

Public-Private Partnerships in Transitional Nations

Public-Private Partnerships in Transitional Nations:

Policy, Governance and Praxis

Edited by

Nikolai Mouraviev and Nada Kakabadse

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INTRODUCTION

TRANSFORMING THE PUBLIC SECTOR CHALLENGES INTO OPPORTUNITIES BY THE DEPLOYMENT OF PUBLIC-PRIVATE PARTNERSHIPS

NIKOLAI MOURAVIEV
AND NADA KAKABADSE

In many nations across the globe, governments promote the use of public-private partnerships (PPPs) in a variety of sectors including energy, transport, housing and utilities infrastructure, sports and recreation, healthcare, education and in the social sphere. A PPP arrangement exists where a government engages in a long-term contractual relationship with a private sector partner(s) for the implementation of a public sector task, such as the provision of transport infrastructure (e.g. roads, bridges, tunnels, airports and sea ports) (Akintoye *et al.* 2003; Grimsey and Lewis 2004). Typically, governments aim to engage with the private sector in order to close or reduce the gap between the required and actual range and volume of public services. Experiencing an acute shortage of budget funds, governments often turn to the private sector and form partnerships with private firms that use their own funds to build or renovate an asset for the subsequent delivery of services to the general public and businesses. Having invested in the construction or renovation of a facility, a private company employs an asset for the public service provision and receives payments from customers and/or the government in order to recover its investment and earn profit (Mouraviev and Kakabadse 2016).

A few principal reasons for PPP deployment are common to most economies: governments aim to avoid budgetary constraints, transfer risk, fully or in part, to the private sector, and make use of the private sector's technological and management expertise (Savas 2000; Wettenhall 2003). In the OECD countries, the prevailing approach is that a PPP should

deliver value-for-money, i.e. the government's whole-of-life costs, related to financing a partnership, should be lower than the cost of the government's in-house service provision (Osborne 2000). As a commonly-understood concept, this approach is used in many nations, although not without criticism. Concerns exist as to whether PPPs dilute the boundaries of the public domain and undermine the area that constitutes a public service ethos. Critics of PPPs argue that a government should be accountable for the efficient work of the public sector and the provision of public services, and be responsible to the communities and society at large (Parker and Hartley 2003; Parker 2012). From this perspective, even if a PPP delivers value-for-money, one might still argue that, via PPP deployment, the government has distanced itself from its traditional responsibilities.

However, transitional nations have their own approaches to PPP development and their own means of justifying why a PPP should be launched (see, for example, Urio 2010). For these countries, the value-for-money perspective cannot serve as a reliable basis for decision-making regarding whether or not to deploy a PPP. The reason is that, typically, governments attempt to attract private investors by offering them generous financial support (e.g. subsidies, payments for investment, exemptions from taxes), therefore reducing or eliminating PPP's value-for-money (Morillos and Amekudzi 2008). If PPPs are not underpinned by value-for-money, how can governments in transitional nations justify the need to deploy partnerships?

This book shows that, in addition to commonly shared reasons behind the implementation of PPPs, each nation has its own set of PPP drivers shaped by the political, economic, legal, institutional and social context. What are these reasons? How does the power struggle and political environment shape the government policy regarding PPP deployment? What are the legal barriers that impede PPP development? What are the institutional obstacles? From the social perspective, are citizens in a certain nation ready to pay for PPP-provided public services that used to be free or subsidised by the government, whilst now they are delivered by private PPP operators for a fee? More generally, is there public acceptance of public-private collaboration: do citizens view PPPs as curse or cure? Drawing on the analysis of the contextual environment of selected economies, this book discusses these and many other issues, and attempts to draw insights into the emergent PPP experience of transitional nations. Naturally, this allows the reader to draw lessons from international best practice, and contrast and compare the progress that different nations have achieved to date in PPP development.

However, this book does not merely highlight the nations' PPP experience. Rather, it focuses on PPP policy and governance. The importance of the PPP governance perspective should be emphasised, as it is a largely neglected area of research, particularly in the context of transitional nations. Whilst PPP governance has received much attention in industrialised economies, such as Australia, Canada, the UK and USA, in transitional countries the management and governance issues are typically overlooked and/or disregarded. They are simply not at the top of the governments' priority list. However, as this book demonstrates, a large number of PPP failures occur due to a lack of attention given to how PPPs should be managed and controlled. Instead of addressing governance issues, governments usually focus on drafting a PPP contract and on the partnership launch. The insufficient attention paid to the PPP governance structures, processes, partner interaction, risk mitigation and dispute resolution explains the significance of this book. Not only does it allow the reader to assess the context and factual data on PPP development in selected nations, but also their experience in policy design and implementation, and in tackling governance issues.

Whilst the public sector in a specific economy has its own challenges, many governments query whether or not PPPs are able to effectively address these. From the governance perspective, what are the structures and collaborative arrangements that underpin partnerships, work well and facilitate the transformation of these challenges into developmental opportunities? By sharing the experience of nations in Africa, Asia and Europe, the book permits the reader to understand the commonalities in PPP deployment, avoid mistakes and learn from other economies. There are questions that concern many, if not all, governments on all continents. These include:

- What are the common and frequent mistakes that governments make when they deploy partnerships and decide on governance issues? Being aware of these mistakes is critical as this will allow governments to avoid them.
- What are the best practices that can be borrowed? Knowing this will make PPP deployment easier, faster and generally more effective.
- How can countries increase PPPs' value-for-money? Understanding these tools and methods will make governments' efforts more attractive to the public and make it more difficult for political opponents to challenge the need for the proliferation of PPPs.
- Do partnerships play a broader role in society, i.e. do they create social value, in addition to the construction or renovation of

infrastructure, hospitals, schools or facilities in the energy sector? If so, what are its dimensions? The emphasis on PPPs' social value might significantly help governments to promote partnerships as a policy tool.

- Can PPPs serve as the core, or a backbone, of entrepreneurial networks? If so, PPPs might effectively contribute to the economic side of sustainable development, i.e. create jobs and enhance an economy's durability.
- In addition to traditional tasks for which partnerships are launched, such as renovating roads and building tunnels, can PPPs be instrumental in accomplishing certain less traditional government tasks? Among the latter are disaster risk management of built infrastructure, for example in coastal communities, and promotion of clean energy, i.e. expanded use of renewable sources for energy generation. Many nations (e.g. Indonesia, Kazakhstan, Russia, and Sri Lanka) are keen on finding robust instruments, financial schemes and organisational arrangements for tackling these challenging tasks, but have not yet identified effective solutions. If PPPs can be used for these tasks, this would further enhance their applicability as a policy tool.

This book addresses the abovementioned issues and lays the foundation for further enquiry into more specific areas of PPP work through the lens of the governance perspective. Part One of the book provides insights from the field by highlighting PPP development and governance matters from selected nations. Part Two takes a different approach: instead of a country-specific focus, it offers discussions on key themes.

In Part One, each chapter has its own focus. A contribution on Croatia gives a detailed account of how its PPP legislative framework evolved over time and highlights the role of various institutions in the PPP governance structure. It also explains the use of the public sector comparator during the preparation of a partnership contract and elucidates the contract's mandatory elements as specified by Croatian law. The chapter further provides a case study of sports halls PPPs and summarises the lessons learned.

As the power struggle in Ukraine has been intense for a number of years and governments at all levels changed regularly, this inevitably presents a challenging and unstable environment for PPP development. Nonetheless, the nation is progressing in forming its legal and regulatory PPP framework and has launched a few partnerships on an experimental

basis. The chapter on Ukraine identifies the critical impediments to PPP implementation in the area of institutional and financial matters, and also in relation to tendering procedures and contractual provisions.

The next chapter discusses Russia's experience in PPP governance, e.g. the formation and work of the national and regional PPP centres and financing channels. This chapter categorises various barriers to PPP development in the nation and assesses progress to date. Of particular interest are three case studies of transport PPPs in Russia, two of which are being implemented at the level of a large city (St Petersburg) and one at the national level. As Russia has a large and rapidly growing number of PPPs and has already accumulated certain management experience, the chapter highlights lessons that could be drawn for more effective governance.

Turkish PPPs in healthcare is the focus of the subsequent contribution that sheds light on the policy in this sector, the institutional framework, and imperfections in the tendering procedure. In addition, the chapter discusses risk sharing arrangements and financing issues, all of which might be useful for those economies seeking to build or reconstruct hospitals in the form of a PPP.

PPP development in Kazakhstan is highlighted in the next chapter. It shows how the legal framework for partnerships has evolved from 2005 to present, what PPP projects have been launched and what the typical management problems are. The chapter elucidates the role that Kazakhstan's National PPP Centre plays in fostering partnership proliferation in the nation and gives details of activities of the recently formed PPP Advisory Centre. The chapter also draws lessons learned in the areas of risk management, PPP governance and concessionaire management.

In Pakistan, the government PPP policy focuses principally on the transport infrastructure (roads). However, the chapter on Pakistan attempts to offer a broader perspective by providing a comprehensive picture of the PPP development to date. It gives details of partnerships in the energy sector, highlights the stages in PPP development, shows the PPP governance structure at the national level, and comments on the debate in the nation regarding how to conceptualise a PPP. The latter is also relevant to many other countries, including Kazakhstan, Russia and Ukraine, in which the governments and academics still search for a commonly shared understanding of what constitutes a PPP. In addition to summarising the distinguishing features and challenges to PPP development in Pakistan, this chapter also includes case studies of two PPP projects in transport

infrastructure and the energy sector. In conclusion, the chapter identifies the required elements of an effective PPP policy framework.

A chapter on China gives a detailed account of the history of PPP development in the nation, and then captures the features of the PPP procurement process, governance and financing issues, drivers and barriers at various levels including the programme, project and political levels. Of particular interest to the reader will be the sections about governance, how the government engages with the private sector in China, and PPP internationalisation in the country.

In order to address the PPP governance issues in yet another Asian nation—Indonesia—the relevant chapter focuses on the institutions, the interaction between them and the regulatory environment. It also elucidates the financing schemes and extensive support that the government extends to partnerships. In addition to case studies, the chapter highlights ten critical challenges to PPP development in the nation.

In Nigeria, the government's attempts to create an enabling environment for PPPs have resulted in the adoption of principles that drive decision-making regarding partnership deployment, which the next chapter discusses. This might be of particular interest to transitional nations that are seeking a framework (i.e. guidelines and criteria) for selecting projects and launching PPPs. This chapter also provides a detailed analysis of an institutional structure that is part of PPP governance in Nigeria. Further, the reader will benefit from three case studies and the structured presentation of the lessons learned.

Part Two of the book features two chapters, both of which offer emerging perspectives on PPPs which have not, to date, been fully explored in the literature. The chapter on PPPs' social value raises the question regarding how to assess, in a comprehensive way, PPPs' impact on society. Using examples from Kazakhstan and Russia, this contribution shows PPPs' impact on the economic and political dependency of a region within a transitional nation. The chapter's core is a theoretical framework that elucidates how PPPs create social value.

The next chapter in Part Two discusses whether PPPs can be effectively used for the promotion of clean energy. The chapter argues that a PPP fits two objectives at the same time: the government agenda regarding the expanded use of the renewable energy sources (as opposed to the reliance on oil and gas) and the government policy aimed at the more extensive use of the private funding and expertise for economic development.

The concluding chapter summarises the lessons learned from the countries' PPP experience discussed in the book. It shows developments

and issues common for all or most nations, and highlights elements of PPP governance that are missing in most economies. Further, it offers serendipitous findings, i.e. those that are not apparent, for example that governments persistently fail in promoting PPP benefits other than efficiency.

What can the reader expect to draw from this book? In addition to the rich data on the projects and PPP development to date in selected nations, the book lays the groundwork for contrasting and comparing successful and unsuccessful government actions, institutional, legal and financing initiatives and procedures at the international level. This offers an opportunity to make cross-country and cross-sectoral comparisons, although they should be made with much caution because, in PPP deployment and governance, the nation's context plays a critical role, and solutions cannot be mechanically copied. Nonetheless, the book provides valuable insights into the present and evolving PPP policy and governance in transitional economies.

Whilst the future of PPP governance might be of a particular interest to the academic community, practitioners will also benefit from this book in a variety of ways. Policy makers, consultants, managers and workers in PPPs and in many organisations that are linked with the PPP field will be able to form a background for international comparisons and learn from the experience of others. Whilst copying solutions is unlikely, borrowing certain elements and adjusting them to the specific context is a possibility that this book provides. Importantly, this book presents the factual data and their assessment that gives impetus for developing the reader's own understanding of PPP issues and governance options that could be applied in different contexts. From this perspective, the book might attract a wide spectrum of readers who are interested in PPP development in transitional countries.

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PART ONE:

**THE NATIONS' SEARCH
FOR EFFECTIVE PPP GOVERNANCE:
INSIGHTS FROM CASE STUDIES**

CHAPTER ONE

PPPS IN PUBLIC INFRASTRUCTURE IN CROATIA

MIHAELA GRUBIŠIĆ ŠEBA

1. Introduction

The years of transition from a social to market economy in Croatia have been characterised by underinvestment in infrastructure facilities. Early examples of PPPs include concessions on highway construction, maintenance and operation. In the first decade of the 21st century, PPPs in social infrastructure, particularly schools and sports halls construction, were quite common.

Until 2008, PPPs were regulated and treated in line with all other contracts. Public debt had been lower, and public authorities gave generous guarantees for project success to the private partners. Many projects had been contracted as directly negotiated deals. Although Croatia is at the forefront in concluding PPP contracts in the Western Balkans, according to the EPEC's Overview of the PPP Legal and Institutional Frameworks in the Western Balkans (2014), only 14 contracts had been classified as pure PPPs by the national PPP monitoring agency by the end of 2015. The aim of this chapter is to address the reasons for PPP projects' implementation postponement and/or failure, and to present some lessons learned in order to accelerate PPP agreements in the future. The specific questions that emerge in this chapter are related to: whether PPP projects can be performed on time and on budget; whether they can be implemented on a regular basis; whether PPPs can be contracted under more favourable terms for the public sector, and whether the PPP projects can be better monitored during the contract term. The PPPs in sports infrastructure have been chosen as mini case studies as they were among the most expensive PPP contracts in the country, and offer valuable lessons for structuring PPP contracts in the future.

This chapter is organised in six parts. After the introductory section, the second part of the chapter is devoted to the PPP regulatory framework development. The third section describes implemented PPP projects in Croatia. Section four offers a deeper exploration of the details of sports arena construction under the PPP mechanism. It is followed by section five, which discusses the lessons learned from the sports arena PPP via a series of mini case studies. Finally, part six offers a conclusion.

2. Contextual Features – Regulatory Framework

PPPs in Croatia can be formed as either public procurement or concession contracts. In concession contracts, the end-users pay for the service, while in PPP procurement contracts, the public partner pays for the service directly to the private partner during the contract term. Laws on concessions (*Croatian Official Gazette* 2008a; 2012a) distinguish between three types of concessions: economic exploitation of natural and other resources, concessions for public works, and concessions for public services. A concession can be considered a PPP, provided that it is either a public works concession or a public service concession.

Before the PPP Act adoption, i.e. until 2008, PPPs had been regulated and treated as all other contracts in line with the law on obligatory relations that regulates all types of contracts. However, special types of contracts, such as concessions, have had their own regulation, with the Law on obligatory relations applied only in addition. The first regulatory Act on PPP project implementation was the Guidelines for the Implementation of Contractual Forms of Public-Private Partnership (*Croatian Official Gazette* 2006), based on the Guidelines for Successful Public-Private Partnerships (European Commission, DG REGIO, 2003) and the Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions (Commission of the European Communities 2004). The Guidelines for the Implementation of Contractual Forms of PPP (*Croatian Official Gazette* 2006) refer to three contractual forms: BOT (build-operate-transfer) contracts, PFI (private finance initiative), and concessions for public works or public services' provision. They introduce the concept of the competitive dialogue for the first time; prescribe the elements of the PPP contract and the obligation to publicly disclose the data on PPP projects' implementation. If the project was to be financed from the public budget, the government's consent was needed before contract conclusion.

The area of PPP is regulated by the Act on Public-Private Partnership — PPP Act (*Croatian Official Gazette* 2008b; 2012b; 2014), the

Regulation on Implementation of PPP Contracts (*Croatian Official Gazette* 2012c), the Law on Concessions (*Croatian Official Gazette* 2008a; 2012a), and the Law on Public Procurement (*Croatian Official Gazette* 2011). Other specific sectoral regulation may also be relevant in certain cases, especially with concessions. The chronological order of how PPP regulation developed is shown in Table 1-1.

Table 1-1 The evolving PPP legal framework in Croatia

Regulation name	Adopted	Main provisions
Guidelines for the Implementation of Contractual Forms of PPPs	2006	<ul style="list-style-type: none"> • Prescribe certain PPP (BOT, PFI or concession) contract content; • Introduce competitive dialogue in the selection of a private partner; • Enhance public partner's transparency; • Determine what agency approves a PPP; • Prescribe the cap of 35% annual revenues of a public partner to be payable to a private partner; • Public sector comparator (PSC) was mentioned in the footnote to the PFI description only.
The Strategic Framework for the Development of PPPs	2008	<p>Recognises that a successful PPP is conditional on:</p> <ul style="list-style-type: none"> • adequate risk distribution; • maximum possible gain from efficiency, expertise, knowledge, skills, flexibility, innovativeness of a private partner; • the provision of public service of at least the same quality as it would be provided by the public partner in the traditional project financing; • long-term budgetary sustainability and acceptable fiscal risks, and • readiness of the private sector to participate in PPPs.
Act on Public-Private Partnership	2008	<ul style="list-style-type: none"> • PPP contracts can last from 5 to 40 years; • PPP Agency was established for approval of PPP contracts.
A set of bylaws	2009	Prescribes the detailed structure of PPP

to the PPP Act (superseded by the Regulation on Implementation of the PPP projects in 2012)		contracts, criteria for assessment and approval of PPP projects, and PPP monitoring criteria.
The Public Procurement Act	2011	Regulates public procurement procedure for public works, public supply and public service contracts.
Act on Public-Private Partnership (PPP Act)	2012	<ul style="list-style-type: none"> • PSC is defined; • PPP contract's content is broadened; • A public organisation can only propose PPP projects; • The project approval procedure is shortened.
Regulation on Implementation of the PPP Projects	2012	Defines the structure of the PSC and other criteria for PPP project approval, the procedure for private partner selection, and the content of the periodic reports that must be submitted to the PPP Agency during the contract term.
Act on Amendments to the PPP Act	2014	<ul style="list-style-type: none"> • PPP contracts can last from 3 to 40 years; • The whole-life-cost (WLC), all risk- and all-cost inclusive concept of the PPP contract is utilised; • Capital value of the project includes the total construction costs, according to the PSC, exclusive of maintenance, replacement and operational costs of the facility; • Simplified administrative approval procedure for small-value PPP projects of up to EUR5 million (without VAT) is set; • The Ministry of Finance must give its consent within 30 days after it receives project documentation from the PPP Agency, which is 15 days longer than in 2012–2014.

Regulation on amendments to the Regulation on Implementation of PPP Projects	2015	Defines the content of the feasibility study and business plan for small-value PPP contracts.
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Source: compiled by the author from various regulatory acts.

The PPP Act for the approval and monitoring of PPP contracts was adopted in 2008. It defined a PPP project as a DBFMO contract, i.e. a project to be designed, built, financed, maintained and operated by the private partner for up to 40 years. The PPP Agency has become a supervisory institution for all PPP contracts in the country. It used to be an independent executive agency reporting to the Croatian government. However, since 2015 it has been an organisational part of the Agency for Investments and Competitiveness (AIC). The PPP Agency, i.e. the AIC, approves and monitors PPP contracts and amendments to PPP contracts. Monitoring is based on regular reports on PPP project implementation. In cases of significant deviation from the contract, the AIC may identify its concerns and approach relevant public institutions, such as the State Audit Office or the State Attorney to remedy damage to the public.

Although some PPP contracts include concessions, the less detailed registry on concessions has been run separately by the Ministry of Finance.

Croatian regulation recognises two PPP models: contractual and institutionalised PPPs. Mutual rights and obligations between the public and the private partners in a contractual PPP are regulated by a governing PPP contract. In an institutionalised PPP, the contractual relationship between the partners is described in corporate bylaws of a project company (operator), that is usually minority-owned by the public partner.

The selection of the private partner is, as of 2012, based on the economically most favourable (advantageous) bid. Strict fiscal rules are applicable to all PPP projects. Following the AIC's approval, the Ministry of Finance approves all PPP contracts regarding their influence on public debt size, in a pre-tender phase and before contract conclusion. The impact of public debt is considered during the whole term of the PPP project as public guarantees for PPP project implementation may cause an increase in public debt. National statistical offices categorise public obligations by their impact on the government balance sheet, reporting them either on or off the balance sheet. The Croatian Bureau of Statistics' rules explicitly prescribe that off-balance sheet treatment is possible only if the private

partner takes on the demand risk and/or availability risk of the public building/services in addition to the construction risk. While the private partners in concession contracts usually take on all three kinds of risks, i.e. construction, availability and demand risk, the private partners in PPP contracts usually take on construction and availability risk only (Bajo and Juričić 2015). Fixed fee contracts typically transfer demand risk to a public partner, while the transfer of economic ownership in case of early contract termination often requires the government to take over the assets and liabilities (arising from the project) from the private partner.

The Ministry of Economy, responsible for the public procurement system, and the Centre for Monitoring Business Activities in the Energy Sector and Investments (CEI) have a significant indirect role in PPP development in Croatia. The latter was created by the Act on Establishing the Centre for Monitoring Business Activities in the Energy Sector and Investments (*Croatian Official Gazette* 2012d) to accelerate the preparation of all PPP projects, whose investment value is higher than EUR1.33 million¹. The CEI's role is subject to the special contract and fee payable by the contracting public organisation. In other words, the CEI serves as an in-house PPP project manager for the public organisations, and helps them prepare PPP projects, select the private partners, finalise the PPP contracts and implement them. The CEI's costs are financed either from the central state budget or from the budgets of public organisations. Local authorities are not legally obliged to request the CEI's help in project preparation, but they are provided with an opportunity to do so. However, since its establishment, the CEI has relied mostly on external advisory help in drafting project documentation and structuring PPP contracts. Thus, The Act on Amendments to the Act on Public-Private Partnership (2014) allowed central state administration bodies either to prepare the PPP projects themselves, or to authorise a certain state-owned institution, e.g. the CEI, to draft the PPP contract and select the private partner.

Since 2012, public sector organisations are obliged to calculate the public sector comparator (PSC), i.e. to compare the present value of the whole life costs during the project implementation with the project costs in traditional (budgetary) financing. PSC includes total monetary costs and expenditures as well as the allocation and quantification of risks. The documentation that should be submitted for PPP projects approval is very detailed, for the purpose of protecting the public interest. The stages of PPP projects' approval and implementation are shown in Table 1-2. Five

¹ The EUR/HRK exchange rate of 7.5 Kuna per 1 Euro is applied throughout the text.

stages regularly occur in any PPP project implementation, while the additional, sixth stage is linked to dispute resolution. A significant effort has been made at the project assessment stage that, besides PSC calculation and risk allocation between the partners, includes the project compliance with the urban planning documents and public budget limits. At the first two stages of project approval, both the AIC and the Ministry of Finance are involved. However, the public procurement process should be simpler. Many PPPs include a concession; hence, some doubts may arise over the governing law in public procurement. Public institutions are reported on project implementation and the ultimate responsibility to deliver project results rests with the AIC. However, there is no legal rule that ensures smooth communication between the public institutions in question after the project approval. A detailed explanation of the whole PPP project cycle in Croatia can be found in Croatia — PPP Units and Related Institutional Framework (European PPP Expertise Centre 2013).

Table 1-2 Stages of PPP approval and implementation: the government perspective

PPP project stage	Governing body	Principal activities at the stage
Project assessment / identification	PPP Agency	<ul style="list-style-type: none"> • Project feasibility, which includes PSC and value for money (VfM) assessment; • The relevance of the PPP option in comparison to the PSC; • The quality of the draft PPP contract; • Risk allocation between the partners, and • The compliance with the urban planning documents.
Project preparation / processing	Ministry of Finance	Verifies project consistency with budgetary projections and plans.
	PPP Agency / AIC	Approves the project.
Procurement	Contracting public partner / CEI	Launches the tender and selects the private partner.
		<ul style="list-style-type: none"> • If the PPP does not involve a concession-type arrangement, it is implemented in line with the Law on Public Procurement. • If the PPP is a concession, it is

		<p>procured under the Law on Concessions, but it also needs PPP Agency's (AIC's) approval.</p> <ul style="list-style-type: none"> • Subject to the Act on Public-Private Partnership, most PPPs are procured under either the restricted procedure or the competitive dialogue procedure.
Implementation and reporting	Various public organisations	The signed contract is delivered to the Ministry of Finance, the PPP Agency and to the Croatian Bureau of Statistics (Eurostat) for public debt reporting purposes.
Monitoring	PPP Agency (AIC)	<p>Checks:</p> <ul style="list-style-type: none"> • Has the private partner met the agreed standard of service? • Have liquidated damages or penalties been applied due to a failure to comply with the contractual obligations?
Disputes	Commercial court	In charge of any disputes during the contract implementation phase.

Source: compiled by the author.

3. Highlights of PPP Progress to Date

Due to strong political promotion, early PPPs have been contracted mostly for school construction in two northern Croatian counties — Varaždin and Koprivnica-Križevci. Thirty schools in the Varaždin area and a high school in Koprivnica were procured under availability-based PPP arrangements in the 2006–2007 period. Such arrangements oblige a private partner to deliver ready-for-use infrastructure in return for pre-defined periodic payments by a public partner during the PPP term. The Croatian government later launched the handball arenas PPP programme, and a Framework programme for the construction and reconstruction of public buildings, according to the contractual PPP model in 2012. The handball arenas PPP programme was related to the organisation of the World Handball Championship in 2009. The Framework programme for the construction, upgrade and reconstruction of public buildings, according to the contractual PPP model (Government of the Republic of Croatia – Ministry of the Economy, Labour and Entrepreneurship 2012, 6) has been

estimated at EUR1.9 billion of construction costs, of which EUR0.83 billion should be used for 338 schools and the rest for another 43 projects.

The Croatian PPP model is based on a rather rigid definition of a design-build-finance-maintain-operate-(transfer) (DBFMO(T)) contract. The total value of construction costs of all PPP contracts, signed in accordance with the legal PPP definition, climbed to HRK2,538 million, i.e. EUR338.4 million at the end of 2015, as shown in Table 1-3 (PPP registry 2016). Hereby the construction of the international passenger terminal of the Zagreb Airport amounts to about EUR189.33 million, while EUR93.33 million refers to the construction of two sports halls. The rest represents the city bus station construction in Osijek worth EUR16 million, while more than EUR40 million refers to the construction of numerous schools. Most PPP contracts were signed in 2006 and 2007, when no Act on public-private collaboration was in force. Other projects commonly regarded as PPPs are not in accordance with the legal PPP classification criteria and thus have not been included in the PPP registry. For instance, the construction of the Istrian Y motorway, that had been heralded as the first PPP contract in Croatia, eventually turned out to be far from a real PPP because of generous public guarantees for project implementation (Grubišić Šeba 2015). There have also been a few projects that, despite being either publicly tendered or approved by the supervisory body, have never been implemented due to the withdrawal of one of the contractual parties during the contract negotiations.

Table 1-3 Implemented PPP projects in Croatia, 2006–2016

No.	Project name	Sector	Contracting year	Contract term in years	Estimated capital value in EUR without VAT
1	Zagreb Airport, a new passenger terminal construction	Transport	2013	30	189,440,000
2	Construction and operation of additional school facilities in Varaždin County	Schools	2008	30	7,149,921

3	Split Arena	Sport	2007	30	67,200,000
4	Sport Hall Varaždin	Sport	2007	25	23,623,237
5	Central bus station in Osijek	Transport	2007	30	16,000,000
6	Construction and operation of additional school facilities in Varaždin County	Schools	2007	25-30	24,572,214
7	Gymnasium Koprivnica	Schools	2006	25	9,275,571
8	Reconstructio n of Varaždin County Palace	Public administr ation	2006	20	1,196,931
Total					338,457,874

Source: compiled by the author from the PPP registry.

In a typical Croatian PPP contract, demand risk always rests with a public partner, while a private partner takes on construction, financing, maintenance and operation of the project. A public partner usually possesses the land that may be temporarily rented out to a private partner for infrastructure development. The required quality of service is subject to the public partner's requirements, which must be in line with either national or EU regulations. However, due to bad project planning, i.e. the absence of clear standards of the service quality and a lack of engineering staff in public institutions, the project is usually shaped in accordance with the private party's objectives. The results of PPP projects, their impact on the government budget and on satisfying the public needs have mostly been hidden from public scrutiny as the costs of some projects have been too high. Their disclosure would potentially be harmful to the political career of some public officials. Due to poor project governance, PPP contracts are often considered obscure. Many analysts believe that PPPs financially damage the public sector. It is evidenced either by excessive periodic availability payments charged to the public partner, or by an inflated fee for the service that citizens are obliged to pay.

In order to serve the public interest and protect the taxpayer, a public partner is obliged to conduct a project feasibility analysis and calculate the

public sector comparator for each PPP project. Since 2009, PPP contracts have had mandatory content. The gradual improvement in structuring PPP contracts is illustrated in Table 1-4. ‘Yes’ refers to the mandatory presence of a certain clause in the PPP contract, ‘no’ denotes the absence of the specific clause, while the textual descriptions are provided for the partial presence of the clause in the PPP contract.

Table 1-4 Mandatory PPP contract content

PPP contract clause	Guidelines for the implementation of contractual PPPs (2006)	Regulation on content of PPP contracts (2009)	PPP Act (2012)
Purpose and subject matter of the contract	yes	yes	yes
Term of the contract	yes	yes	yes
Risk allocation between the parties	yes	yes	yes
Table of risk allocation	no	yes	yes
Business plan of the private partner	no	yes	no
Financing and refinancing	Private partner’s obligation was to fully or partially finance the project	yes	yes
Ownership rights of the parties and the manner of their execution	yes	yes	yes
Guarantees and insurance policies	yes	Financial guarantees were required only	yes
Estimated efficiency gains related to environment, health and safety during the PPP contract	yes	The influence on environment protection was required only	no
Payments of the parties	yes	yes	yes
Cases of compensation	yes	yes	yes

and releases			
Public partner's right of supervision	yes	yes	yes
Decision on most advantageous bid selection	no	yes	no
Full transparency and obligations of the public partner to release the data on PPP	yes	no	no
Liquidated damages	no	yes	yes
Consequences of contractual obligations breach	yes	yes	yes
Settlement of mutual relations in case of previous termination of contract	yes	yes	yes
Force majeure	no	yes	yes
Protection of intellectual property, business secrecy and confidentiality of individual data	no	yes	yes
Procedure and conditions for takeover of infrastructure, if PPP contract includes infrastructure construction	yes	yes	yes
Procedure for dispute resolution	no	yes	yes
Rights, obligations and responsibilities of the parties	Required only for the public partner	Requested to be defined in the contract	yes
Standards of service	Minimum standards in design, construction and quality of services were required	yes	yes
Conditions for structures maintenance and exploitation	no	yes	no

Subcontracting	no	yes	no
Assignment of receivables to the third party	yes	no	no
Guarantees for contract execution	no	yes	yes
Guarantee of the parent company (sponsors) for the special purpose vehicle	no	yes	yes
Financial model	no	no	yes
Incorporation documents if applicable	no	yes	no
Other provisions	yes	yes	yes

Source: compiled by the author.

Although the PPP contracts were supposed to be more detailed from 2009 thereon, there are some clauses that should have not been omitted in later regulations of the contract content, such as contract transparency, subcontracting, efficiency gains, environment and health protection. However, despite the improvement in legislation and control mechanisms, the public is only acquainted with the final identity of the selected private party in signed PPP contracts. Under such circumstances, it is no wonder that the public have a negative perception of, or are indifferent to, prospective PPPs. All PPP projects in the PPP registry are based on the same contractual model of a PPP, i.e. DBFMO(T). A public partner invests publicly-owned land into the project, sometimes with the concept design of the desired object(s). It requires a private partner to undertake the design, construction, financing, operation and maintenance of the facilities in line with the agreed quality of service that is the condition of regular availability fee payments by a public partner. A private partner has a right to rent out the objects freely, provided that they do not hamper the contractually agreed PPP terms and conditions. Thus, a private partner has a guaranteed minimum income in the form of the public partner's availability payment, and the right to earn additional income. The availability fee aims to cover design and construction costs, the fixed costs of operation and maintenance, interest rate or financing costs of a private partner, and serves as a guaranteed revenue to a private partner. Any commercially earned revenue can be divided between the partners under agreed terms, which are in practice more favourable to a private partner. Upon the end of the contract term, the facility is transferred to a public partner without any charge and in a ready-to-use condition. By that time, the costs of a private partner have mostly been paid by a public partner.