European Construction Sector Observatory

Policy measure fact sheet

Bulgaria

Public-Private Partnerships (PPPs) in Construction

Thematic Objectives 1 & 3

January 2017

Implementing body:	**Ministry of Finance, Unit for Real Sector Finance**
Key features & objectives:	Legal framework to support partnerships between public and private entities in construction, public infrastructure development and maintenance and the delivery of public services.
Implementation date:	2006 – 2013
Targeted beneficiaries:	Citizens, public organisations and construction, infrastructure and service companies.
Targeted sub-sectors:	Technical and social infrastructures
Budget (EUR):	n/a

In a nutshell

Bulgaria has inherited an outdated Soviet infrastructure and did not invest in maintenance or reconstruction work during the 1990s. By the early 2000s, public infrastructure (e.g.: roads, railways, airports) was in a rather poor condition. By 2003, over 12,000 km of roads were estimated to be in need of major or regular repair. Much of the national rail network was not able to handle train speeds over 100 km/h and the quality of the airport infrastructure did not correspond to international standards[1]. Despite some earlier attempts to introduce public-private partnerships (PPPs) in Bulgaria, it was not until the country's accession to the European Union in 2004/2005 that real progress began. The breakthrough for PPPs in Bulgaria occurred during the last 10 years with the adoption of the Concessions Act 2006 and the PPP Act 2012. Today, PPPs in Bulgaria are regulated by two Acts, depending on the type of work involved[2].

Application of the Public-Private Partnership (PPP) legal framework and the adoption of European standards prior to joining the European Union were seen as important steps towards improving the public infrastructure in Bulgaria. Due to the limited financial and material resources of public authorities[3], the Bulgarian Ministry of Finance – the body responsible for implementing public-private partnerships – aimed to use PPPs to attract private sector investment to drive infrastructure modernisation initiatives and to engage the private sector in infrastructure work, from design through to construction and maintenance. Under the PPP framework, the private sector would not only be responsible for providing the majority of the funding, but would also share responsibility for implementation and risk management[4].

The overall perception of stakeholders is positive, as PPP is often considered a useful tool to improve competition and to modernise public infrastructure. However, despite major efforts to develop PPPs in Bulgaria, success has not been significant to date. In the four years since the introduction of the PPP Act, there continues to be some confusion between the PPP Act 2012 and the Concessions Act 2006. The Concessions Act was the first act to give the right to exploit public facilities or services and, at present, it is often used as the main or the only PPP instrument. Complicated PPP regulations that are governed by two different Acts, as well as constraints in each of the Acts, are impeding PPP uptake. A new Concessions Act has been drafted to replace the previous two Acts, in an attempt to address a number of issues. It was recently adopted by the Bulgarian Parliament, but was then subsequently vetoed by the Bulgarian President following complaints from a number of parties. A lack of public consultation is a key factor cited. Public consultation and significant changes are required before all parties can fully embrace the initiative. The new and amended Act is unlikely to pass until after the general elections this year.

General description

Major stakeholders such as the Council of Ministers, the Ministry of Finance, and various line ministries and local authorities, were actively involved in a series of PPP-related policy attempts between 2005 and 2009. Numerous bilateral projects were run in collaboration with counterparts in Germany, Italy, France and the

UK with the aim of strengthening administrative capacities at central and local government levels[5].

In 2006, the Ministry of Finance issued a Methodological Guidance on PPP regarding the whole process of identifying and motivating the chosen PPP option with a focus on a "Value for Money" assessment by the public sector. In the same year, the Concession Act was adopted. The Act was defined as the 'special right to use objects which are public state property, including those which shall be built and funded by the concessionaire [6].

There are three types of concessions permitted by the Act:

- Works concession is defined as the 'entire or partial construction, management and maintenance of the object of the concession'[7];
- Services concession is defined as the management and maintenance of a service of public interest at the risk of the concessionaire for a consideration consisting of the concessionaire's right to exploit services, or of that right in addition to compensation on the part of the contracting authority[8];
- Natural resources concession[9].

To further expand the scope of PPP, the Concessions Act was amended to include provisions for governance of partnership agreements. This initiative led to the adoption of a separate Public-Private Partnership Act (PPPA)[10].

The PPPA was adopted in 2012 and entered into force in 2013. It includes PPPs for all types of social infrastructure, such as education, culture, health care and sport facilities, as well as some well-defined types of technical facilities, such as parking lots, garages, parks and green areas, street lighting, surveillance and security systems. Partnerships for other types of technical infrastructure, such as transport, water and heat supply, waste treatment and sewerage, are still being awarded under concessions[11].

The current Bulgarian Public-Private Partnership (PPP) framework is governed by the two aforementioned Acts. The main difference in the public-private partnership models is the revenue component. Concessions are revenue generating and PPPs are not. A draft motion is currently going through Parliament to combine the two Acts by amending the Concession Act and abolishing the PPP Act[12].

The new Concessions Act will replace the current framework regulating concessions and PPPs in Bulgaria. The new Act is also required to implement the EU Directive on the award of concessions contracts (2014/23/EU). A new Act applies to three categories of concessions. The first two categories (works and services) are also covered by the earlier Act. The third category – concessions for the use of municipal or state property – is new. Concessions for the extraction and use of natural resources, covered by the earlier Act, are excluded in the new framework, but will be regulated under the Natural Resources Act[13]. The main differences between the new Concessions Act and the EU Directive on concessions are the introduction of a new type of concessions agreement which gives the economic operator the right to use state or municipal properties; and the duration of a concession that in theory may be unlimited[14].

Achieved or expected results

According to the Construction Industry 2014 Annual Review, the Bulgarian construction sector has been hit hard by the financial crisis. Decreasing levels of investment since 2008 and persistent freezes on construction work have resulted in negative sector growth over the last seven to eight years[15]. Despite some slight signs of recovery, this trend continued into 2015, with a further fall in investments and a low number of PPP projects in operation[16].

In addition to the difficult situation of the Bulgarian construction sector, experts also take the view that PPPs have been hindered by the complexity of the public-private partnership legislation, with the Concessions Act on the one hand and the PPP Act on the other. In their view, the two acts have created an unnecessary bottleneck. Very often there is a misunderstanding about the nature of the two acts and consequently a general tendency to see concessions as the only available PPP model.

Following the introduction of the Public-Private Partnerships Act 2012[17], the construction sector had high expectations that the uptake of the PPP model would drive the creation of a PPP market in Bulgaria, to aid the sector's recovery. Unfortunately, that affect did not materialise. The majority of projects under the PPP framework are medium or small-scaled and are limited to municipal service concessions. Only a limited number of large-scale projects have been set up under the terms of this Act[18], such as the concessions for the Burgas and Varna Airports. Some other concessions are currently in the pipeline, such as the concessions to Sofia Airport and Sofia Urban Heating[19]. To date, no significant projects have been successfully delivered[20].

According to the former head of the PPP Unit at the Bulgarian Ministry of Finance, there was strong initial momentum for the development and execution of transport-related PPP projects that had attracted a keen interest from international service providers and investors., This momentum was subsequently lost since neither the private prisons projects, nor the tall road (Trakia Motorway) were ever contracted[21]. The experience of the Trakia Motorway project provides some explanation. Tasked with developing a span of 360 km at an estimated value of EUR 450 million, the Trakia Motorway project was initiated as a PPP but was later withdrawn. Consortium partners have indicated that 'delays in decision-making' were the main cause for lost momentum and withdrawal. Delayed decision-making by the Bulgarian government led to the project being postponed and that led to increases in overall project costs, which made the project unfeasible. As a result, the consortium sought funding from the

European Union's Cohesion Fund and was successfully granted EUR 430 million[22].

With the accession of Bulgaria to the European Union, EU-funded operational programmes are often a cheaper and quicker alternative to PPPs [23]. An attorney-at-law at Schönherr Rechtsanwälte in Bulgaria believes that Bulgaria is highly dependent on EU funds for infrastructure projects and considers this to be one of the major obstacles that prevents the uptake of public-private partnerships in Bulgaria[24]. Overall, the private sector does not appear to be ready to engage in long-term projects. Construction companies became accustomed to larger profit sharing from projects in the years of the construction boom, and now do not seem to be as willing to join projects that offer more moderate profit sharing over the long term.

In addition to complex legislation and the availability of EU funds, the Bulgarian construction sector faces a number of other important challenges. Corrupt practices [25] and the lack of transparency in public procurement are hindering competition and are some of the factors that are blocking progress in public-private partnership implementation[26]. A lack of policies, measures and incentives to attract investors and encourage private sector investment is hindering construction sector growth[27]. The public sector lacks the administrative capacity to identify and assess markets and opportunities and lacks the skills to negotiate and manage large and medium-sized PPP projects.

Table 1: Main PPP obstacles and drivers

Main obstacles	Main drivers
Delays in decision-making	Increasing competitiveness
Corrupt practices	EU incentives for PPPs
Lack of transparency	Interest from foreign investors
Limited access to finance	New focus on traditional public services
Slow recovery from the financial crisis	New attempts to adjust the legislative framework

Source: CARSA 2017

Despite these barriers, the existence of local legislation – which is synchronized with EU legislation[28] – can be seen as having great value and is an achievement for the Bulgarian construction sector. The existence of the framework has created an environment in which many local construction companies can operate in very competitive conditions. As an example, the Bulgarian authorities have initiated and developed the Transport and Transport Infrastructure 2014-2020 programme to develop, maintain and repair roads and related infrastructure with the overall aim of developing a high standard road network throughout the country. As a result of this national policy and the initiative to improve the country's road infrastructure, investor interest in towns such as Stara Zagora[29] and Dimitrovgrad[30] has increased. This compares to a previous lack of investor interest in these areas. Reasonably priced land in these areas provides investors with more economical opportunities to construct modern industrial and commercial developments. As an example, two factories will be built in Dimitrovgrad by Turkish and Japanese companies as a direct consequence of the programme[31].

As the construction sector slowly recovers, financial challenges will continue to influence potential PPP projects in the years ahead. High levels of debt and difficulties in accessing finance from banks and other lenders remain a challenge to companies and partnerships and pose a threat to PPP project implementation and completion[32].

Overall, it is expected that the focus on small-scale projects will continue, at least in the near future. The expectations are that in the coming years, construction sector production and output will achieve steady growth. The trend of investing in non-residential building construction is likely to continue; however, interest will no longer be concentrated on the construction of shopping centres, hotels and holiday villages. In recent years, the construction industry has redirected its focus towards the construction of roads, railways, water supply and sewage infrastructure projects, industrial warehouses, factories and plants[33].

Perspectives and lessons learned

Private sector representatives see public-private partnerships as a mechanism to build the public infrastructure that Bulgaria needs. With the Concessions and PPP Acts, Bulgarian legislation has enabled the realisation of PPP partnerships. The government has also demonstrated its desire to launch PPP initiatives and to further develop these partnerships[34]. However, in practice, some important amendments are required to ensure that PPPs in Bulgaria continue to develop.

Private sector engagement should be encouraged by eliminating the complexity of public-private partnerships and the execution of PPP project schemes should be governed by just one common law[35]. The former Head of the PPP Unit of Ministry of Finance, who is now working in the private sector, argues that PPPs should be allowed in all sectors that contribute to public infrastructure and related services, and should solely be driven by the market and should respond to public-private interests. The role of lenders should be clearly formulated and so-called "step-in" rights should be permitted. "Step-in" rights refer to a lender's right to take control over an infrastructure project in the case that a private partner is not performing according to the agreement[36]. This will ensure that projects are delivered on time and on budget, even if a private partner enters into bankruptcy during the implementation phase[37].

PPPs should be closely re-examined and benchmarked against international experiences, because Bulgaria currently lacks good practices and this lends itself to a culture in which there is a fear of making mistakes as well as a lack of motivation in government institutions[38]. In addition, the expectation that EU financing will change after 2020, likely means that EU funds will be less easy to access[39].

The overall feeling of the private sector is that the introduction of the PPP Act was a step in the right direction, but it did not produce the desired effect. The Act did not prove to be operationally effective nor did it facilitate the development of a PPP market in the country. Private sector stakeholders do not only apportion blame to the government. The general public and local communities are very often resistant to changes in the provision of public services. In communities where public services have been delivered by local or central government for decades, Bulgarian citizens are often suspicious of projects on key public services, due to a lack of trust and a fear of corruption[40].

Investments are shifting towards the construction of much needed public infrastructure, such as roads and water supply. This provides a good opportunity for the uptake of PPPs; however, too much attention is currently focused on EU funding and on the implementation of the Operational Programmes for the period 2014–2020[41]. This is despite the fact that the EU strongly encourages PPPs and a large number of EU member states have successfully developed or expanded their PPP markets, which are now contributing to public policies in sectors such as transport, environment, health, justice, education and housing[42]. Additionally, private sector stakeholders are concerned about debt levels and limited access to finance through very conservative banks and lenders. They consider these factors to be key barriers to the recovery of the construction sector and, in particular, the successful implementation of construction sector PPPs[43].

From a **public sector perspective**, the development of a PPP market in Bulgaria has been motivated by the need to boost the provision of infrastructure and services with the active participation of the private sector, delivering public projects that are on time, of better quality and on budget[44]. Over the last decade, the Bulgarian government has made considerable effort to achieve that. The legal framework was provided for partnerships where political and public support is consolidated to effectively promote common projects.

The government and other public sector stakeholders have achieved some success in delivering this task and have managed to attract responsible private partners with a good reputation and the appropriate experience in a relatively short time span. Concessions for airports in Varna and Burgas and for ports are good examples of achievements so far[45]. Several additional concessions are also currently being processed, including the concession of Sofia Airport and the concession of Sofia Urban Heating. It is hoped that these will be granted under the current Concessions Act.

Nevertheless, there are issues to resolve. Public representatives recognise the complex nature of the current legislative framework and the confusion that exists between the PPP Act and the Concessions Act. This is evidenced by the Government's proposal to repeal the PPP Act in March 2014. The decision was taken because the Government considered the Act to be too limiting in nature due to a number of ineffective features, such as restrictions on potential partners, complex award procedures and unnecessary interventions by municipalities on administration activities[46]. In addition, the Bulgarian Government is of the opinion that the PPP Act is rather redundant, as most of the activities are already regulated by the Concessions Act[47].

The new Concessions Act, which replaces the earlier Act (2006) and the PPP Act 2012, was finally adopted by the Bulgarian Parliament on 24th January 2017. However, the Bulgarian President subsequently vetoed the new Act due to complaints from a number of parties, including from non-profit organisations, one of Bulgaria's largest trade unions, the Podkrepa Confederation of Labour, and the newly formed right wing political party, New Republic.

The main concerns surrounding the new Act, as it is currently drafted, relate to the procedure for granting concessions, longer concessions periods and options to prolong concession periods. The Draft Act does not provide a maximum time limit for a concession. There is a general concern that these factors would introduce subjectivity into the decision-making process and could give rise to corruption[48]. According to the President of the Podkrepa Confederation of Labour, the new Act has been pushed through Parliament too hastily without holding a meaningful public consultation, in an attempt to make it law before the end of the current Government's term of office[49]. Additionally, New Republic is concerned that the new Act is actually designed to serve corporate interests and award lucrative long-term contracts to certain companies, thereby creating monopolies[50].

The Bulgarian President's veto of the new Act means that it will go back to Parliament for further consideration, debate and redrafting, which will hopefully also include a formal public consultation to ensure the engagement and buy-in of all affected parties. This is not likely to take place until after the parliamentary elections in March 2017.

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