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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Mobilising private and public investment for recovery and long term structural change: developing Public Private Partnerships

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1. INTRODUCTION

To tackle the financial and economic crisis, the EU and its Member States are implementing ambitious recovery plans that aim to stabilise the financial sector and limit the impacts of the recession on citizens and the real economy. Investment in infrastructure projects[1] is an important means to maintain economic activity during the crisis and support a rapid return to sustained economic growth. Public Private Partnerships (PPPs) can provide effective ways to deliver infrastructure projects, to provide public services and to innovate more widely in the context of these recovery efforts. At the same time, PPPs are interesting vehicles for the long-term structural development of infrastructures and services, bringing together distinct advantages of the private sector and the public sector, respectively.

PPPs are forms of cooperation between public authorities and the private sector[2] that aim to modernise the delivery of infrastructure and strategic public services. In some cases, PPPs involve the financing, design, construction, renovation, management or maintenance of an infrastructure asset; in others, they incorporate the provision of a service traditionally delivered by public institutions. Whilst the principal focus of PPPs should be on promoting efficiency in public services through risk sharing and harnessing private sector expertise, they can also relieve the immediate pressure on public finances by providing an additional source of capital. In turn, public sector participation in a project may offer important safeguards for private investors, in particular the stability of long term cash-flows from public finances, and can incorporate important social or environmental benefits into a project.

At EU level, PPPs[3] can offer extra leverage to key projects to deliver shared policy objectives such as combating climate change; promoting alternative energy sources as well as energy and resource efficiency; supporting sustainable transport; ensuring high level, affordable health care; and delivering major research projects such as the Joint Technology Initiatives, which are designed to establish European leadership in strategic technologies. They can also boost Europe's innovation capacity and drive the competitiveness of European industry in sectors with significant growth and employment potential.

The combination of public and private capacities and money can therefore help the process of recovery and the development of markets that will form the basis of Europe's future economic prosperity. However, just at the time when the more systematic use of PPPs would bring considerable benefits, the crisis has made the conditions for these instruments more difficult.

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1 Almost all Member States have been speeding up major on-going or foreseen infrastructure projects.

2 The Commission launched a consultation on PPPs in 2004 (COM(2004) 327) and reported on the results of the consultation in 2005 (COM(2005) 569)

3 Three PPPs were for instance identified in the European Economic Recovery Programme: factories of the future, energy-efficient buildings, green cars.

Although there is now some evidence of recovery, the volume and value of projects currently closing is still significantly below pre-crisis level[4]. It is therefore all the more urgent and important to look at new ways to support the development of PPPs.

2. The case for Public-Private Partnerships[5]: why and when can they be effective?

In the EU, PPPs have developed in the transport sector (road, rail)[6], in the area of public buildings and equipment (schools, hospitals, prisons)[7] and the environment (water/waste treatment, waste management)[8]. The experience varies greatly between sectors and from one country to another. Many Member states only have a limited experience of PPPs or none at all. In terms of overall management of public services or the construction and operation of public infrastructure at global EU level, the **spread of PPPs is still very limited** and they represent a **small part of total public investment**[9]. As far as energy or telecommunication networks are concerned, there is already significant service provision in the private sector, but there could be scope for the development of more PPPs, for example in the development of necessary energy infrastructure where commercial interests provide insufficient investment incentives[10] or in PPPs for broadband – both fixed and wireless- in order to overcome the digital divide and promote a rapid transition to high speed internet broadband services. There is now considerable evidence that PPPs can:

– **Improve delivery of projects.** PPPs have a track record of on-time[11], on-budget[12] delivery. PPP projects in the Trans-European Transport (TEN-T) network prove that partnership structures may be successfully applied to various projects in all modes of transport. Examples include the Perpignan — Figueras 50-year rail concession including a cross-border tunnel, the Oresund fixed railway link between Sweden and Denmark, and a high speed railway line in the Netherlands**.** Several cross-border PPP projects are currently planned under TEN-T. These include a rail/road bridge between Denmark and Germany, the Seine-Nord Canal, and a cross-border inland waterways project in France and Belgium.

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4 The drop in PPPs having achieved financial close in the first 9 months of 2009, is about 30 % from last year, both in volume and number, EPEC research, October 2009.

5 Based on work within EPEC, UNECE, IMF, WB, and OECD.

6 Greece, Ireland, Netherlands, Spain, the United Kingdom: Guidebook on Promoting Good Governance in Public-Private Partnerships, UNECE 2007, p. 20.

7 France, United Kingdom idem.

8 The prevailing model for private sector involvement in the environmental sector has been that of public service concessions.

9 According to a global survey by Siemens in 2007, PPPs only account for about 4% of all public sector investment.

10 For instance in the case of market interconnectors, projects contribution to the security of supply objectives and energy research cooperation

11 A recent report (October 2009) by the National Audit Office (NAO) in the UK updates the earlier 2003 "PFI construction performance report". This report confirms the overall better performance of PPP vis a vis conventional procurement in respect of on budget (65 % of PFI projects) and on-time delivery (69 %). When costs over-run were incurred, they were caused by the authority or third party requests in 90 % of cases. In addition, 91 % of completed projects were rated by key users as very or fairly good in term of construction quality and design.

12 These conclusions are upheld by an EIB internal review published in 2005, based on a detailed review of 15 PPP" Evaluation of PPP projects financed by the EIB", http://www.bei.europa.eu/projects/publications/evaluation-of-ppp-projects-financed-by-the-eib.htm.

– **Better value for money from infrastructure,** by exploiting the efficiency[13] and innovative potential of a competitive private sector to either costs, or achieve a better quality ratio.

– **Spread the cost of financing the infrastructure over the lifetime of the asset**, thus reducing immediate pressures on public sector budgets and allowing the completion of infrastructure projects — and the benefits they deliver — to be brought forward by a number of years.

– **Improve risk sharing**[14] between public and private parties. Provided it is properly apportioned, more efficient risk management reduces the overall costs of projects.

– **Boost sustainability, innovation and research and development efforts** for delivering the breakthroughs needed for new solutions for society's socio-economic challenges **:** this is linked to the basic mechanism underpinning a PPP:

  - It is a competitive process; innovation (in terms of hardware or systems) that provides a competitive edge will be promoted.

  - It is based on undertakings by the private party to deliver a performance that can be linked to technical as well as environmental and social criteria.

– **Give the private sector a central role** in developing and implementing long-term strategies for major industrial, commercial and infrastructure programmes.

– **Enlarge EU companies' market shares in the field of government procurement in third country markets.** Through the award of Build, Operate and Transfer (BOT) work and service concessions as well as the setting up of special vehicle solutions, European public works and utilities companies can gain important contracts in certain markets of major trading partners as regard e.g. airport construction and management, motorways and water supply and treatment.

In addition, PPPs offer capacity to leverage private funds and pool them with public resources. These benefits are of particular importance in the present economic conditions as Member States are seeking to accelerate investments in response to the crisis, whilst being acutely aware of the need to preserve budgetary discipline.

3. THE EU CONTRIBUTION TO PPP PROJECTS

The crisis is placing renewed pressure on public finances in many Member States, and at the same time makes it more difficult to secure long term private investment in capital intensive projects. EU financing through the Structural Funds, the European Investment Bank or TEN-T instruments can help to mobilise PPP solutions for essential investment in projects even at a time of reduced availability of national public or private resources. The EU also influences the environment in which PPPs operate through its regulatory framework.

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13 Results of a global study on the impact of private sector participation in water and electricity distribution (May 2009) show that private sector delivers on expectations of higher labour productivity and operational efficiency, http://www.ppiaf.org/content/view/480/485/.

14 Canoy et al. (2001) underscore that risk sharing arrangements within PPP provide an instrument to create incentives for both parties to increase efficiency of the project.

3.1. Community rules

Several sets of Community rules have a direct or indirect impact on PPPs. Going forward, it will be important to ensure that the applicable rules are appropriate and supportive while fully respecting the principles of the Internal Market.

In the past, there was a concern that Member State governments could use PPPs as a way to conceal their expenditure and new liabilities on public balance sheets, loading up costs for the future, in contradiction with the Stability and Growth Pact rules. Similar concerns might be raised in the current context of public debts incurred due to the crisis. Eurostat developed rules on the **statistical accounting of PPPs**[15], which clearly determine in which cases a PPP's asset(s) should be recorded on the government's balance sheet. These rules are based on the distribution of the main risks of the project between the government and the PPP operator. Where the financial risk of the project rests mainly with the government, the PPP asset(s) is recorded on the government balance sheet. Given the pressure on public finances due to the ongoing economic crisis, a smooth return to budgetary discipline would require that Member States be aware of the impact of individual projects on their balance sheets and the related consequences (debt and deficit treatment).

PPPs are structured around a public contract or as work or service concessions. When public contracts or works concessions are involved, they are subject to the provisions of the public procurement directives if their value exceeds the Community thresholds[16]. Following extensive modifications in 2004, EU **public procurement legislation**[17] now provides for a range of procedures that contracting authorities can employ when awarding contracts. Notably, to enter into dialogue with tenderers in particularly complex cases, the EU rules now allow opting for competitive dialogue. Its use may be appropriate in case of PPPs where the contracting authority may not always be able to determine the technical specifications and the appropriate price level in advance.

Service concessions do not fall under the scope of public procurement directives, but the case law of the European Court of Justice has confirmed that the EC Treaty principles (such as transparency and equal treatment) also apply to service concessions[18]. A reflection is ongoing on the need to improve transparency, equal treatment between all economic operators, and, thus, legal certainty in the award procedures for service concessions. The Commission is preparing an impact assessment to assess which future initiatives are necessary to ensure a clear and predictable framework in this area.

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15 Eurostat News Release 18/2004: Treatment of public-private partnerships and ESA95 Manual on government deficit and debt 2004 Edition: Chapter on Long term contracts between government units and non-government partners (Public-private partnerships).

16 For public contracts or works concessions below the thresholds, Treaty principles apply (transparency, equal treatment, non-discrimination).

17 Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1-113). Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114–240).

18 Judgement of 26 April 1994, case C-272/91, Commission v. Italy (Loto); Judgement of 9 September 1999, case C-108/98, RI.SAN; Judgement of 7 December 2000, case C-324/98, Telasutria Verlags; Judgement of 21 July 2005, case C-231/03, Consorzio Aziende Metano (Coname); Judgement of 13 October 2005, case C-458/03, Parking Brixen; Judgement of 6 April 2006, case C-410/04, Associazione Nazionale Autotrasporto Viaggiatori (ANAV); Judgement of 18 July 2007, case C-382/05, Commission v. Italy (Municipal waste produced in the Region of Sicily).

Finally, it should also be recalled that PPPs, as long as they carry out an economic activity, are subject to the application of competition rules and, in particular, of State aid rules.

3.2. EU-level PPPs: the case of Joint Technology Initiatives

The Seventh Framework Programme for Research introduced a new type of European public-private partnership at programme level: the Joint Technology Initiative (JTI) based on Article 171 of the EC Treaty[19]. This new instrument was created to promote European research in fields where the objectives pursued are of such a scale and nature that traditional instruments are not sufficient. The first JTIs have been set up in five fields: innovative medicines, aeronautics, fuel cells and hydrogen, nanoelectronics and embedded computing systems. The JTIs have total budgets ranging between € 1 billion and € 3 billion in the period up to 2017. In three JTIs (Innovative Medicines Initiative, Clean Sky, and Fuel Cells and Hydrogen), public resources are exclusively composed of Community funds, provided through the budget of the JTI; in two other JTIs (ARTEMIS and ENIAC), they are combined with funds of the participating Member States or countries associated to the Seventh Framework Programme, provided through national funding agencies. The private partners' contribution is made up of 'in kind' contributions to the projects funded by the JTIs in which the private partners participate. Both public and private partners contribute to the running costs (administrative costs) of the JTI.

These partnerships make it possible:

– To develop commercially-viable solutions by supporting large-scale multinational research activities in areas of major interest to European industrial competitiveness.

– To integrate and internalise objectives of high societal relevance, such as promoting alternative energy sources and using energy and resources more efficiently[20], supporting more sustainable transport, combating climate change and ensuring high quality, affordable health care.

– To pool and leverage (private, European and national) funding and know-how and to reduce the fragmentation created by multiple national projects pursuing similar or overlapping objectives.

– To harness the skills and innovation of the private sector within appropriate risk sharing arrangements.

The experience of the five existing JTIs as they become autonomous and fully operational will enlighten the approach to creating further research PPPs.

3.3. Structural funds

PPP projects can be partly funded by resources from the Structural Funds. Nevertheless, few Member States so far seem systematically to design programmes that bring Community

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[19] Article 171 TEC allows the Community to set up Joint Undertakings for the efficient execution of Community research, technological development and demonstration programmes.

[20] PPPs can in particular drive further development of the pan-European energy research cooperation and will be promoted through the recently adopted Commission Communication on Investing in the Development of Low Carbon Technologies (SET-Plan), COM(2009)519

funding into PPP structures[21]. PPP projects can be partly funded by resources from the Structural Funds. There is a perception that combining different sets of EU and national rules and practices and timetables in one project may be complex and act as a disincentive. However, in many cases **a PPP may offer the optimal approach** for implementing projects. Strengthening Member States' institutional capacity and providing more practical guidance on combining Community funding with PPPs should help national administrations to have more recourse to PPPs when taking decisions about financing future major projects.

> Harilaos Trikoupis Bridge:
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> This bridge over the straits of Corinth, the longest cable-stayed bridge in the world, connects the Peloponnese with mainland Greece. In 1996, the Greek state granted the Franco-Hellenic consortium Gefyra S.A. a 42-year concession for the conception, construction, use and maintenance of the Harilaos Trikoupis bridge. The EU extended significant financial support, in the form of an ERDF grant and a loan from the EIB, to this building project.

The Structural Funds for the period 2007-2013 offer important opportunities to Member States to implement operational programmes through PPPs organised with the EIB, banks, investment funds and the private sector in general. Initiatives aiming to combine Structural Funds with PPP projects can draw on:

- JASPERS[22], a project development facility launched together with the EIB and the European Bank for Reconstruction and Development (EBRD), which aims at providing assistance as required for any stage of a PPP/infrastructure project cycle.
- The JESSICA[23] initiative for sustainable urban investment for PPPs/urban projects included in an integrated urban development plan.
- The context of the JEREMIE[24] initiative in support of new business creation and improving access to finance for enterprises.

3.4. European Investment Bank (EIB)

The EIB, the EU's long term lending institution, has actively sought to support efficient PPP schemes across Europe, and in particular in transport infrastructure. The Bank has made nearly € 30bn available in loans for PPPs since the late 1980s. The EIB is also the leading financier of the TEN-T networks. It is expected to contribute 14 % of total TEN-T investment between 2007 and 2013.

The EIB group is at the forefront of EU efforts to finance innovation and enterprises. Using the expertise of the EIB and its SME financing arm, the European Investment Fund (EIF) provides the EU with an efficient tool to develop new PPPs.

Furthermore, the EIB has established together with the Commission and Member States the European PPP Expertise Centre (EPEC), which aims to strengthen the organisational capacity

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21 According to DG REGIO survey, 7 Member States have experience of PPP with a Structural Fund component.
22 Joint Assistance to Support Projects in European Regions.
23 Joint European Support for Sustainable Investment in City Areas.
24 Joint European Resources for Micro to Medium Enterprises.

of the public sector to engage in PPPs through network activities and policy support to its members.

The Commission will work closely with the EIB and the private sector in order to increase the overall leverage effect of EIB funding, for instance through the blending of grants from the EU budget and EIB loans.

3.5. TEN-T instruments

Three financial instruments designed for TEN-T projects were introduced under the current TEN Financial Regulation, all of which aim to increase private participation. These new instruments are designed to benefit projects by targeting specific needs (such as optimal risk transfer, financing cost). Not only do they allow a targeted response, they also guarantee the highest leverage effect of the available EU funds.

The value of such EU level financial support to PPP projects often goes beyond simple capital provision. They are also an expression of a political commitment by the EU that often makes financing institutions look more favourably at the risk profile of a project and therefore make it easier to secure its financing at more favourable conditions. EU level guarantees serve the same function.

Loan Guarantee Instrument for TEN-T Projects (LGTT)

PPPs for TEN-T projects in which the private sector takes on risk relating to the possible variations in demand often face difficulties in attracting competitively priced private financing. The LGTT is a guarantee facility that helps by partially covering these risks by making up shortfalls in revenue that result from lower than expected traffic growth in the early operational periods of projects. In this way, it improves the financial viability of a project and its overall credit quality. Individual LGTT guarantees are available through the EIB. Three PPP schemes have already benefited[25] and in total the LGTT facility is expected to support 25-35 TEN-T projects by 2013. Planned projects include a high speed rail line, an airport express, motorway concessions in some new Member States and innovative freight projects.

Construction cost based grant in the framework of availability payment schemes

This special grant scheme encourages the project promoter to enter into a PPP agreement with a private partner rather than use public grants to finance the construction. The TEN-T grant, equivalent to up to 30 % of the total construction cost, is used by the promoter to support payment obligations only once the project is completed. This improves affordability for the public sector, while maintaining risk transfer to the private partner.

Provision of risk capital — equity participation in TEN-T projects

Up to 1 % or € 80 million of the TEN-T budget can be invested in projects in the form of equity or quasi-equity through a dedicated infrastructure fund. The Commission is currently

[25] Motorway schemes 'IP4 Amarante — Villa Real' and 'Baixo Alentejo' in Portugal, and the A5 Autobahn A-model PPP in Germany.

exploring options for using this instrument to invest in the 2020 Fund for Energy, Climate Change and Infrastructure (Marguerite)[26] which targets a fund size of € 1.5 billion.

3.6. Risk Sharing Finance Facility and Competitiveness and Innovation Programme

The Risk Sharing Finance Facility (RSFF), an innovative credit risk sharing scheme jointly set up by the European Commission and the EIB, as well as the financing instruments under the Competitiveness and Innovation Programme (CIP), support public private partnerships in the areas of research, technological development, demonstration and innovation.

Both RSFF and financial instruments of the CIP have proved their success:

– Since the launch of RSFF in July 2007, € 4.4 billion in loans have been approved for investments in R&D and innovation. The European Economic Recovery Plan foresees an accelerated implementation of RSFF.

– By the end of the second quarter of 2009, under the CIP, partnerships with the private sector were concluded in 16 agreements with venture capital funds from 14 countries. For the guarantee instrument, partnerships with public and private organisations resulted in 16 agreements with financial intermediaries from 10 countries. By the end of first quarter 2009, over 30 000 SMEs had received financing supported by the instruments.

3.7. PPPs outside the EU

The EU has made also contributions to PPPs outside the EU. For example, the Global Energy Efficiency and Renewable Energy Fund is a PPP offering risk sharing and co-funding opportunities for commercial and public investors in developing countries. Currently funded by the European Commission and the German and Norwegian governments, it will invest in private equity funds that specialise in providing equity finance – financing in return for shareholdings – to small and medium-sized regional projects and enterprises. In the enlargement process the EC has also participated in PPPs through programmes such as ISPA and Phare. Guidelines were elaborated to this effect in 2003 to address issues of concern for external cooperation[27].

In negotiations with our trade partners, the European Commission seeks to enlarge transparency and obtain market access commitments for PPP as it does with traditional public procurement contracts when dealing with government procurement in free trade and other bilateral agreements. The most recent achievement in this respect is the inclusion of Build Operate Transfer (BOT) contracts and work concessions in the FTA to be concluded with South Korea. This is also the case in negotiations with third countries, which are party to the WTO Government Procurement Agreement (GPA).

[26] The proposal for creating such fund which would invest in the core infrastructure areas of EU interest was endorsed by the European Council in December 2008.

[27] http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf.

4. CHALLENGES: WHY ARE PPPS NOT REACHING THEIR FULL POTENTIAL?

4.1. Challenges in the current crisis[28]

The recent crisis has had a major negative impact on PPP projects since (i) there has been a marked reduction in the availability of bank lending and other forms of credit for PPPs, and a significant deterioration of the financial conditions offered for PPP lending, a development associated with a change in the assessment of risk of PPP projects on the part of banks, and (ii) some national governments and regional authorities have reduced or put on hold their PPP programmes.

The development of PPPs is, therefore, currently being restricted by:

- significant **increases in the cost of debt** for PPP projects as a consequence of the credit crunch;
- the **substantially reduced maturities** being offered by banks[29] on their debt;
- the fact that committed **finance** is only **available at the end of the procurement process**.

Faced with this situation, responses **in Member States** vary. Some authorities have decided to reduce, or temporarily suspend, their PPP programmes. However, others are taking supporting measures, ranging from **state guarantee schemes,** which have been introduced in France, Belgium and Portugal, to new **public sector debt facilities** introduced in the United Kingdom, Germany and France. A number of public authorities are also **modifying the management of procurement** of PPP projects or simplifying national public procurement rules and practices, which often go beyond the minimum procedural requirements of Community rules in this field. These developments reflect governments' commitments to ensure that PPPs play a more important role in investment — a role that will become still more important as public finances remain under pressure for the foreseeable future[30].

Reduced access to finance may also have an impact on the effectiveness and extent of competition in the **public procurement** process. The fact that there is not enough banking capacity in the market to support two or more fully funded bids, and that banks are unwilling to commit significantly in advance of contract signature, has significant implications for procurement. The issue is therefore how to ensure that deals are still closed, and that the public sector gets the best value for funding while not infringing the public procurement rules. The Commission will explore ways to deal with these difficulties (Section 5).

At the EU level, the European Council of 11 and 12 December 2008[31] supported the use of accelerated procedures during 2009 and 2010, recognising the exceptional nature of the current economic situation and the need to accelerate public spending during the crisis[32].

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[28] Material in this section draws on analysis by the European PPP Expertise Centre (EPEC) as part of its work on the impact of the credit crisis on PPPs. EPEC was established as a joint initiative by the Commission, Member States and EIB. Further details are available at www.eib.org/epec.

[29] Maturities of 7 to 10 years are now the market standard. Previously, maturities of 25 to 30 years were not uncommon for major infrastructure projects.

[30] Support measures for PPPs might constitute state aid, which needs to be notified to the Commission.

[31] Point 11, 8th indent.

[32] IP/08/2040 of 19.12.2008.

The Commission has also put in place a ‘Temporary Community framework for **State aid measures** to support access to finance’[33], which contains a number of relevant provisions for PPPs. It provides a flexible complementary instrument allowing Member States to intervene where general measures, interventions in line with market conditions and interventions under the normal state aid rules are insufficient to respond to the exceptional conditions created by the crisis.

4.2. Challenges inherent to complex procurement models such as PPPs

There are a number of inherent difficulties in setting up PPPs, which need to be addressed more broadly:

– They may require committing significant resources at the preparation and bidding stage and often involve important transaction costs.

– They require **a set of specific skills within the public sector**, involving the preparation, conclusion and management of contracts. The range of complex financial arrangements required for PPPs and the relative lack of expertise in such matters may limit the capacity of the public sector to deliver good PPPs. Training and assistance are therefore necessary to accumulate the necessary knowledge for the sound preparation of PPP projects.

– In cases involving **Community funding**, in the short term Member States may view PPPs unfavourably compared to grant funding for projects procured and implemented through traditional means. The long-term benefits of potentially greater efficiency from private sector participation tend to be forgotten when seen against the more urgent need to meet the requirements of EU procedures. Moreover, **a level playing field between public and private management** of public infrastructure and services in the allocation of EU funding to investment projects should be guaranteed. To this end, rules and practices should be reviewed in order to ensure that there is no discrimination in the allocation of funds for investments projects in which the private sector participates.

– PPPs require **long-term governmental commitment and political will** to sharing investment in major projects with the private sector. In particular, the possibility of **future changes in policy** in various regulatory domains (environment, local authorities' autonomy, fiscal policy, economic policy) may introduce uncertainty into the procurement process and can increase costs.

– Successful PPPs need to be designed to allow private partners the potential to generate a return proportionate to the risks they undertake. Since risks are shared with public partners, returns should also be shared. Bidding processes must be competitive and require an appropriate regulatory and financial framework at national level. Public entities should have flexibility in the types of agreements they can conclude, and retain the possibility to award contracts according to value for money, provided for by the best mix of private and public risk allocation.

4.3. Specific challenges of Joint Technology Initiatives

PPPs in the research field are oriented towards coordinating public and private investment into generating new knowledge and technological breakthroughs. The outputs are therefore

[33] OJ C 83, 7.4.2009, p. 1.

less predictable and tangible than for the procurement of infrastructure and services, but potentially enormous.

The first five JTIs were set up as "Community bodies", according to Article 185 of the Financial Regulation, subject to rules and procedures, such as the Framework Financial Regulation for Community bodies, the staff Regulations and the Protocol on privileges and Immunities, which were conceived in the interest of minimizing risks for European public funds rather than facilitating co-investment with private partners in research in fast-moving markets. These JTIs will soon become operationally autonomous and the new instrument responds to a need that the industrial research community has highlighted. At the same time, the partners express the view that the instrument could be implemented more effectively if the set-up and operational procedures were simplified and the legal and administrative framework better tailored to PPPs operating close to the market.

These concerns should be addressed properly to make sure that the existing JTIs deliver on their promises and do not hinder the interest of the private sector in new JTIs in fields where PPPs are necessary. The Commission therefore intends to explore alternative models that could lead to a more streamlined process for setting up and implementing public-private partnerships in European research. In the light of the first experience with JTIs and in view of setting-up new long-term PPPs, the Commission will consider all options in reviewing the legal framework and the financial rules (as well as the operational procedures) to provide a simple and cost-efficient model, based on mutual understanding, true partnership and risk sharing.

Moreover, contributions from the main EU research and innovation programmes (FP7, CIP) directly to PPPs can only be made through grants or public tenders. This is a limitation where the most efficient form of cooperation would be an investment. To improve investment in innovation, the Commission will explore options to allow PPPs to make investment decisions that include Community funds.

5. THE WAY FORWARD: WHAT NEEDS TO BE DONE?

To release fully the potential of PPPs as a tool for facilitating economic recovery and building sustainability, competitiveness and high quality public services for the future as well as maintaining high level of environmental standards, the Commission intends to build **an effective and enabling co-operation framework** between public and private sector. Drawing on a dialogue with all relevant stakeholders through a dedicated PPP group to be set up by the Commission, a **series of actions** will complement Member States' actions to remedy the obstacles to the development of PPPs and to promote their use. These proposed actions will focus, on the one hand, on the Community instruments and regulatory framework, and on the other hand, on enhanced measures aimed at improving the access to financing of PPP initiatives and increasing the EIB's role in financing essential projects. The ultimate decision to use PPPs lies with the Member States' public authority and it is for the Member States to review the national framework as necessary to enable it. The Commission will:

1. Improve **access to finance for PPPs** through**:**

- Reinforcing and broadening the scope of the Community instruments currently available to support PPPs, such as LGTT and EPEC and other initiatives that, although not specifically aimed at PPP schemes, can support the implementation of PPP projects (JASPERS, JESSICA, RSFF, Marguerite Fund).

- Coordinating closely with **the EIB** in order to explore possible ways to increase the Bank's participation in EU infrastructure financing, in particular regarding key initiatives in the EU with socio-economic and European added value (e.g. cross-border projects, environmentally friendly initiatives, etc.). The EIB should also be supported in its efforts to make full use of the multiple instruments available for PPPs and to integrate PPPs as one of the core objectives of the Bank. Furthermore, the EIB is invited to further develop and implement guarantee instruments to facilitate the financing of PPPs, by promoting the role of the capital markets, institutional investors and the public sector as liquidity providers for PPP schemes.

2. Facilitate the setting up of PPPs through **public procurement of PPPs** by :

- Examining the impact of the Community crisis response on the availability of finance for infrastructure investment, including the need for an adjustment of procurement programmes and processes to take account of reduced access to finance.

- Completing ongoing impact assessment and other preparatory work with a view to considering a legal proposal in the area of **concessions** in 2010.

3. Ensure **proper debt and deficit treatment of PPPs** through:

- Examining the implication on the ‘balance sheet’ treatment of PPP assets of revised financing arrangements and issue clarifications on the existing accounting treatment in national accounts of PPP contracts.

- Providing guidance on the accounting treatment of guarantees provided in the context of PPP schemes.

- Continuing to provide clear advice to Member States on the statistical recording of individual PPP contracts, should they request it.

4. Improve **information and disseminate relevant expertise and know-how**, by:

- The Commission will issue guidance on the legal and methodological issues involved in combining EU funds with PPPs, in particular in the framework of the JASPERS initiative, in order to facilitate and increase the uptake of PPPs in structural funds. **Guidelines on the applicability of PPPs** for simpler forms of PPP such as Design-Build-Operate contracts will also be issued.

- **Pilot PPP projects** that could serve as models of best practices, good governance and solutions should be developed and replicated on a wider scale with the use of technical assistance elements of relevant funding programmes.

- Working with the European PPP Expertise Centre (EPEC) to identify means to deliver enhanced **long term support** to those Member States that seek to use PPP to optimise their use of structural and cohesion funds as a component of programmes of investment. EPEC should be strengthened and be developed into a platform for the exchange of information and best practices and act as a focal point for a European network of national bodies established to support PPPs. It can also complement the role of JASPERS and the Commission, both of which support individual grant applications and projects. Options to promote **better project preparation and design projects that are better suited** for private sector involvement will be explored.

- Disseminating **good practice**, in cooperation with EPEC, in order to enhance public sector management capability and reduce PPP costs. For example, EPEC has developed an analysis of potential remedial actions to support PPP initiatives in the prevailing circumstances of the financial markets[34].

- Working with Member States to **identify provisions** in national legislation that **prevent or hinder setting up PPPs**, as part of the implementation of the European Economic Recovery Plan. Where the EU funding is involved, it should be ensured that there is no discrimination in the allocation of funds to investments projects depending on the management of the project, be it private or public. The Commission will examine together with Member States the EU and national rules and practices and present its findings, accompanied by proposals for modifications, where appropriate, by the end of 2010.

5. Address the **specific challenges of JTIs and financing for innovation** by:

- Moving the current JTIs rapidly to autonomy and examining the lessons learnt, while at the same time exploring options for streamlining the legal and administrative framework applicable to JTIs. While ensuring the protection of the EU's financial interests, the objective should be to strike the right balance between control and risk and be flexible enough to permit an efficient partnership with the private players, ensuring the protection of the EU's financial interests based on an equitable sharing in the costs and benefits

- Taking a strategic perspective with JTI leaders and other stakeholders to identify what the specific obstacles are and how they can best be addressed, including changes in the Community rules that govern them, such as the Financial Regulation, as necessary. A report including policy recommendations will be presented in the coming months. On the basis of the recommendations of this report, the Commission will propose a **new framework for JTI**, which could be based on private law bodies. This new framework will be taken into account in the revision of the Financial Regulation, which will be presented during the first half of 2010.

- Working with the EIB group and other stakeholders to see how the financial instruments could be strengthened in order to improve finance for innovation. This work should also examine whether and how the participation by the EU in private law bodies could be facilitated as a means to delivering our innovation policy goals. The output of this work could be included in Commission proposals for a new innovation policy, due to be presented in early 2010, and taken into account where appropriate, in the coming revision of the Financial Regulation.

The Commission will take stock of the results of these initiatives aiming at improving the EU framework for PPPs before the end of 2011 and if necessary, propose new initiatives.

[34] C.f. European Expertise Centre- EPEC-publication "The financial Crisis and the PPP market, potential remedial actions" of August 2009 at www.eib.org/epec.

6. CONCLUSION

Developing PPP as an instrument becomes critical as the financial and economic crisis is taking its toll on the ability of the public purse to raise adequate financial means and allocate resources to important policies and specific projects. The interest of the public sector in innovative financing instruments has increased and so has the political readiness to create conditions for more efficient ways of delivering infrastructure projects, whether in the transport, social, energy or environmental sectors. On the other hand, the private sector's interest in pursuing PPPs could be limited by the prevailing regulatory framework and new economic constraints, as well as other longer established underlying factors such as limitations in the public sector's capacity to deliver PPP programmes in many parts of Europe. In order to ensure that PPPs continue to play a role in the longer term, in particular five key actions are indispensible in 2010:

- The Commission will **set up a PPP group** inviting relevant stakeholders to discuss their concerns and further ideas with regard to PPPs. Where appropriate, it will issue guidance assisting Member States in reducing the administrative burden and delays in the implementation of PPPs: in this context, it will explore ways facilitate and speed up the attribution of planning permits for PPP projects.

- The Commission will work with the EIB with a view to **increasing the funding available for PPPs**, by re-focussing existing Community instruments and by developing financial instruments for PPPs in the key policy areas.

- The Commission will review the relevant rules and practices in order to **ensure that there is no discrimination in the allocation of public funds, where Community funding is involved,** depending on the management of the project, be it private or public. It will make proposals for amendments, where appropriate.

- The Commission will propose **a more effective framework for innovation, including the possibility for the** EU to participate in private law bodies and directly invest in specific projects**.**

- The Commission will consider a proposal for **a legislative instrument on concessions,** based on the ongoing Impact Assessment.

The actions set out above aim at creating a supportive Community framework for PPPs designed to meet the needs of citizens, furthers Community goals through a prospective analysis and ensures that actual delivery meets these needs.