European Union have developed various methods and techniques to identify employment forecasting future labour needs that take into account sectoral, occupational, educational and training factors that influence supply and demand for jobs. In the new global circumstances have emerged a number of observations including the fact that employment rates tends to follow GDP. Thus, it appears that, from 1997, employment in the European Union has increased significantly, being more significant for women than for men. International statistical analysis reveals that the gap between employment in 2012 (the difference between the employment rate for men and women employment rate) is positive and as shown in the Chart no.1.

Chart no.1 – Gap's employment in EU Member States, 2012



Source: Eurostat online database [t2020_10]

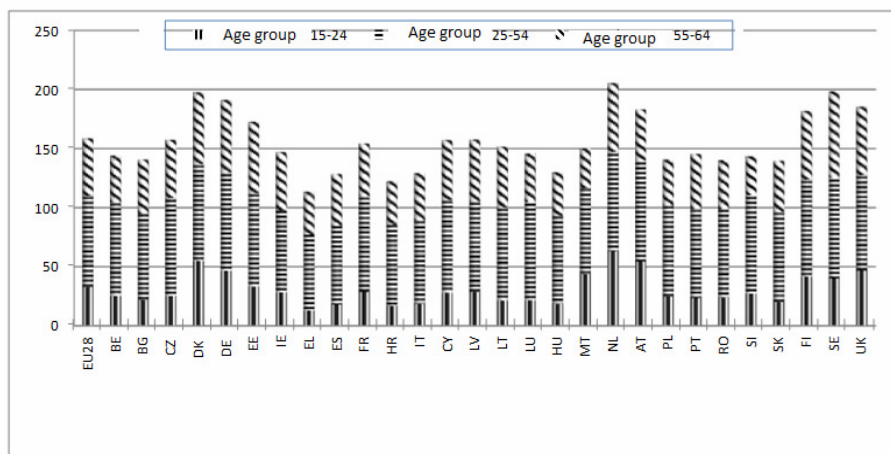
The chart above shows that, in 2012, male employment rates were consistently higher than those of female employment in all EU Member States. However, there were disparities, whereas the biggest difference

between the employment rates between men and women was in 2012, in Malta, 32.2, which showed the lowest rate of employment of women (46, 8%) and the one among men was 79%. The smallest gap is in Lithuania by only 1.2 percentage points. In Romania, the gap was 15.1, close to the EU average, which was 12.2. Italy and Greece have reported a difference of 21.1, respectively 20.1 percentage points.

Across the European Union, it is clear that male employment rate peaked in 2012, the level of 74.5 %, while the employment rate for women was 62.3 %.

However, the chart no. 2 shows the employment rate by age. We felt the need to analyze trends in employment of the elderly people, because due to the ageing population, their share in the total population is a growing share, the young population is becoming less and birth rates almost halved compared to the years 1980s. For this reason, people aged between 55 and 64 years are still reflected in employment, as the pensions are very small. Employment rate of older was in 2012 the highest in Sweden, which recorded a rate of 73 %, followed by Germany with 61.5 % and the lowest was in Malta 33.6 % . In 2012, in Romania this indicator was 41.4 %.

Chart no. 2 – Employment rate by age groups within the EU Member states 2012



Source: Eurostat online database [lfsi_emp_a]

At the same time, it can be seen that the employment rate among young people in 2012, was the largest in the Netherlands, 63.3 %, and the lowest in Greece, 13.1 % . Regarding the rate of employment aged between

25 and 54 years, in Romania was 74.9 %, relatively well, especially that the European Union average of this indicator was 77.2% .

Eurostat statistical data analysis indicates that the overall EU employment rate has risen and seeks to increase by 2020 to 75%. However, there are countries that have experienced a decline in this indicator, as for example, Britain, which until 2012 had recovered and had a rate of 74.2% .

In the 2002-2014 period , employment in Europe increased by 5.8 percentage points.

Forecasts for 2020 are not exaggerated and are available for each Member State. The harder is for Greece, which has a rate of 53.8 % and expects to reach 70% in 2020.

Therefore, we believe that public - private partnership has a major impact on employment of labour in the European Union, which increases considerably the development of the whole society.

Conclusions

In conclusion, we believe that if the Public Private Partnership would have significant increases, they should be translated into more jobs, and these, in turn, would reduce unemployment and increase the employment rate.

Presentation of the employment by age groups and sexes, aimed to identify the general features of the labour market in order to determine areas where they can take action to improve the quality of labour resources, to increase the skills of the workforce work in the context of Public Private Partnership.

We consider this important because the Public Private Partnership has serious risks if labour resources are unqualified or incompetent.

Currently, more than five million young people are unemployed in the European Union, which means that one of five young people available in the labour market can not find a job. And the Public Private Partnership has various ways to provide young people (and not only) adequate training to enable them to have better career opportunities.

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