

COORDINATES ON PUBLIC-PRIVATE PARTNERSHIP. A EUROPEAN AND NATIONAL VISION

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The concept of public-private partnership emerged as the result of the need to attract funding for the delivery of public projects, from private economic operators.

Considered to be an efficient and effective way of financing various projects carried out at regional level or at the national level, at present, public-private partnership is an opportunity that Romania misses, the latter not pursuing the model of most European states that have adopted this solution to develop infrastructure, the construction of various public institutions such as hospitals, schools, prisons or for the progress of social or security services.

Considering the above-mentioned aspects, we intend to approach the concept in this paper of public-private partnership in terms of national legislation correlated with the relevant legislation at European level.

Key words: *advantages, collaboration, disadvantages, legislation, private sector, public sector, public services, public-private partnership, Romania, the European Union*

JEL Classification: *D73, H42, L32*

I. INTRODUCTION

In the relevant published literature, public-private partnership consists of "representing any transaction that transfers the general responsibility for providing a service or for making a public investment to a private company, while the competent public authority retains its political responsibility" (Levai, 2009).

This concept can be assimilated to outsourcing (Hintea, 2000), which has as its primary objective the collaboration to a public institution with a private investor to meet needs of public interest and as a secondary objective, it aims to obtaining a reasonable profit from the private investor. It appeared in the context a new paradigm in the public sector, called the new public management (Calu et al, 2011).

Public-private partnership is a multidimensional concept at the level of specialized literature, taking into consideration the tendency to limit public financial resources and increase demand and service costs (Stefanescu & Dudian, 2016).

The great European economic analysts have concluded that the move to the management of the private sector within the public sector may have the effect of reducing the sector's weaknesses the public has at the economic level, resulting from poor management of public money (Inceu, 2000).

At present the perspective in the European Union and in our country is characterized through the various developments that have taken place lately, at the level of the community and national legislative framework, with a view to developing and harmonizing common legislation with regards to public-private partnership, public procurement and works or service concessions.

The public-private partnership term is becoming more and more common in our country considering the current economic situation (Didier, 2007), which is characterized by significant budget cuts, related to the infrastructure investments.

Although in Romania there were (and continues to exist) multiple forms of collaboration between public and private actors in diverse areas, the legal mechanisms of the public-private partnership could not be used until present to maximize the good relations existing between these sectors (Moldovan, 2017).

From the perspective of the public-private partnership's advantages, these are: in an efficient and economically efficient way, removing some of the administrative deficiencies encountered in the public sector, the launching and running of long-lasting and safe partnerships, minimizing the costs necessary to carry out the projects, the option to launch various projects that do not require a pre-financing from own sources to be achieved and promoting leadership styles.

The disadvantages of the public-private partnership are: the amount of expenditure required by the public sector, with the aim of creating a continuously developing efficient control mechanism, the high dependence of a the public sector as compared to the private sector, the private operator's inability to continue the project initiated by partnership, which has the effect of interrupting the provision of the contracted service as a result of

insolvency or bankruptcy, a high level of complexity of the contracts concluded as a result of a partnership of this type, does not allow for a detailed follow-up of how human rights are followed, related to the quality of the accessed service and the loss of control over time of the various activities which were leased.

Given the many advantages of these types of partnerships, assuming their associated risks is viable, as this form of collaboration generates a high level of positive impacts on the economy (Avram, 2004).

II. PUBLIC-PRIVATE PARTENERSHIP WITHIN THE EUROPEAN UNION

States within the European Union are divided into three categories related to the adoption of this partnership type, as follows (Akhter, 2009): States that have adopted this partnership at an advanced level, such as: France, Germany, Ireland, Italy, United Kingdom; States that have adopted the public - private partnership at the middle level, such as: Portugal and Spain; States that are trying to adopt a public-private partnership, such as: Luxembourg, Sweden, Romania.

Public-private partnership has emerged in the European space as a result of the significant financial constraints which the Treaty on European Union of 1992 has imposed on member countries (Belecciu, 2008). So, through it, each state has been obliged to act in the sense of diminishing public budgets, which resulted in a significant decrease in public sector spending, with the highest impact in the budget allocated to investments. As a result of these issues, the governments of the Member States sought for solutions to be able to pursue various investment projects in the public sector.

In the Anglo-Saxon sense, public-private partnership is a collaboration between the public environment and the private operators, which aims to provide services of public interest, that have previously been made available to the citizens only by the public system. (Hamlin & Neamtu, 2005) and concerns aspects such as: the sharing of investments and related risks, between the public sector and the private sector, in which case funding is largely provided by the private sector, as well as the sharing of the liabilities generated by the private sector partnership and its benefits generated by it.

In the French sense, the public-private partnership is materialized by a written contract between the public sector and the private sector (Brenet, 2004), defending the notion of joint venture (Besancon, 1998).

The analysis of the public-private partnership at the level of the European countries highlights the significant role of the private sector at the public sector level in delivering different services, infrastructure building, funding and management of various services (Stefanescu, et al, 2010)

III. PUBLIC-PRIVATE PARTNERSHIP IN ROMANIA

In Romania, the concept of public-private partnership has been known since the mid-1990s, being the result of the process of developing several strategies at a sectoral or national level, but also of different institutionalized organizations (Vițelar, 2006).

Public-private partnership has emerged in our country as a result of certain circumstances, among which we can enumerate (Ioan, 2007): the impossibility of the local public sector to finance certain necessary investments; the political, legal, economic, social and cultural integration of Romania in the European Union, the improvement and developing of the Romanian business environment, having impact on the expansion of various private businesses, which have become eligible to take over some of the responsibilities and risks of the public sector; opportunities that resulted as part of development and consolidation of the market economy at the national level; the transfer of several assets that were held by the State, or by various state-owned trading companies to private investors, thus externalizing part of the public interest services.

Studies conducted in the relevant published literature have highlighted that the public-private partnership is an alternative to improving performance (Calu et al, 2011).

In our country, the public-private partnership is settled by Government Emergency Ordinance no. 39 of 10 May 2018 on Public-Private Partnerships, in force since 18 May 2018, which should fill the legislative gap left by the repeal of the Public-Private Partnership Law no. 233 of 24 November 2016. Through this ordinance, practically the national legislative provisions provided by Law no. 233/2016, have not been updated but replaced altogether, although they have been updated in a significant way in February 2018. Until 2016, the public-private partnership was governed by the Law no. 178 of 1 October 2010, a law that was heavily criticized.

The first normative acts by means of which private investors were able to carry out public projects in Romania were: Law no. 219 of 25 November 1998 on the regime of concessions, Government Emergency Ordinance no. 60 of 25 April 2001 on public procurement, modified and completed by the Government Emergency Ordinance no. 40 of 12 May 2005 and Government Emergency Ordinance no. 16 of 24 January 2002 on public-private partnership contracts, repealed by Government Decision no. 90/2006.

The new legal framework for the public-private partnership that has been concluded in our country is a

step forward to clarify and simplify the conditions in which a public-private partnership can be concluded, whether it be contractual or institutional nature.

The most important aspects for the replacement of the provisions of Law no. 233/2016 by the Government's Emergency Ordinance 39/2018, are the following: at art. 3 lit. b) it is expressly clarified that the duration of the public-private partnership is over 5 years; to art. 13. par. (3) foreseen the establishment of a special fund for financing the public-private partnership contracts, containing public revenues resulting from various financial resources, within 1 year from the entry into force of the Government's Emergency Ordinance no. 39/2018, that is until May 18, 2019; to art. 32 lit. e) reintroducing the right of the private partner to be able to provide guarantees for the social parts, parts of interest or shares held within of the project company and which can be executed in favor of the financing institutions of the public-private partnership contract concluded; to art. 39 reintroduces the provision, according to which, if the private partner of the contract or the established project company does not fulfill the contractual obligations which were assumed through the contract concluded on the basis of the public-private partnership or the contracts' assumed obligations with the project sponsors, the public partner has the right to replace the private partner if this clause was foreseen as a clear clause, in the awarding documentation, issued within the award procedure of the contract and within the public-private partnership agreement concluded afterwards of that awarded procedure.

Although the current legislation has made significant improvements over the old public-private projects in our country, allowing both a broader range of projects and an important contribution from public partners, it presents a series of vulnerabilities.

Among the main limits of current legislation in our country, on public-private partnership, we can recall that at the investment stage, the financial contribution made from public funds is not allowed this being done exclusively from non-reimbursable external funds. Moreover, it remains an ambiguous issue the provision of the guarantees related to the goods which are the object of the project initiated between the public partner and the private partner, although it would have been necessary to have the possibility of providing guarantees on the various assets in the private domain of the state, which would considerably broaden the options available through which public-private partnerships would become more attractive. Also, the ordinance in force still does not have methodological norms of application, which leads to the impossibility of initiating such partnerships to the contracting authorities, given their limited experience in the implementation of such collaboration. Thus, we consider it advisable at the level of the legislative framework in our country, to include the specific risk categories that may be generated by such a partnership, the way that the risks that arise are allocated and that it should be clarified for the contracting authorities the possibility to reflect public-private partnerships in order to anticipate potential budget allocations.

IV. CONCLUSIONS

Although in most European countries the public-private partnership has been a real success, in Romania has not yet concluded such a partnership, amid the legislative framework in our country, which did not encourage private investors, this being more motivating for public administrations than for private ones. Moreover, so that this type of partnership brings significant results, the legislative framework in our country should also be harmonized with the legislation settled in other fields of activity, so that private investors are more interested in concluding such partnerships.

Creating a favorable framework for the development of public-private partnerships in Romania is a long – lasting process, the evidence being the poor cooperation in the past of the two type of actors within the framework, to which private investors have profited largely from all the facilities that the public administrations have made available, but not involving in the host communities, or government representatives have changed the legal provisions in a short time, unfortunately resulting in the emergence of a mutual economic mistrust mood, unstable.

In conclusion, for this type of partnership to be used in an optimal way in Romania, on the model of the Member States of the European Union, used as a financing method or as a source by which the citizen to be able to benefit from public services, both the private sector and the public sector administrations, have to change their approach. Thus, the public sector should consider the efficacy and efficiency, offer a beneficial treatment to the partnership and not an obedience, and the private sector should become a responsible partner, aiming at the joint development of the partnership and the profits gained in the detriment of individual profit.

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