PUBLIC-PRIVATE PARTNERSHIP - A STRATEGIC APPROACH OF PUBLIC SERVICES MANAGEMENT

Ana-Maria BERCU
Faculty of Economics and Business Administration
Alexandru Ioan Cuza University
Iasi, Romania
bercu@uaic.ro

Abstract

Public-private partnership is a solution in the management of public services by government authorities. Often faced with budget restrictions and laws limits, the administration was asked to address the problem of investments to develop local communities. In this issue has been addressed collaboration between public and private sector through partnerships. In states with tradition, including France, Britain, Spain, United States was demonstrated that the risks and benefits are shared between partner, and development of projects through public-private partnerships have a real chance of success. This paper proposes an analysis of the types of partnerships used their characteristic, the advantages and disadvantages to their use. Are envisaged the partnership agreements of states which has been adopted, aiming at finding solutions to their implementation in Romania.

Keywords: partnership, reform, public contract, the concession contracts
JEL classification: H27, H83, K12

1. INTRODUCTION

The need for outsourcing the administration of part of public services has emerged in the context of changes caused by successive developments in the world by political, economic and social environment. Also, the notion of public service has different meanings depending on the state to which we refer, as in every state; they are satisfied to varying degrees depending on the features recorded.

In the context of creating a single market, Europe is trying to harmonize the concept of public service and public service management model and to align infrastructure and public services at unique standards. In many states it is rooted idea that the public sector is responsible for delivering basic services, but this may change especially in the context of the public wishing to exploit the advantages offered by the private sector. Recourse to the private sector is increasingly necessary because of budgetary limitations faced by most countries, but also because the state's role in economic development, from directly player to the referee and regulator. Question often arises whether a model of public services management and partnership between public persons and private enterprises? And if there is, is it sustainable?
Public - private partnership can be a solution in managing a large part of public problems to be found within a State authority. In Europe the term public - private partnership is not defined, but is used to mean the form of cooperation between public authorities and private environment which is aimed at ensuring the financing, construction, renovation, management, maintenance of infrastructure and public services [European Commission, 2004, 3-5].

However, the law there is no specific definition for public - private partnership, leaving the discretion to regulate its high members States. Community law can be considered as neutral; it leaves the public authorities to choose how to meet the public service, but only comes into play when public authorities decide to involve third parties through legislation on public procurement and concessions.

2. THE NECESSITY TO OUTSOURCING THE PUBLIC SERVICES

In international practice, public - private partnership takes two forms: public-private partnership contract and institutional public-private partnership. Public-private partnership contract is based exclusively on contractual arrangements between two parties, one being a public entity and the other a private entity. The best known model for public-private partnership contract is the concession contract; the private entity provides a public service to the population and not the public entity, but under its control [European Commission, 2004, 9-10]. A study made by Price Waterhouse Coopers, the European Union, approximately 60% of projects by type public - private partnership taking the form of concession. In Romania, the concessions are regulated by Government Emergency Ordinance no. 34/2006 on public procurement, the public works concession contracts and services concession contracts. The institutional public-private partnership is a form of cooperation between partners from public and private sectors which decide the establishment of a public entity that has joint ventures active in the execution of public contracts or concessions. In this case, private entities participating in the joint venture as equity, but also as active agents necessary to perform the tasks set. This form of partnership is not regulated at Community level, but the European Commission published an Interpretative Communication of Community law on public-private institutional. In Romania institutional public-private partnership is unregulated, with this pressure from the private sector who wishes to remove existing legal uncertainty by adopting a legislative act. This form of collaboration between public and private sector is used countries like Italy, Hungary and Czech Republic in the water supply companies.

3. MANAGEMENT OF PUBLIC SERVICES THROUGH PUBLIC-PRIVATE PARTNERSHIP. RISKS AND BENEFITS

The central aspect that the public authorities should consider is where and which public services should be outsourced to be met by the private partner. This analysis must consider the net benefits and value addition that would bring it every way explorer of that service. Should consider both the benefits it would bring such a project and risks involved, seeking to provide services in an efficient, effective, economical and value for money (European principle that supports free movement of goods, services and individuals within the single market).
The partnership can be seen as a more convenient formula than alternative available to the public sector, namely privatization. By privatizing the contract is transferred permanently to the partner the private property, while if the public-private partnership contract to return property under state ownership. Also, both the experience of developed countries like the UK, but also in countries like Romania, has proven that privatization is not the best solution. Mostly public companies were sold too fast, too expensive and defeating is an analysis of subsequent performance of that entity.

European Commission itself has identified four benefits that would bring private sector partnerships, namely [European Commission, 2003, 4-5]:

a. To provide additional capital
b. To provide alternative public service management
c. To offer consumers added value
d. To ensure better identification of needs and optimal resource utilization

Benefits associated with a project in public-private partnership not only have an impact on the public sector but also the private sector. These contracts represent a long-term investment opportunity, offering private partner relative certainty and security due to the contract with the public partner.

Benefits of public-private development are significant risks associated. For example, international experience has shown that most times the public authorities assume too many responsibilities, which leads to financial risk to be transferred to them. The solution in this regard could be given by a legal framework which must be clear in the contract terms, but while leaving some flexibility in which to consider the particular project. Risk sharing should be fair and be determined by the respective responsibilities assumed by contract.

In determining if a project is better or not to be achieved through public-private partnership, public sectors should conduct a cost benefit analysis, in which to assume that a work or a service can be exploited in several ways. However, in a study [EIB, 2005] conducted by the European Investment Bank in ten European countries, showed that alternatives to public-private partnership was that of doing nothing. Public authorities must understand that although public-private partnership has registered many successes are not the best solution for any type of project and outsourcing of certain public services is not always the best solution.

These tests are particularly necessary in countries at an early stage in the development of public-private partnerships, because they enjoy the expertise and experience of Western European states. Public-private partnership must first be carefully regulated and monitored, both in conducting the proceedings when the private partner selection and during implementation and enjoyment. A public-private partnership project requires extensive training and a serious impediment in our country is lack of experience in the field of human resources in the central and local authorities. For example, locally is not a uniform institutional approach for such projects, there are not clear responsibilities allocated to the institutions and isn’t known the level of decision making.

Macroeconomic benefits are compelling public-private partnership. First budgetary constraints existing in Romania are almost impossible to conduct major public investment projects. Lack of public investment in Romania could be reduced by attracting private investment. Project cost sharing between public authority and a private partner is even more necessary as Romanian legislation in this area focuses on attracting financial resources in whole or in part from an investor, and use a lesser extent the public funds. Also, Romania is an emerging market and expansion in terms of attracting private sector in providing public
services. This may draw attention to the private sector as an early model for our country, but enjoys success internationally. Thus, public authorities could take advantage of this comparative advantage to attract foreign investors who have extensive experience in developing partnerships with public sector internationally. One area that could be exploited successfully is the road. Highways in Romania are almost nonexistent, they assuming a high financial burden from the state, but their construction can be financed with private partners. This form has been applied successfully operating in many EU countries like Spain, Portugal, Italy or France. According to statistics approximately 38% of highways in Europe were built by concession, namely 21,998 km from 57,542 km [Fayard A., 2010, 5]. However, Romania needs of large projects in partnership, whose success is publicly presented together with the obstacles encountered and how they were resolved through cooperation between public and private, to win the confidence of private investors. Although public-private partnership is widely used in Europe, they represent only 4% of total public sector investment. Only the UK, the proportion of public investment through public-private partnership and private financial initiative in total public investment is higher, reaching 10-15%.

Another advantage is that the private sector much better control costs and lead times because the main purpose is to obtain a private profit and return on investment. In this respect they seek to minimize costs and meet deadlines for responding to operation as quickly as possible the work and recover the investment. Minimize costs does not imply a reduction in quality of work because the private entity will take charge maintenance costs, which will be higher in such a context. Unlike the private sector, public sector uses public money, which makes their management are likely not be realized on the basis of economy. However, public sector focuses exclusively on the financial aspect but also the social benefits of a project. This is another reason why it is necessary the collaboration between the two sectors, the public entity may own some issues relating to financial management used in the private sector and the private sector must take account not only the financial aspect but also how that project will reflect the community and how the benefits will be felt and shared in the community.

Another advantage of conducting the public-private partnership projects is that risk is shared between the two sectors. Recommendation given by Eurostat in this respect is that the risk to be allocated in the most capable of managing. Risk is defined as any factor, event or influence that threatens the successful completion of a project in terms of time, cost or quality. Thus the project risk is transferred to the private partner, which in addition to the risk of construction may take longer depending on the specific project operating risk or the risk of availability. By transferring risk to the private sector ensure that the principle of predictability in the budget, because some costs cannot be anticipated during construction and operation of a project are now transferred to the private partner.

In Romania the problem is represented by the existence of a weak relationship between public and private sector to take part in the existing legal and institutional barriers. It would be beneficial if it could be regulated the possibilities as the private sector can be the one to take initiative to develop partnerships with the public environment. Through such rules would enable businesses to come up with innovative ideas for exploiting certain public services and could bring added value in areas that government does not yet anticipated. This could also represent a way for government to become more dynamic and its reactions being conform to current realities and needs of citizens.

Another assumption existent is that the public-private partnership model is better than traditional methods of operation of public services because are not consumed public funds.
This premise is false because while a private partner realizes the investment initially, then the state will pay him a certain fee or end users instead to pay a state tax will pay to the private partner. However, this should be seen and by the fact that role in the economy should be reduced, and supporting major projects require a substantial initial investment that would reflect a deficit and a substantial increase in public debt. It is also known that the most common projects, namely the infrastructure, the biggest costs are distributed mainly in the early years of construction, creating a negative cash flow that could hardly be supported by public sector. The constant payment of fees by private operators costs are distributed linearly on the public several years and are more easily borne by the public budget uncreated imbalances. For example, if a section of highway construction period of the works is three years and the mining of approximately 27 years. Where costs would be borne by the public sector, there is a high financial burden during the first three years, which would increase public debt and high deficits. Increasing public debt of a state or local authorities can be seen through the prism of existing legal constraints both at EU and national level. Where would apply to a public-private partnership contract, administration costs will be linear during the years of service and will not increase public debt. Thus, before deciding operating as a public service is necessary to consider all related impacts that would attract each variant design and trial of a value not is simplistic.

Another negative effect of financial crisis on public-private partnership refers to reducing cash flow because the economic downturn had an impact on cash flows earned. This threat affects mainly projects in the operational phase and the end users are charged, may have repercussions on the whole viability of the project.

Another threat facing the projects implemented in public-private partnership is amended by exchange rate fluctuations. If the private partner has covered external debts, exchange rate fluctuations can have repercussions on the project. This occurs especially where the private partner underestimated exchange risk, or are under construction and needs to import goods whose acquisition cannot being estimate to lead an increase of expenditures.

4. EUROPEAN EXPERIENCE IN USING PUBLIC-PRIVATE PARTNERSHIP. SOLUTIONS FOR ROMANIA

In Europe, use of public-private partnership is developing in various forms, there are countries like Britain, France, Ireland which successfully use it and states which set the legal framework and conduct pilot projects, that most Eastern European countries. From countries with tradition in developing public-private partnerships can learn many lessons since they cannot be automatically translated into any other state. To see the differences we make a comparative analysis of the level of implementation, use and regulation of public-private partnership between France and Romania.

In France there is a long tradition in the delegation of certain public services to be provided by the private sector. This model was initially charged in France in the XVII century and XVIII century for the construction of bridges and canals, knowing an explosion at the end of the XIX century, especially in infrastructure: railways, electricity, drinking water, sewerage, public lighting, explosion give by industrial revolution at that time. Partnership between public and private sector declined in the interwar period, resuming their upward trend after 1950, the most famous project in partnership at the time refers to the bridge construction Tancarvile (partnership between Havre Chamber of Commerce and business group Daydé). In, time, the public - private partnership has expanded to other areas which
were started under the exclusive competence of public authorities such as paid parking, heating, urban transportation. A study by the Ministry of Environment, Energy, Sustainable Development and Spatial Planning in the cities of France with more than 2,000 people have reflected the importance of public-private partnerships in some sectors, as private operators have generated 22% of public transport 68% of water supply and sewerage services, 90% of district heating services and 54% of the cable [Hoorens D., Peretti M.P, 1995, 36-38]. Unlike France, in Romania the concept of public-private partnership has emerged much later after the transition to market economy in the mid of 90s. This was mainly due to nationalization and concentration of power from communism. However, during the totalitarian regime of Franco in Spain to use public-private partnership type DBO (Design, Build, Operate) for building highways. So, not only the political regime influenced partnership option, but the vision and the openness of the society of that State.

In Romania to develop public-private partnership projects are still in its infancy, there are very few projects developed in this regard, and the less important projects. Some of the projects are on the City Hospital Timisoara whose investment estimated to reach 59 million Euros, at the University Hospital and Medical Center Union Elias. Public-private partnership in Romania is more in phase of the initiative, rather than completed projects. We can say that our country is an atypical case, because public-private partnership is considered key to the Romanian Government's anti-crisis program, we have a unit to support public-private partnership in the Finance Ministry, but we have projects to be developed and put into practice through collaboration between the two sectors, let alone quantifiable results.

Regarding legislation in France, the traditional approach to concession contracts and public-private partnerships has recently been revised and updated due to increasing awareness of the benefits they are providing services through partnerships. A contribution to reform in France had legislation for new types of public-private partnership contracts and switching to so-called second phase of the decentralization process by which new responsibilities are delegated to local authorities [FBD, 2005, 15].

In France meet both forms it may take public-private partnership:

• **Public-private partnership contract, which can be put in place by two types of contracts:**

  Public service delegation (PSD) through concession or lease, and the definition of which was regulated by the Law on urgent action for economic and financial reform

  Partnership agreement (PA) created by Order of June 17, 2004 and amended by Law of July 28, 2008 and other similar contracts. The contracts are similar partnership agreements specifically in the hospital sector - Bail Emphyotiques Hospitaliers (BEH), the specific partnership agreement Bail Emphyotiques Administratifs for administrative domain (BEA) and temporary employment contracts in the public domain (AOT) with possibility of renting or with the possible purchase (LOA).

  The difference between the contract of delegation of public services and the partnership lies in the fact that the former private entity assumes the risk management and exploitation, while the second is the further construction risk.

• **Public-private partnership that meets the institutional framework of mixed companies or local businesses and private and public entities are linked by state and business capital.**

  It should be noted that public-private partnership contracts are part of administrative contracts. In the event of litigation or administrative contracts fall within the competence of administrative courts and the partnership can be resolved through arbitration proceedings.
Unlike the French model, in Romania are regulated specifically by legislative act only concessions, leaving the Romanian legislation to understand that public-private partnership contract is a legal act independently and with a separate existence. In 2002, in our country was adopted the law regulating public-private partnership, but because of its inconsistency with the provisions of the European rules, it was repealed leaving behind a legal vacuum. Regulating concessions only by Romanian legislator became an inadvertently because the forms of partnership are more complex than the tensile field concession. We could say that the report should be just the opposite, like to be representative of public-private partnership contract and concession species.

Both, Romania and France are facing budget constraints regarding the amounts allocated to investments. In France, increased financial and budgetary constraints, so that French investment budget has declined in recent 25 years from 10% to 7.5%. This was accompanied by deterioration of infrastructure and reducing investment in health and education, leading to the need to resort to public-private partnerships in areas which until now was the responsibility of the state.

In 2008, according to the report provided by the French Ministry of Economy and Finance have endorsed 44 projects in public-private partnership and its equivalent forms, of which 26 projects were initiated by central government and 18 by local authorities. The total investment amounted to 10 billion Euros and were divided into the following types of contracts: approximately 2 billion through partnership contracts specific to the field hospital (BEH), 0.6 billion by temporary employment contracts in the public domain (LOA) mainly directed to prison, two million Euros in specific partnership contracts administration, and the remaining 7.2 billion Euros in public-private partnership contracts fever [NCW, 2005].

The situation in Romania is slightly different, because even the state does not occurs in the economy through public investment, and private capital is not used to finance public services and works. Much of the state budget and loans for our country go to support a budget device cumbersome and pension system, public investment remains only at the political statements. Their replacements should be done by private funds; the best way is represented by public-private partnership. But unlike France, which moved to a new level, outsourcing public services which were traditionally met by state benefits, Romania fails or use public-private partnership for infrastructure projects which are used in France in the century XIX. Romanian public authorities should find ways to attract private partners and, above all, to create an adequate legal framework. Attention should be made so much as to designate the law but on creating a coherent and stable. To win the confidence of private operators’ selection procedures should be done in accordance with the principles of transparency and competition, therefore not leaving questions about the conduct of selection procedures.

The difference between the two countries is striking, while in Romania the public-private partnership projects are almost inexistent in France is currently running about 20,000 contracts of partnership, and sectors are concerned can be seen in Table no. 1.

<table>
<thead>
<tr>
<th>Sector</th>
<th>The amount</th>
<th>% private</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water</td>
<td>11,4 m€</td>
<td>71%</td>
</tr>
<tr>
<td>Municipal waste</td>
<td>5,7 m€</td>
<td>73%</td>
</tr>
<tr>
<td>Municipal heating</td>
<td>0,9 m€</td>
<td>93%</td>
</tr>
<tr>
<td>Municipal transport</td>
<td>8,6 m€</td>
<td>16%</td>
</tr>
</tbody>
</table>

Table no. 1 Public-private partnership in France
<table>
<thead>
<tr>
<th>Sector</th>
<th>The amount</th>
<th>% private</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees for highways</td>
<td>6.0 m€</td>
<td>-100%</td>
</tr>
<tr>
<td>Parking</td>
<td>0.8 m€</td>
<td>59%</td>
</tr>
</tbody>
</table>

Source: [Ratledge; Lignières, 2006]

The most developed sector in France remains road infrastructure, being in ongoing projects in design, construction, financing, maintenance and operation (DBFMO - Design, Build, Financing, Maintain and Operate) to pay for the highways between cities Artenay and Courtenay (project worth m€ 618m), the middle of Bodeaux and Pyrenees (worth m€ 100). Also, took scale the development projects on the projection, construction, financing, maintenance of hospitals and prisons. Projects are promoted by health plan "Hospital 2007" began in 2002 and had 951 beneficiaries by hospitals across the country and 92.80% of investments have resulted in real estate transactions. These projects are characterized by the fact that the risk projection, construction and maintenance are borne by the private sponsor (sponsor private), bank financing the construction is done and payment risks are borne by the state. Highest-developed projects under this program cover: Douai Hospital Research Institute and Center CHNO South Francilien Hospital.

In France the specific regulations of public-private partnership contract in the field hospitals has enjoyed great success by the number of beneficiaries and attract investments. Romania can learn from this experience, and if the road infrastructure is a priority could be made a law of highways, and create conditions that would facilitate the development of public-private partnerships in the field. The success of such laws is difficult to estimate, because Romania hasn’t a tradition that has France in public-private partnership. A first step would be starting much debated adoption of public-private partnership laws, and then depending on market response that comes from taking further action.

Public-private partnership has a long tradition in many countries in the European Union but also in USA and Australia. It was initially scattered in the states of Western Europe which had a strong private sector. In recent years various partnership schemes were adopted in the countries of Eastern Europe.

If it was initially used as a model of success particularly in infrastructure, the findings of upward flow in other areas like schools, hospitals or prisons. The transfer of private sector management concepts to the public can mitigate the shortcomings of the public sector economy. The source of these shortcomings lies in the fact that public policy makers manage public money and thus do not assume any personal risk. They also are subject to certain external stimuli, many of invoice political, administrative and even personal interests that lead to lower efficiency of resource allocation.

5. CONCLUSIONS

It is important to consider that public - private partnership is not a key success that can be applied to any public project, as the scheme to be applied may vary depending on the specifics of each project. Justification for public-private partnerships are based on a specific perspective on public management and the terms of these partnerships need to be modeled according to the specificity of each sector as uncritically translated can attract unwanted consequences.

For an economy like Romania, public - private partnership raises based on skills needed to design and management, access to capital markets or potential conflicts that may arise
between the business expectations of confidentiality of commercial contracts. Romania can learn from the vast experience they offer EU countries to avoid the difficulty they have faced throughout history. Also, a project of this kind involves a cost-benefit analysis, a comparative analysis of various implementations and decision must be done based on the efficiency criterion to meet the needs of citizens.

References


