

Regulatory and Legal Support of the Process of Involving Public-Private Partnership in the Field of Socio-Transport Infrastructure at The Local Level in Ukraine

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Abstract

The current state and problems of transport infrastructure development in Ukraine are considered. The expediency of solving the problems of transport infrastructure through the implementation of public-private partnership projects is substantiated. The most important areas of application of public-private partnership in Ukraine at the regional level are highlighted. The experience of attracting private investors to the development of transport infrastructure and its adaptation in the territorial communities of Ukraine is analyzed.

Keywords: public-private partnership (hereinafter - PPP); territorial community (hereinafter - TG); social infrastructure; transport infrastructure; private partner.

1. Introduction

In the conditions of modern state formation, the transport infrastructure plays an important role in the development of the national economy. Its condition has a significant impact on production activities, socio-economic development, social relations in general in the country and at the regional level in particular. The current state of social infrastructure in Ukraine is characterized by the presence of certain problems that have not been solved for many years, in particular, the lack of order in the ownership of social infrastructure; Insufficient budget funds for the efficient operation and development of relevant facilities, lack of effective incentives to raise funds from other sources, low quality of services provided to the population by these facilities, etc.

The introduction of public-private partnership has become an effective and promising tool for economic and social development and an effective means of raising funds for projects through which state and municipal authorities maintain control and establish cooperation with investors for most countries.

In Ukraine, the development of transport infrastructure is given considerable attention, and the priority areas of public-private partnership are: production infrastructure and high-tech production (transport and communications, transport infrastructure); however, according to unanimous assessments of scientists, politicians, experts and practitioners, it remains

underdeveloped, especially at the regional level. There are a number of ways, approaches, mechanisms for accelerated development of infrastructure industries, but the most effective is the mechanism of public-private partnership.

2. Data and purpose of the study

Analysis of scientific sources on the theoretical and methodological justification for the implementation of public-private partnership in the field of transport infrastructure and their application in the real economy at the regional level, shows that against the background of many research results at the present stage remains unclaimed direction of PPP in each specific area of human life. In view of this, there is a need for scientific substantiation of ways and practical measures for the development of the PPP mechanism in territorial communities and in specific areas of infrastructure, in particular in transport.

The purpose of the publication is to study the legal framework and generalize the experience of the process of involving private partners in solving problems of transport infrastructure at the local level and substantiate approaches to applying best practices in the field of transport infrastructure of Ukraine.

3. Results

Given the world experience, public-private partnership can be considered in two senses. On the one hand, as a system of relations between the state and business, it is used as a tool for economic and social development at the international, national, regional and local levels. On the other hand, as specific projects implemented jointly by state bodies and private companies on the basis of state and municipal property.

Public-private partnership determines the essence of the relationship between public authorities, local governments and private partners. This approach determines the interaction of the state and the private sector, excluding the cooperation of public institutions in the social, political and economic spheres of public activity.

It is also worth noting that not only public authorities and local governments, but also public organizations and charitable foundations are involved as a public partner in other foreign countries.

In Ukraine, public-private partnerships are forms of cooperation between public authorities and business, which are designed to provide funding, construction, reconstruction and modernization, as well as management and support of infrastructure and services in this area. Public-private partnership in the current realities of the Ukrainian economic crisis is designed to become a tool in the development of social infrastructure, including transport, to take on some tasks to provide municipal authorities to provide social services to the population, ensure welfare and appropriate level of their implementation and constructive cooperation with public authorities.

The World Bank notes that PPP laws or concession legislation should establish a clear institutional framework for the development, procurement and implementation of such partnership projects. Such laws can be used to close gaps in the laws of the host party. And

this is necessary to ensure successful infrastructure projects in terms of lending and openness and fairness of procurement processes¹.

The issue of public-private partnership in terms of involving public associations in socio-economic development is included in the law on public-private partnership. In contrast to domestic scientific approaches, foreign scholars and practitioners call all relations with the non-governmental sector a public-private partnership. Therefore, legally public-civil partnership is recognized in the legislation on public-private partnership.

The process of decentralization in Ukraine has significantly increased the need to involve public-private partnerships in the development of territorial communities.

Article 1 of the Law of Ukraine "On Public-Private Partnership" defines public-private partnership as cooperation between the state of Ukraine, the Autonomous Republic of Crimea, territorial communities. In the person of the relevant state bodies and local governments and legal entities other than state and municipal enterprises, or individuals - private partners entrepreneurs, carried out on the basis of the contract and meet the characteristics of public-private partnership².

Adherence to these basic principles in the law should ensure the efficiency and effectiveness of public-private partnerships, particularly in the regions, and contribute to a significant improvement in the development of infrastructure facilities in local communities. However, this legal act does not specify the tender procedures, does not regulate the structure of the agreement between the public and private parties and does not take into account the specifics of public-private partnerships in various economic activities.

In particular, the Law contains inconsistencies and gaps on the part of government bodies, financing of public-private partnership projects, determination of tariffs for services, determination of efficiency indicators, determination of penalties for non-reimbursement in case of revision of agreements and change of tariffs for services. There is a significant need to detail the mechanism of state guarantees and compensation for losses incurred by a private party during the implementation of public-private partnership agreements, during the actions or inaction of the government or local government. There are also no tax or other benefits for the implementation of large-scale infrastructure with a long payback period.

A major shortcoming is the lack of clearly defined issues of formation and functioning of the authorized body of executive power on public-private partnership, not regulated regulation of investment in the implementation of public-private partnership projects. There are also a number of contradictions in the institutional support of PPP. In addition, other central executive bodies are involved in the implementation of PPP policy in relevant areas. Local authorities formulate and ensure the implementation of PPP development policy at the appropriate level of government. This situation creates duplication of functions and conflicts between authorities. A significant obstacle to the practical launch of investment projects on the basis of PPP, especially at the regional and local levels, is the lack of staffing with the appropriate level of methodological and methodological training. The activities of employees of structural units

¹ Public-Private Partnerships Laws \ Concession Laws. Source <https://ppp.worldbank.org/public-private-partnership/legislation-regulation/laws/ppp-and-concession-laws>

² Zakon Ukrainy «Pro derzhavno-pryvatne partnerstvo». Source <https://zakon.rada.gov.ua/laws/show/2404-17>

responsible for investment activities are aimed primarily at the redistribution of budget funds allocated for investment activities, rather than creating favorable conditions for attracting private capital to the real sector of the economy³.

Investments in infrastructure facilities of Ukraine with the participation of public-private partnerships using various organizational forms - leasing, concessions, joint ventures or product sharing agreements - are regulated by various laws, which in turn may contradict the law.

For example, the Law of Ukraine "On Concession" of October 3, 2019 defines the legal, financial and organizational framework for the implementation of projects carried out under concession, in order to modernize infrastructure and improve the quality of socially significant services. The main criterion for the implementation of projects implemented under the concession should be an electronic trading system (hereinafter - ETS) - a two-tier information and telecommunications system that includes a central database and electronic platforms that interact with the central database through the application programming interface of such a central database. ETS provides the ability to create, place, publish, and exchange information and documents in electronic form, conduct a concession tender and competitive dialogue, as well as publish documents in the procedure of direct negotiations with the lessee of state property transferred to the concession⁴.

However, analyzing the Law, its shortcomings become clear, in particular paragraph 1 of Art. 6 of the Law stipulates that the concessionaire selects the concessionaire by conducting a concession agreement based on the results of a competitive dialogue or the results of direct negotiations with the lessee of state property transferred to the concession, and paragraph 2 of Art. 6 of the Law indicates that when choosing a concessionaire, the concessionaire must ensure compliance with the principles of openness, equality and non-discrimination. Thus, the new Law does not exclude corruption risks and corruption component, and the standard conditions of the tender, for example in the transport sector have been implemented before, standard contracts are concluded by state and local authorities with road carriers on the basis of CMU Resolution №1081 of 2008 "On approval The procedure for holding a tender for the carriage of passengers on a public bus route ", which has proven to be not entirely transparent, bureaucratic and with high corruption risks.

With the help of ETS, a significant breakthrough is envisaged in the field of private sector involvement in public projects, but such a mechanism should introduce an electronic selection system among bidders then it will make the market of services transparent and attractive for investment.

With the right approach to implementing the concept of public-private partnership, its subjects can gain significant benefits. For the public sector, i.e. government and local self-government, there are opportunities to address various socio-economic, infrastructural and

³ Shchodo rozvytku derzhavno-privatnoho partnerstva yak mekhanizmu aktyvizatsii investytsiinoi diialnosti v Ukraini. Analitichna zapyska. Natsionalnyi instytut stratehichnykh doslidzhen. Source <https://niss.gov.ua/>: "[Щодо розвитку державно-приватного партнерства як механізму активізації інвестиційної діяльності в Україні](https://niss.gov.ua/)". Аналітична записка :: Національний інститут стратегічних досліджень (niss.gov.ua) [in Ukrainian].

⁴ Zakon Ukrainy «Pro derzhavno-privatne partnerstvo». Source <https://zakon.rada.gov.ua/laws/show/2404-17>

environmental problems by attracting additional investment, sharing risks and responsibilities with the private sector and increasing revenues to local budgets. The private sector has access to the resources and organizational and legal opportunities of the public sector, which will contribute to additional profits, given that part of the risks are borne by the public sector. There are opportunities for the development of social infrastructure open up for local communities, including obtaining better social services, increasing jobs and increasing incomes, developing businesses at the local level and in turn improving demographic, social and economic initiatives.

Positive dynamics in accordance with the Resolution of the Cabinet of Ministers of Ukraine of April 8, 2015 № 214 "On approval of the Methodology for forming capable territorial communities" (hereinafter - the Resolution) receives project capable territorial community (hereinafter - capable territorial community) - territorial communities of villages, settlements, cities, which as a result of voluntary association (voluntary accession to the united territorial community) are able to independently or through relevant local governments to ensure the appropriate level of public services, in particular in the field of education, culture, health, social protection, housing, utilities, taking into account human resources, financial support and infrastructure development, including transport, the relevant administrative-territorial unit.

In particular, paragraph 11 of the Resolution stipulates that a territorial community located at the same distance from potential administrative centers of able-bodied territorial communities may be included in the able-bodied territorial community whose potential administrative center has the most developed social and transport infrastructure and is located within one district⁵.

Territorial communities at the local level and united territorial communities through the implementation of public-private partnership projects can get a mechanism that can promote the development of regions and can increase their competitiveness. Each territorial community must independently determine the priority areas of development within which it is advisable to implement projects in a public-private partnership, taking into account the needs and interests of the population.

The Law of Ukraine "On Cooperation of Territorial Communities" of June 17, 2014 № 1508-VII created the preconditions for cooperation of territorial communities, defined its principles, forms, mechanisms of its stimulation, financing and control. In accordance with the conditions set out in this Law, territorial communities that are interested in the implementation of joint projects have the opportunity to coordinate the activities of cooperative entities and accumulate resources for the joint implementation of relevant activities.

Pursuant to Part 1 of Article 1 of the Law of Ukraine "On Public-Private Partnership", several territorial communities that have united to achieve certain goals may act on the side of a public partner in an agreement concluded within the framework of a public-private partnership. This will help the local community to implement projects aimed at its development, which could not be implemented by such communities without the participation of a private partner. Effective joint use of the mechanism of public-private partnership by territorial communities can be a tool that will ensure their development and provision of quality

⁵ Zakon Ukrainy «Pro kontsesiiu». Source <https://zakon.rada.gov.ua/laws/show/155-20>

services, especially in conditions of impossibility to provide quality services when a separate territorial community is unable to meet the conditions for public-private partnership projects.

Given some imperfections and the limited ability of local communities to co-finance public-private partnership projects, a number of requirements must be met for their successful implementation.

In order for potential projects to be successful, they must meet the following criteria:

1. The project should have a positive socio-economic effect for the community, reduce the fiscal impact on the local budget and provide little co-financing from the local government;
2. The project must have a commercial component and be attractive to potential investors - acceptable financial indicators of economic and financial efficiency; the private investor must develop a feasibility study for the project; the project must be characterized by a steady demand for goods, works, services provided by a private partner; to cause the absence of significant barriers to entry of a private partner into the market (lack of a large number of licenses, permits, etc.); the term of realization should not exceed 2-3 years;
3. The source of return on investment made by a private partner should be a fee from consumers / users of services (an example is a bus depot, which is maintained by a private partner who receives income from passenger traffic that uses transport on public bus routes);
4. A private partner may receive a fee from local governments, but in this case the local government must be a consumer of services (payment for heating of schools, hospitals, kindergartens, etc.);
5. The project should not provide for large-scale construction work, which will require significant investment in related infrastructure (power lines, roads, other communications);
6. The local self-government body must be the owner of the land plot on which the project is planned to be implemented, or the respective land plot must belong to the utility company on the right of permanent use⁶.

Due to the observance of these features, there will be a great potential for the development of public-private partnership, especially at the regional level and mostly in the areas of social infrastructure. However, the practice of public-private partnership agreements at the regional level in Ukraine indicates a slight involvement of partners in this form of cooperation. However, taking into account that as a positive factor in involving a state partner in the person of a state body and a local government body to participate in public-private partnership infrastructure projects, such a practice is in great demand in Ukraine today. In the future, this will contribute to ensuring primarily the public interests and the interests of local communities, which will be able to solve state problems and tasks of local governments at the regional level quite effectively, dynamically and efficiently.

In the case of compliance with these features and the involvement of public-private partnership in the sphere of the state executive branch, a number of tasks are solved:

Opportunity for authorities to focus on important functional issues. The main role of public authorities is to promote the interests of the public through the implementation of

⁶ Derzhavno-pryvatne partnerstvo yak mekhanizm realizatsii novoi rehionalnoi polityky: mozhlyvosti zastosuvannia ta praktychni aspekty pidhotovky i vprovadzhennia investytsiinykh proektiv. Source https://rdpa.regionet.org.ua/images/129/PPP_report_ULEAD_30_10_2017.pdf

effective policies. When the private sector assumes secondary non-core functions, it allows the executive to reallocate its resources and focus on fulfilling its primary role;

Helps to improve the management of state assets. Traditional procurement planning cycles are often based on the short term, as a result of which asset retention and recovery are often not optimal. On the other hand, the private sector often applies a life-cycle approach to planning and budgeting, using long-term contracts. These contracts include maintenance funds that ensure that the assets are in good condition and properly cared for;

Improves the quality-of-service delivery due to the authorization of innovations. Involvement of the private sector on a specific competitive basis contributes to the development of creative solutions in the field of infrastructure, planning, construction and asset management;

Ability to transfer risk and taxpayers to the private sector. Due to this approach, the risks associated with unexpected costs and overspending, delays and execution and deviations from the calendar schedule and the need to respond to fluctuations in demand for services are effectively transferred from the public sector to the private sector⁷.

It is this effective public-private partnership policy that ensures cooperation between the public and private sectors. This cooperation proves that both parties benefit from financial resources, technology and management knowledge to improve the provision of services to citizens. In addition, public-private partnership is an alternative to the privatization of state and communal property, as it combines the benefits of public and private sectors, which is a key factor in conserving public resources and government regulation, and these issues are extremely acute in today's Ukraine.

It should be noted that the current legislation of Ukraine in the field of regional development is formed taking into account the best European practices and is substantially adapted to similar documents of the European Union. In particular, the Law of Ukraine "On Principles of State Regional Policy", the Law of Ukraine "On Voluntary Association of Territorial Communities", the Law of Ukraine on Cooperation of Territorial Communities, the State Strategy for Regional Development, and the possibility of directing funds of the State Fund for Regional Development, and infrastructure subventions - for the development of the territorial community, are sufficient prerequisites for reducing the imbalance of development of individual regions and territories.

4. Conclusions

Summarizing the above, we can draw the following conclusions. Social, and especially transport infrastructure significantly affects the development of all sectors of the national economy, in particular the regional level of Ukraine. The current situation is currently underdeveloped and requires considerable attention. It was found that the best among the known ways to improve the efficiency of social and in particular transport infrastructure is a public-private partnership, the essence of which is the joint action of the state and business on the optimal distribution of powers to control the cooperation of the parties. The main task for improving cooperation and attracting public-private partners, including foreign investors, is to improve the regulatory framework and create an authorized executive body for public-private partnership to regulate and involve private partners both at the state level and at local level in

⁷ Vynnytsky, Lendiel, Onychuk, Sergvari. Experience and prospects of implementation of public-private partnerships in Ukraine and abroad. K. I. C., Kiev, 2008, s 14.

particular. Such a body will compensate for the coordination of roles, risks, rewards, incentives and the use of flexible approaches to obtain predetermined results in concluding service contracts.

Public-private partnership is an effective and promising tool for economic and social development at the regional and local levels, a means of raising funds for projects where state and local authorities try to maintain control and establish cooperation with investors. During such cooperation between the state and business entities, better technical and economic indicators and business results are achieved, state resources and communal property are used more efficiently. However, it is established that in the conditions of modern domestic state formation the level of use of PPP potential for development of economic and social infrastructure of national economy is insufficient. In particular, this is preceded by insufficient legal and regulatory support to attract public-private partnerships in the field of transport infrastructure in Ukraine. The regulatory framework is quite outdated, and the adopted new Law of Ukraine "On Concession" of October 3, 2019 №155-IX, did not ensure transparency of the law and did not exclude possible corruption risks to provide a private partner willing to invest in infrastructure development of Ukraine.

Further study of the problem of PPP in the field of transport infrastructure should be carried out taking into account the improvement of the regulatory framework. To solve this problem, it is necessary to review the entire legal framework of transport infrastructure and improve it in accordance with the new economic conditions. Ukraine's new regional policy is aimed at mitigating disparities in the socio-economic development of different territories of the state. Given that Ukraine is a large enough country and given the significant differences in access to and access to public services, creating the conditions to reduce such disparities between regions and local communities should be one of the key tasks for the near future.

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