

<https://doi.org/10.22364/jull.15.19>

The Concept of Public-Private Partnership in Poland

Dr. iur. Rafał Cieślak

Faculty of Law and Administration, University of Warsaw
Assistant Professor at the Public Administration Research Unit
E-mail: rcieslak@uw.edu.pl

The paper concentrates on the concept of public-private partnership in Poland. In particular, the issues concerning the legal basis and the principles of implementing PPP projects were raised. Moreover, the paper explores the procedures of the private partners' selection and important provisions of the PPP contracts. The institutional environment, such as PPP policy and the role of the PPP Central Unit were also discussed. At the conclusion, the analysis of PPP market in Poland is provided.

Keywords: public-private partnership, concession for works or services, public procurement law, Poland.

Contents

<i>Introduction</i>	282
1. <i>Scope of the PPP Act</i>	284
1.1. <i>Definition and key features of PPP</i>	284
1.2. <i>Assessment of the effectiveness of project implementation</i>	285
1.3. <i>Selection of the private partner</i>	285
1.4. <i>The PPP agreement</i>	286
1.5. <i>Impact of the PPP on public debt</i>	288
2. <i>The PPP Policy and institutional framework</i>	288
3. <i>PPP market in Poland</i>	289
<i>Conclusion</i>	290
<i>Summary</i>	291
<i>Sources</i>	291
<i>Bibliography</i>	291
<i>Normative acts</i>	291
<i>Other sources</i>	292

Introduction

In Poland, public-private partnership (PPP) is still a relatively new concept with regard to carrying out public tasks. The introduction of the democratic system after 1989, based on the principles of market economy, did not automatically generate interest in PPP as an organized form of public-private cooperation. Despite the transactions

carried out on the basis of principles similar to PPP¹, the first legislative attempt in this regard (actually unsuccessful) was made only in 2005. In fact, PPP *sensu stricto* can be talked about only since 2009, when the provisions of the Act of 8 December 2008 on public-private partnership² and the Act of 9 January 2009 on concession for construction works or services³, later replaced by the Act of 21 October 2016 on the concession agreement for construction works or services⁴, entered into force. In broad terms, PPP in Poland is treated as various concepts and types of public-private cooperation, while in narrower terms it is limited to the provisions of the PPP Act and Concessions Act⁵. The problem of lack of coordination between the offices responsible for the development of the two acts is recognized in the Polish science⁶, which results in numerous practical problems in the process of applying the law.

In this article, I will focus on discussing the concept of PPP in Poland from a narrow perspective and limited to the most important legal act normalizing public-private cooperation – the PPP Act. It should be emphasized that every undertaking being a concession for construction works or services, regulated by the Concessions Act, can be successfully implemented also under the PPP Act. This is so, *inter alia*, because the broad definition of PPP, contained in the PPP Act, enables applying it also to concessions. This problem occurs not only on the substantive level, but also on the procedural level, which will be discussed later in this article.

At the beginning, it should be emphasized that the PPP Act has the nature of a framework regulation, so it can be applied to various PPP structures, which should be considered as a positive solution. After the PPP reform carried out in 2018⁷, the legislative barriers to the implementation of PPP have been largely removed. The relatively small number of PPP projects implemented in Poland⁸ is therefore not due to legal restrictions, and in any case – they are no longer the primary ones. The discussion on the implementation of the Government Policy for the Development of PPPs of 2017⁹ and development of the PPP market in Poland will also complement the arguments of legal nature.

¹ Several sections of motorways have been built in Poland under the PPP or concession rules; there have also been numerous transactions at the local government level based on public-private partnerships or lease agreements. However, these concepts were usually not based on the system of public procurement and concessions, which is now the foundation of public-private partnership, but on separate regulations for public roads and toll motorways, municipal economy and real estate management.

² Dziennik Ustaw, 2022, item 407 (consolidated text), as amended; hereinafter referred as to: the PPP Act.

³ Dziennik Ustaw, 2016, item 113 (consolidated text), as amended, repealed.

⁴ Dziennik Ustaw, 2021, item 541 (consolidated text), as amended; hereinafter referred as to: the Concessions Act.

⁵ See “Wytyczne PPP, Tom II: Postępowanie PPP”, Ministry of Development Funds and Regional Policy, Warsaw: 2021, version 2:0, p. 28, www.ppp.gov.pl [last viewed 30.04.2022].

⁶ See Piotr Bogdanowicz in Piotr Bogdanowicz, Roberto Caranta, Pedro Telles, Public-Private Partnerships and Concessions in the EU. An unfinished legislative framework. Elgar: 2020, p. 115.

⁷ See ustawa z dnia 5 lipca 2018 r. o zmianie ustawy o partnerstwie publiczno-prywatnym oraz niektórych innych ustaw, Dziennik Ustaw 2018, item 1693.

⁸ According to the latest reports of the Ministry of Development Funds and Regional Policy, until 31.12.2021, there were 164 PPP and concession contracts concluded, see: <https://www.ppp.gov.pl/file.php?i=przegladarka-plikow/Raport-roczny-z-ryнку-PPP-2021.pdf> [last viewed 30.04.2022].

⁹ Adopted by the Council of Ministers on 26 July 2017. English version available at: <https://www.ppp.gov.pl/file.php?i=przegladarka-plikow/PPP-Policy.pdf> [last viewed 30.04.2022].

1. Scope of the PPP Act

1.1. Definition and key features of PPP

According to Article 1(2) of the PPP Act, the public-private partnership consists of joint implementation of the project based on a division of tasks and risks between the public entity and the private partner. Such a broad definition of PPP favours various public-private structures. The public entity is identified here (in simplified terms) with the contracting authority under the public procurement law, while the private partner is defined as an entrepreneur (including foreign entrepreneurs).

However, the definition of a project is the key to understanding the essence of PPP. Article 2(4), provides the definition of a project:

- (a) construction or refurbishment of a building or structure, or
- (b) provision of services, or
- (c) performance of a work, in particular equipping an asset with devices increasing its value and use, or
- (d) other consideration (service) – combined with maintenance or management of the asset that is used for implementation of the public-private partnership project or related to it.

As can be seen from the above, the definition of a project is very general and open. This definition includes any public-private cooperation, as long as it is based on the division of tasks and risks, consisting of various services of the parties to a PPP agreement. However, the basic factor distinguishing PPP from other public contracts is the private partner's obligation to actively participate in operating public infrastructure. Lack of the maintenance or management of the asset that is used for implementation of the PPP project (or at least is related to it) eliminates the undertaking from the PPP definition¹⁰. This rule is also supported by the construction of the remuneration of the private partner, included in Article 7, according to which the private partner commits to implement the project at a remuneration and to cover in whole or in part the expenditure for project implementation or to have them covered by a third party¹¹. Moreover, the remuneration of the private partner shall primarily depend on the actual use or actual availability of the subject of project, which determines even more the rule of active cooperation during the exploitation stage of the asset.

To complete the picture, the public party's own contribution to the PPP project must be noted. Pursuant to the aforementioned Article 7, the public entity must also participate in the project, in particular by making its own contribution¹². This contribution can be financial or in-kind. In the former case, it can consist of co-financing part of the construction of infrastructure or making subsidies for services provided by the private partner at the stage of operation. The in-kind contribution usually takes the form of making the investment property available to the private partner. Interestingly, the PPP Act allows for making such contribution in any legally permissible form (e.g., lease, lending, or even sale)¹³.

¹⁰ That is why public contracts based on long-term performance guarantees issued by the contractor or minimal scope of the private partner's serviced during the exploitation period, cannot be considered as PPP projects.

¹¹ By a third party, the PPP Act understands banks and other financial institution, including investment funds, investors, sponsors or shareholders.

¹² The PPP Act obliges public entity to cooperate with the aim of achieving the project objective.

¹³ It is worth to note that, according to the Article 9(2) if an asset contributed by a public entity is used by the private partner in a way obviously contrary to its intended use specified in the public-private partnership agreement, the private partner shall transfer that asset to the public entity according to the principles specified in the public-private partnership agreement.

1.2. Assessment of the effectiveness of project implementation

Until the 2018 amendment of the PPP Act, public entities were not required to adequately prepare PPP projects. From 2018, according to Article 3a, before initiating the selection procedure of the private partner, the public entity shall perform an assessment of the effectiveness of project implementation within the framework of public-private partnership in comparison with the effectiveness of its implementation in any other way, with the exclusive use of public funds. The public entity shall consider, in particular: the planned division of tasks and risks between the public entity and the private partner, the estimated costs of the project life cycle and the time necessary to implement the project and the amount of fees collected from users, if planned, and the conditions for amending them. Despite the general nature of this provision and emerging interpretive questions about its scope, government guidance has been made available to public entities to facilitate the development of the assessment of the effectiveness of project implementation¹⁴. It can be said that this solution has improved the quality of prepared projects, which has a direct impact on the effectiveness of procedures for the selection of private partners. Assessment of the effectiveness of project implementation must be developed for each type of project falling under the PPP Act. This means that even the smallest projects must be carefully and comprehensively considered and analysed. Unfortunately, this approach limits the application of PPP in small and very small projects, of which Poland has the largest number¹⁵.

It should be added that, in accordance with the Article 3b(1,3), the public entity may request the minister competent for regional development to issue an opinion on the rationality of implementing the project within the framework of PPP. The opinion, which, to a certain extent is a support to the project, shall be issued within 60 days from the receipt date of the complete request.

Interestingly, the PPP Act does not provide for sanctions of nullity of the procedure or the concluded PPP agreement in case when the public entity does not fulfil the disposition of the Article 3a. In such a case, however, the project would certainly be exposed to increased inspections by authorized services. In practice, this obligation is respected by public entities preparing PPP projects.

1.3. Selection of the private partner

In the legal system of the European Union, a PPP is generally based on the concept of either a public procurement or a concession¹⁶, therefore, from the procedural point of view, the selection of a private partner is based on the regulations of the “Classical Directive” and the “Concessions Directive”¹⁷. Regulation of the PPP Act does not generally provide for procedural provisions modifying the general rules for the award

¹⁴ Wytuczne PPP Tom I: Przygotowanie projektów PPP, Ministerstwo Funduszy i Polityki Regionalnej, wersja 2:0 [PPP Guidelines Vol. 1: Preparation of PPP projects, Ministry of Development Funds and Regional Policy, version 2:0], 2021. Available: www.ppp.gov.pl [last viewed 30.04.2022].

¹⁵ See more in section 4 of this article.

¹⁶ See *Korbus, B.* In: *Cieślak, R.* (ed.). *Partnerstwo publiczno-prywatne: 100 pytań, wyjaśnień, interpretacji.* Wolters Kluwer: 2014, pp. 20–22.

¹⁷ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.03.2014, p. 65 and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.03.2014, p. 1.

of public procurements and concessions¹⁸. The Article 4 stipulates that the provisions of the Act of 11 September 2019 – Public Procurement Law¹⁹, shall apply to the selection procedure of the private partner and the agreement on public-private partnership in any matters not regulated in the PPP Act. A specific manifestation of confusion between the regulations of the PPP Act and the Concessions Act is the possibility to apply the procedure specified in the Concessions Act to select a private partner, if the planned undertaking falls within the definition of a concession²⁰. In practice, the distinction between the concessions based on the PPP Act and based on the Concessions Act comes down to a slightly different assessment of the allocation of risk within the project²¹. Such a “mixed” procedure creates a lot of problems in practice. Therefore, in the vast majority of cases, the private partner’s selection is based on the regulation of the PPL Act. As in certain cases contracts awarded as PPPs are exempt under the PPL Act and the Concessions Act, the PPP Act provides for the possibility of selecting a private partner in a way which guarantees fair and free competition and the principles of equal treatment, transparency and proportionality.

When the PPL Act applies, the private partner is usually selected by means of a competitive dialogue; when the Concessions Act applies, negotiations, similar in their essence to a competitive dialogue, will be the appropriate mode. Obviously, the PPP Act does not oblige public entity to choose a competitive dialogue, however, the PPP Guidelines refer to two-step procedures based on the dialogue or negotiations as preferred modes, recommended in such a complex and long-term project as PPPs²².

1.4. The PPP agreement

The PPP agreement shall be governed by the PPP Act, and to the extent not regulated by the PPL Act²³. Matters not regulated by the aforementioned legal acts fall under other generally applicable regulations, particularly the civil law regulations.

As noted before, the PPP agreements may apply to the variety of PPP models and sectors and the PPP Act leaves a lot of room to both parties in order to negotiate and

¹⁸ The exception includes facultative award criteria (e.g., the division of tasks and risks; the effectiveness of project implementation, including the effectiveness of asset use; the ratio of public entity contribution to private partner contribution – see Article 6(3) of the PPP Act; another procedural exception is that the public entity may express its consent to conclude and implement the agreement on public-private partnership with a one-person company established by the private partner to implement the project upon the selection of the advantageous offer or with a capital company which the private partners are the only shareholders of – see the Article 7a.

¹⁹ Dziennik Ustaw, 2021, item 1129 (consolidated text), as amended; hereinafter referred to as the PPL Act.

²⁰ According to the Article 3 of the Concessions Act, “Based on the concession contract the contracting authority entrusts the concessionaire the execution of works or the provision and the management of services for remuneration. [...] In the case of entrusting the economic operator: 1) the execution of works – where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment (concession contract for works); 2) the provision and the management of services – where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract, or in that right together with payment (concession contract for services). [...] The concessionaire bears the economic risk related to the exploitation of a work or a service and the risks related to demand and supply.

²¹ See *Cieślak, R.* In: *Cieślak, R.* (ed.). *Ustawa o umowie koncesji na roboty budowlane lub usługi*. Komentarz. C.H. Beck: 2018, p. 6.

²² See *Wytuczne PPP Tom II: Postępowanie PPP, Ministerstwo Funduszy i Polityki Regionalnej, wersja 2:0 [PPP Guidelines Vol. 2: PPP proceedings, Ministry of Development Funds and Regional Policy, version 2:0], 2021. Available: www.ppp.gov.pl [last viewed 30.04.2022].*

²³ Or the Concessions Act, if the PPP contract has been concluded on the basis of the Concessions Act.

prepare the PPP agreement. However, there are a few rules and obligations that should be introduced to every PPP agreement in Poland.

According to the Article 7, both parties are obliged to contribute to the project. Usually, the public entity makes a land contribution and private partner is responsible for designing, performing construction works, delivery of financing, management or maintenance of the infrastructure. Nonetheless, the definition of the common undertaking is very broad and flexible.

The remuneration of the private partner shall primarily depend on the actual use or actual availability of the subject of project. The source of the remuneration may be combined. The agreement on PPP, as every public contract, shall define the consequences of undue performance or non-performance of the commitment, in particular the contractual penalties or a decrease in the remuneration of the private partner. Usually, due to the requirements of financial institutions, the remuneration is subject to assignment to banks. In case of projects based on fees from users, the PPP contract shall define the maximum amount of such fees and the conditions for amending them.

Under the Article 8, the public entity shall have the right to current control of project implementation by the private partner and to control the asset used by the private partner for implementing the project. The principles and detailed procedure of conducting the controls shall be specified in the agreement on PPP. Protection of public assets requires implementation of the rule under which an incorrect usage of the asset by the private partner shall lead the public entity to call on the private partner to take appropriate measures, in particular, to make expenditures to restore the correct technical state of the asset. The agreement on PPP shall define the consequences of not taking appropriate measures to restore the correct technical state of the asset. The private partner is obliged to report to the public entity on the project implementation progress and the technical state of the asset used by the private partner for implementing the project on an ongoing basis.

The PPP Act, after the 2018 reform, introduced the “step-in right” procedure. Pursuant to the Article 10a, the public entity may conclude a contract with a third party financing the project as a whole or in part, based on which it will be able to transfer the obligations of the private partner entirely or in part, as well as the related rights, onto the third party, in case of a severe threat to the project implementation. The third party may entrust another entity or entities with the project implementation solely with the consent of the public entity. However, it may be noticed that no financial institution would be willing to take over the private partner’s obligations, – in practice the Article 10a is a basis for a transfer of assets, rights and obligations of the special purpose vehicle company to a new private partner.

Among other additional or facultative provisions, Article 7b is noteworthy. This regulation excludes the liability of the public entity playing the role of the investor (under the Polish construction law regulation) for the remuneration due to the subcontractor of the private partner. Consequently, the availability payment is secured in a long-term perspective and the public entity is not subject to any claims of the subcontractors.

Finally, it should be noted that the PPP Act does not contain any regulation concerning the minimum or maximum duration of a PPP agreement. Usually, the PPP agreements are concluded for no longer than 30 years²⁴.

²⁴ In case of operation and management PPPs or a concession, the minimal identified period was 24 months. On the other hand, there are agreements, which have been concluded for the term of 69 years.

Last but not least, the regulations of the PPP Act provide for the possibility of realizing the so-called institutional PPP, i.e., PPP in the form of a company of a public entity and a private partner. In practice, due to the complicated nature of this structure, in particular the problem of transferring the risk from the company to the partners (in case of termination of the PPP agreement), this form of realizing a PPP agreement has not yet been applied.

1.5. Impact of the PPP on public debt

In Poland, one of the most important motivations for public entities to reach for PPPs is the issue of public debt. As most of the projects are being concluded by local government units, for many years there had been a strong debate over the impact of PPPs on public debt. It wouldn't be risky to observe, that other advantages obtained through PPPs implementation are not as required as "off-balance" treatment of PPP contracts. In the period of 2009–2012, there were extensive problems with indication a proper legal basis for local governments to determine which rules apply to their "on-" or "off-balance" position.

In 2012, the amendment to the PPP Act addressed this problem. According to the Article 18a, the obligations arising from PPP agreements do not affect the level of state public debt of a public finance deficit in a situation where the private partner bears most of the risk of building and most of the availability or demand risk, taking into account the influence of factors such as guarantees of financing by the public entity and allocation of assets when the agreement expires on the above risks²⁵. In addition, a regulation was issued, which stipulated taking into account particular types of risks and factors. On the level of local government, the obligations arising from the PPP agreement are thus treated as a debt title only if they do not meet the criteria indicated in the Article 18a²⁶. In case of the central government projects, the methodology introduced by the Eurostat obviously is the proper one to apply²⁷.

2. The PPP Policy and institutional framework

The Government Policy for the Development of PPPs of 2017 concluded the discussion on PPP problems in Poland. The identified barriers in PPPs development²⁸ had been partly overcome by the novelization of the PPP Act of 2018, establishment of the institutional structure²⁹, issuing the PPP Guidelines, creating data base of planned and realized projects, education and promotion of the PPP model in general.

Under the Article 16a of the PPP Act, the minister responsible for regional development shall hold the competency regarding any matters pertaining to public-private

²⁵ Clearly, the Article 18a is very similar to the decision of the Eurostat of 2004, related to the discussed issue.

²⁶ In practice, these regulations have not fully resolved the problem of impact of PPPs on public debt and deficit. Instead, the burden has been transferred to financial supervision units, which have to analyse the provisions of PPP agreements in depth and try to apply the Article 18a rules.

²⁷ See, e.g. A Guide to the Statistical Treatment of PPPs. 2016, Eurostat.

²⁸ Which were: lack of a clear institutional structure and coordinated PPP development policy; lack of optimal legal solutions; absence of database of PPP investment plans; few large projects; no standardization of legal models or documentation for PPP and concession contracts; gaps in the dissemination and examination of good practice for PPP projects; limited knowledge of PPP and the principles of PPP implementation; lack of dedicated project teams and experience in implementing PPP projects in the public sector; difficulties in preparing PPP projects and lack of diligent project preparation; insufficient information for the public; problems with project financing.

²⁹ Central coordinating and management unit for public-private partnership (PPP Unit) in Poland – the Ministry of Development Funds and Regional Policy.

partnerships³⁰. The minister fulfils this task through the Public-Private Partnership Department under the Ministry of Development Funds and Regional Development. His authority extends to the following tasks:

- 1) Issuing opinions on the rationality of implementing the projects within the framework of PPP (the so-called “certification”);
- 2) Issuing non-binding opinions on the method of realizing the public investments financed by the central budget, of a total value over 300 000,00 PLN;
- 3) disseminating and promoting best practices in relation to PPP, including the so-called hybrid projects;
- 4) preparing and disseminating examples of template agreements on PPP, guidelines and other documents to be used for planning and performing public-private partnerships;
- 5) keeping a database of public-private partnerships;
- 6) providing professional support to the public entities implementing projects;
- 7) performing analyses and assessments of the functioning of PPPs, including the status and perspectives for the financial engagement of the private sector.
- 8) The PPP Unit offers support for the public entities. All of its activities may be followed at: www.ppp.gov.pl. In terms of the Concessions Act, partly competent is also the President of the Public Procurement Office (www.uzp.gov.pl).

The Government Policy for the Development of PPPs stated that the principal indicators, according to which the effectiveness of the policy’s activities will be assessed by 2020 include:

- increase in the number of implemented PPP investment projects – conclusion of at least 100 new PPP agreements,
- increased share of the value of signed PPP agreements, in terms of percentage of investment outlays in national economy in the public sector to the level of 5%,
- increase in the number of tenders initiated by the government/state sector to select the private partner – the implementation of the activities provided for in this document is expected to result in the initiation of at least 10 such procedures,
- increase in the number of signed PPP agreements in relation to the number of tender opportunities announced to 40%.
- Unfortunately, none of the abovementioned has been achieved. The evaluation of the policy should be completed until the first half of 2022.

3. PPP market in Poland

Polish PPP market is probably one of the most developed in the whole of Central and Eastern Europe,³¹ however, it still remains very, very far from the mature European PPP markets³². The complete data presented by the PPP Unit, covering the market from 2009 to 2021, leads to the following conclusions³³.

³⁰ Currently, this is the Minister of Development Funds and Regional Development.

³¹ However, a great deal of caution should be exercised in this assessment, as there has been no in-depth comparative research in this area to date.

³² See, e.g., the reports of the European PPP Expertise Centre. Available: <https://www.eib.org/epec/what-we-do/index> [last viewed 30.04.2022].

³³ See Raport rynku PPP 2009 – 2021, Ministerstwo Funduszy i Polityki Regionalnej [PPP Market Report 2009–2021, Ministry of Funds and Regional Policy], 2022. Available: www.ppp.gov.pl [last viewed 30.04.2022].

In the last 13 years, from the beginning of 2009 to the end of 2021, a total of 624 PPP proceedings were initiated in Poland. In the same period, the number of PPP agreements amounted to 164 (this number includes the total of ongoing and completed agreements). The average number of concluded agreements in the period from 2009 to 2021 amounts to 13 agreements per year, i.e., slightly more than 1 agreement per month. It is not an impressive result. The total value of concluded agreements amounts to 8.6 billion PLN, which is a margin of the value of public investments realized in this period.

PPPs are implemented in at least a dozen sectors, such as waste management, water and sewage management, sports and recreation, energy efficiency, transport, education, health care, housing, revitalization, telecommunication; in the vast majority of cases, these are the tasks of local government units.

The largest number of PPP agreements as of the end of 2021 was concluded in the following sectors: energy efficiency (25), transport infrastructure and sports (24 each), and water and sewage management (22). The waste management sector remains the dominant one with the highest value of projects (2.6 billion PLN in total), and this value results from the implementation of three very large projects in Poznan, Olsztyn and Gdansk. However, the market of Polish PPP projects is dominated by agreements whose value does not exceed 40 million PLN. Such agreements constitute 79% of all PPP contracts. The average of the above gives the value of one agreement concluded in the period 2009–2021 at the level of 54 million PLN.

As far as the legal basis for selection a private partner, since 2009 most agreements (38%) were concluded after conducting proceedings in the form of concession for services, and slightly fewer (36%) agreements – after conducting proceedings in the PPP mode based on the PPL Act. It should be noted that currently the tendency is changing towards an even wider use of the provisions of the PPL Act (for example, in 2021 a partner was selected primarily in the PPP mode based on the PPL).

As it was mentioned before, PPP is formed mainly by local governments, which have so far concluded (directly or through their units) 148 agreements (90%). The majority of agreements that entered the implementation phase were signed by urban (51 agreements), rural (38 agreements) and urban-rural municipalities (25 agreements). 16 PPP agreements were concluded by entities not connected with local governments, of which in 8 cases the institutions of central government administration were parties to the agreement. In the latter case, only one project concerns the construction of a cubature facility, the others are concessions for services.

Some projects, including case studies, are available at of the PPP Unit³⁴, as well as the pipeline of projects in various stages of preparation.

Conclusion

The principles of public-private cooperation in Poland were included in a separate legal regulation – the PPP Act. The regulation is of a framework nature. A wide definition of PPP enables realization on its basis of various projects, the common feature of which is the division of tasks and risks, as well as maintenance or management of the asset at the stage of infrastructure operation. Preparing a PPP project requires carrying out an assessment of the effectiveness of project implementation. The procedure of selecting a private partner is based on regulations proper for public procurement, or (in rather rare cases) – for concessions. The PPP

³⁴ See <https://www.ppp.gov.pl/projects/> [last viewed 30.04.2020].

Act (especially after the amendment of 2018) to a large extent takes into account the specificity of implementing PPP projects. It seems that the regulation of the PPP Act has enabled a significant reduction of legal barriers to the implementation of public-private cooperation.

The image of the Polish PPP market appears to be still in its nascent stage, without a significant number of large infrastructure projects, fragmented, dominated by smaller undertakings implemented mainly at the local government level. At the same time, it is impossible not to notice some efforts of the PPP Unit aimed at promoting the use of PPP as a form of realizing public tasks.

Summary

In Poland, the concept of public-private partnership has been developing steadily since 2005.

On the regulatory side, it should be stated that the PPP Act of 2008 to a large extent takes into account the specifics of PPP. The regulation is of a framework nature and a wide definition of PPP enables realization on its basis of various projects, the common feature of which is the division of tasks and risks, as well as maintenance or management of the asset at the stage of infrastructure operation.

The effective implementation of a PPP project requires the preparation of an assessment of the effectiveness of the implementation of the project and the conduct of a private partner selection procedure, which is usually based on the provisions of the PPL Act. In the case of projects where the economic risk is borne by the private party and the remuneration comes from infrastructure user charges, the selection of the private party is based on the provisions of the Concessions Act.

Unlike Western Europe, the Polish PPP market is dominated by small projects. This is due to the fact that more than 90 percent of projects are carried out by local government units, while there is a lack of large PPP investments by central government.

Sources

Bibliography

1. Bogdanowicz, P. In: Bogdanowicz, P., Caranta, R., Telles, P. (eds). *Public-Private Partnerships and Concessions in the EU. An unfinished legislative framework*. Elgar: 2020.
2. Cieślak, R. In: Cieślak R. (ed.), *Ustawa o umowie koncesji na roboty budowlane lub usługi. Komentarz [Act on concession contract for works or services. Commentary]*. C. H. Beck, 2018.
3. Korbus, B. In: Cieślak, R. (ed.). *Partnerstwo publiczno-prywatne: 100 pytań, wyjaśnień, interpretacji [Public-private partnership: 100 questions, explanations, interpretations]*. Wolters Kluwer, 2014.

Normative acts

1. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.03.2014, p. 65.
2. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.03.2014, p. 1.
3. Act of 28 July 2005 on public-private partnership, *Dziennik Ustaw*, 2005, No. 169, item 1420 (repealed).
4. Act of 8 December 2008 on public-private partnership, *Dziennik Ustaw*, 2022, item 407 (consolidated text).
5. Act of 9 January 2009 on concession for construction works or services, *Dziennik Ustaw*, 2016, item 113 (consolidated text; repealed).
6. Act of 21 October 2016 on the concession agreement for construction works or services, *Dziennik Ustaw*, 2021, item 541 (consolidated text).

7. Act of 5 July 2018 on amending the Public-Private Partnership Act and certain other acts, *Dziennik Ustaw*, 2018, item 1693.
8. Act of 11 September 2019 – Public Procurement Law, *Dziennik Ustaw*, 2021, item 1129 (consolidated text).

Other sources

1. Polityka Rządu w zakresie rozwoju partnerstwa publiczno-prywatnego 2017, przyjęta uchwałą Rady Ministrów z dnia 26 lipca 2017 r. [Government Policy for the Development of PPPs of 2017, Adopted by the Council of Ministers on 26 July 2017]. Available: <https://www.ppp.gov.pl/polityka-zarzadu/> [last viewed 30.04.2022].
2. Wytuczne PPP Tom I: Przygotowanie projektów PPP, Ministerstwo Funduszy i Polityki Regionalnej, 2021, wersja 2:0 [PPP Guidelines Vol. 1: Preparation of PPP projects, Ministry of Development Funds and Regional Policy, version 2:0, 2021]. Available: www.ppp.gov.pl [last viewed 30.04.2022].
3. Wytuczne PPP Tom II: Postępowanie PPP, Ministerstwo Funduszy i Polityki Regionalnej, wersja 2:0, 2021 [PPP Guidelines Vol. 2: PPP proceedings, Ministry of Development Funds and Regional Policy, version 2:0, 2021]. Available: www.ppp.gov.pl [last viewed 30.04.2022].
4. A Guide to the Statistical Treatment of PPPs, 2016, Eurostat.
5. Reports of the European PPP Expertise Centre. Available: <https://www.eib.org/epec/what-we-do/index> [last viewed 30.04.2022].
6. Raport rynku PPP 2009–2021, Ministerstwo Funduszy i Polityki Regionalnej [Market reports of PPP 2009–2021, Ministry of Development Funds and Regional Policy], 2022. Available: <https://www.ppp.gov.pl/file.php?i=przegladarka-plikow/Raport-roczny-z-ryнку-PPP-2021.pdf> [last viewed 30.04.2022].

© University of Latvia, 2022

This is an open access article licensed under the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>).